

The CIWM is the professional body for the resource and waste management sector. It represents around 6,500 waste and resource management professionals, predominantly in the UK but also overseas. The CIWM sets the professional standards for individuals working in the sector and has various grades of membership determined by education, qualification and experience.

Proposals to Enhance Regulators' Powers to Tackle Waste Crime

General Comments

CIWM believes it would be useful to have an understanding of how the proposed competence and exemptions consultation (if taken forward after the General Election) might dovetail with the current proposals under this consultation. These powers also need to be considered alongside those that the regulator already has access to – but may not utilise sufficiently or apply effectively.

Guidance

CIWM believes the regulator should be required to develop guidance to ensure “that the regulators act in a proportionate and reasonable manner”. This would provide comfort to legitimate operators. For example the burden on legal owners such as the National Trust, the Country Land and Business Association members, Farmers, and Network Rail is well known (through the National Fly-Tipping Prevention Group) and further powers granted should be in line with protection of their legitimate interests, not increasing the risk. Therefore “very unlikely” in paragraph 3.3 should be even stronger e.g. “extremely rarely”.

Sentencing Guidelines for magistrates on environmental offences, in this regard, should also be updated.

Service of Notice

On whom or what should this be served? There are three potential users – an owner, an occupier or an illegal ‘visitor’. It may not be possible to identify an illegal ‘occupier’ who may just be a user that dumps waste obtained at a location(s). The legal owner or occupier may not be aware of the activity being undertaken. So can the notice be served on the property/land as well without necessarily identifying the owner/occupier or in default if they cannot be readily found? This would assist in being able to take immediate action necessary to prevent pollution or harm. Can the notice be served on all at the same time - owner, occupier and other (i.e. criminal)?

Resources



CIWM ascertains that the regulators need the necessary resources to be able to enforce this power, including detection, or it will merely be a paper exercise.

Power to restrict access to waste sites

1: Are you happy that the restriction notice and/or a restriction order are sufficient to enable the regulators to restrict access to a site?

CIWM is not sure such notices will achieve the desired outcome, at least until the details are set out.

What is needed is the power to take speedy action to:

- remedy non-compliance involving deposit of waste at permitted sites
- prevent criminal action for gain at non-permitted sites
- save public cost of removing and legally disposing of waste.

CIWM believes it is widely accepted that the main criminal intent is to profit from (cheap) illegal waste dumping. Similarly, an operator will gain by failure to observe the conditions of a permit allowing more waste to be deposited than the limited amount. Carriers, brokers and producers continue to take or send to such sites – acting illegally themselves.

Rethinking Waste Crime the latest report from ESAET released May 2017 highlights that illegal waste crime cost (net) £98 million in 2015. A cost to legitimate industry.

So, if these are the main drivers, then surely the conditions for the restriction notice should be relatable i.e. that the waste is deposited without the benefit of a permit or exceeds the conditions of a permit (implying that it is done illegally for gain).

The way this proposal is phrased there has to be a “serious risk” of pollution, which will need to be evidenced.

In Regulating the Waste Industry – 2015 Evidence Summary the main facts between 2014 and 2015 were that:

- serious pollution incidents caused by permitted waste sites decreased by 36%
- poor performing permitted waste sites has fallen by 20%
- persistently poor performing waste sites has fallen by 6%

This proposal could frustrate many examples of illegal disposal, which might have been discovered at an advanced stage, or call into question just what the test should be and if it is met – an excessive amount of inert waste or soil might not be within the scope of this proposal yet be considered worthy of action. Suppose, in this case, that an operator seeks a stay of the Regulator’s notice. Doubt could easily be sown into a Magistrate’s mind - it might be argued that



the pollution might not be imminent – for example the waste would have to break down first in order to cause pollution.

The regulator should be able to issue a notice on their own account as in section 3.2.1 and then go to the courts after the initial period is due to elapse. Maybe the operative term should be “risk of harm” and not qualified by “serious”, as in EPA 90.

CIWM suggests these powers are looked at in relation to the increased powers that came in on 30 October 2015.

CIWM understands that once the regulator issues such Notices the [illegal] operator will likely disappear and the regulator will still be left with managing the clear up. CIWM feels an illegal operator is hardly likely to appeal such an Order.

CIWM seeks clarification that it will be an offence(s) for an operator to continue to bring in waste when a Notice has been issued or an Order granted.

CIWM would like to also see an offence to carry waste into a site which is under Notice or had an Order made against it. If carriers were included under offences then responsibilities can be extended up (and indeed downstream where waste is [illegally] taken from an illegal site issued with such Notices and Orders.

CIWM seeks clarification on extension of the Restriction Notice; can this be extended by the regulator? Otherwise once this period expires (without any extension) the regulator might be unable to continue to take action.

If this power is put forward as drafted CIWM feels 72 hours might not be long enough. Discovery of an incident, say, on a Friday does not give much opportunity to follow up with further action before the notice expires on a Monday. What is the situation over a Bank Holiday?

CIWM believes that contravening a restriction order should be “any person”. It might not be easy to identify a perpetrator in any case.

Finally, there needs to be certainty that the regulator will have robust procedures in place to meet the aims of these new powers. Anecdotally, CIWM hears that many poor performers prosecuted by the regulator, such as the EA, escape conviction in court due to technical issues resulting from processes and procedures of the regulator.

The emphasis on pollution is worrying. The numbers of illegal sites posing “serious risk of pollution” is very small whereas the relative numbers of illegal sites is quite large and undercuts legitimate industry. It is well known that when the regulator comes upon an illegal site and tries to take compliance action, such sites regularly become ‘abandoned’ or go on fire, hence becoming an incidence of serious pollution. These proposals therefore need to be made available to **prevent** these incidents occurring.



CIWM feels this proposal should give powers to regulators to tackle all illegal sites, sending a strong message both to the illegal operators but also highlighting the support government gives to legitimate waste industry.

2: Are you happy that the proposed restriction order and restriction notice powers strike the right balance between the regulator's ability to restrict access and occupier or owners' rights?

CIWM is in general acceptable of the proposed restriction order and restriction notice, general given the comments and safeguards above.

Power to require the regulators to remove all waste from sites

1: Are you happy that the proposed powers are sufficient to enable the regulator to require all waste to be removed?

CIWM finds it difficult to envisage how, in practice, the regulator will be able to ensure that an illegal operator will pay for the removal of such waste. The proposal is predicated on the landowner/occupier clearing up and of course in many situations they are the victim of this crime.

Paragraph 4.3 – Impact – requires some clarification. It seems a little strange that the powers would only be expected to be used a handful of times. What is costing the UK economy £800m and is supported by £23m GIA or similar is expected to be applied only to 26 occupied sites per year and 3 owned sites and would impact on "waste occupiers" ranging from £646,100 to £2,147,600 and owners between £74,550 and £247,800. If the full powers are used for the remainder of the cases (the 1000 quoted), including removal of waste, does this not also imply that the remainder of the cost is born by the regulator i.e. potentially some £797m? CIWM seeks clarification on these calculations to fully identify where the burdens lie.

2: Are you happy that the obligations on occupiers and owners are sufficient?

CIWM agrees that the obligations are sufficient but have some concerns about the implications for a landlord or farmer subjected to waste illegally deposited on their land. How will this power work in these circumstances?

3: Are you happy that the proposals for the transition period are sufficient?

Yes CIWM believes 2 months is quite sufficient.

