



Waste Regulation – Review and Update

CIRIA Brownfield Risk
Management Forum

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Background

- England produces around 90 million tonnes of construction and demolition waste each year.

The Good News:

- Current high levels of recycling of construction, demolition and excavation waste in relation to other waste streams. The figures indicate around 50%.

Scope For Improvement:

- Large amounts of waste is still disposed to landfill.
- Estimated that 13% of virgin materials at construction sites are disposed of unused.
- Nearly 1/3 of all reported incidents of fly tipping in England involve construction and demolition wastes.

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Overview of Site Waste Management Plans (“SWMPs”)

- Originally as a Voluntary Code of Practice introduced by the DTI (now BERR) in 2004.
- The Site Waste Management Plans Regulations 2008 came into force on 6 April 2008.
- SWMP Regulations made pursuant to powers conferred on the Secretary of State under the Clean Neighbourhoods and Environment Act 2005, s. 54.
- Apply in England.
- The Welsh Minister awaits evidence to show that SWMPs are effective in improving resource efficiency and reducing fly tipping before proceeding.

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Best Practice Is Key!



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Purpose of SWMPs

- The aim is to encourage best practice, improve resource management and decrease fly tipping of waste from construction projects.

To ensure:

- Building materials are managed efficiently;
- Waste is disposed of legally; and
- Material recycling, reuse and recovery are maximised.

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Types of Projects Affected

- SWMP required for any project worth over £300k (on any one construction site) that includes or is intended to include construction work (Reg 5(1)).
- Projects worth over £500k incur additional requirements and obligations.
- The cost of the project is the price in the accepted tender (excl. VAT) or if no tender the cost of labour, plant and materials, overheads and profit (Reg 5(2)).
- Construction Work has wide definition that includes repair, redecoration, decommissioning, preparatory work (excluding site survey), excavation, clearance and preparation for occupation at conclusion.
- Part A installations under Environmental Permitting (England and Wales) Regulations 2007 are excluded.

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Responsibility

- If contractors are involved, then a “Principal Contractor” must be appointed (Reg 4) who is responsible for the SWMP; or
- If contractors are not used, responsibility rests with the person who carries out the project on their own behalf (the “Client”).

Responsibility is broadly to ensure that:

- A SWMP is written;
- The SWMP is followed; and
- The SWMP is updated during the project.

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Timing

- The SWMP must be prepared before construction work begins (Reg 5(1)).
- SWMPs are not required for any projects planned before the 6 April 2008 where construction work begins before 1 July 2008 (Reg 17).
- Within three months of completion of the work the SWMP must be updated with final confirmations (more detailed in the case of projects over £500k).
- The SWMP must be retained for two years after completion of the project (Reg 10).

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Information Required in all SWMPs

- Details of Client, Principal Contractor and author (Reg 6(1)).
- Description of construction work proposed, including estimated cost of project (Reg 6(2)).
- Any decisions taken in order to minimise the quantity of waste produced on site (including decisions in relation to the design, construction method or materials employed) (Reg 6(3)).
- Description of each waste type expected, the quantities and the actions proposed to deal with each (Reg 6(4)).

A declaration that Client/Principal Contractor will take all reasonable steps to ensure:

- Compliance with Duty of Care requirements (Environmental Protection Act 1990 and Environmental Protection (Duty of Care) Regulations 1991) (Reg 6(5)(a)); and
- Materials will be handled efficiently and waste managed appropriately (Reg 6(5)(b)).

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Updating the SWMP

All SWMPs:

- Whenever waste is removed the SWMP must record the identity of the person removing waste, the type of waste and the receiving site (Reg7(1)).

SWMPs over £500k (Reg 8(2) and (3)):

- Must also record the waste carrier registration number of the carrier and copy or reference to waste transfer note/consignment note;
- Whether the operator of the receiving site holds relevant environmental permit or is exempt;
- As often as necessary (not less than every six months) review the plan and record the types and quantities of waste produced and how these were dealt with (re-used, recycled, etc.); and
- Update the SWMP to reflect the progress of the project.

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Final Confirmations

- To be added to the SWMP within three months of completing the work.

All SWMPs:

- Confirmation that the plan was monitored and updated according to the Regulations (Reg 7(2)(a)); and
- Explanation of any deviation from the plan (Reg 7(2)(b)).

SWMPs over £500k:

- Comparison of the estimated and actual quantities of each waste type (Reg 8(4)(b)); and
- Estimated cost savings achieved through the SWMP (Reg 8(4)(d)).

Additional Duties (1)

Both Client and Principal Contractor:

- Must review, revise and refine the SWMP as necessary to ensure any changes in roles and responsibilities are clearly communicated to those affected (Schedule, Para 3(1)); and
- Take reasonable steps to ensure sufficient site security to prevent illegal disposal of waste (Schedule, Para 3(2)).

Client:

- Must give reasonable directions to enable Principal Contractor to comply (Schedule, Para 2(1)).

Additional Duties (2)

Principal Contractor:

- Must make arrangements to ensure co-operation with workers to implement the SWMP and to check the effectiveness of the measures (Schedule, Para 1(3)) and so far as is reasonably practicable:
 - seek to ensure co-ordination of the work and co-operation among contractors during the construction phase (Schedule, Para 1(1)); and
 - ensure every worker is provided with a suitable site induction and further training required to implement the SWMP (Schedule, Para 1(2)(a) and (b)); and
 - ensure waste produced is re-used, recycled or recovered (Schedule, Para 1(4)).

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Storage of SWMPs

- During construction work, the SWMP must be stored at the site office otherwise somewhere at the site if there is no site office (Reg 9(1)).
- All contractors must be made aware of the location of the SWMP and the SWMP must be available to all contractors carrying out any work described in the plan (Reg 9(2)).
- After completing the project, the SWMP must be stored at the principal place of business or at the project site (Reg 10).

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Enforcement

- Intended that SWMPs are to be largely self-regulated (emphasis on the Client and Principal Contractor to ensure compliance).
- The Environment Agency and Local Authorities are the primary enforcers.
- Fixed penalty notices available for certain offences.
- Otherwise, prosecution as a criminal offence.

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Fixed Penalty Notices

- Only available for one particular type of offence: where a person fails to produce a SWMP or any other record when required to do so by a local authority or the Environment Agency (i.e. a breach of Reg 13(d)).
- After service, no proceedings may be instituted for the offence for 14 days.
- Allows recipient to discharge liability to conviction for *that particular* offence through payment of a £300 fixed penalty.
- Recipient may not be convicted of *that particular* offence if the fixed penalty is paid within 14 day period.

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Criminal Prosecution

- Individuals and companies could be liable:
 - On summary conviction (i.e. in a Magistrates' Court) to a fine up to £50,000; or
 - On conviction on indictment (i.e. in a Crown Court) to an unlimited fine.
- Individuals can be liable where body corporate is guilty of an offence and "that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of" any senior officer of that organisation.

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Best Practice - Avoid Becoming a Target for Regulators!



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The Future - Government Strategy

- Waste Strategy for England 2007:
 - Recommends a reduction by 50% of construction, demolition and excavation waste being sent to landfill by 2012 compared to 2005.
 - Construction clients to include contractual requirements to improve material resource efficiency in half of all contracts over the value of £1 million.
- Draft Strategy for Sustainable Construction:
 - Consultation closed on 30 Nov 2007 and analysis of results published in February 2008. Repeats the above recommendations and also suggests:
 - Zero net weight at construction site level by 2015 (i.e. value of construction materials wasted is matched by value of additional reused and recycled content).
 - Zero waste to landfill by 2020.

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The Future and Construction

- Revision of the European Waste Framework Directive (as at April 2008, MEPs require a re-use and recycling rate of 70% by weight for construction and demolition waste by 2020).
- Proposals to revise the Duty of Care and Waste Carrier Registration regime (consultation closed on 6 March 2008).
- Review of the system of waste management licensing exemptions (which include the reclamation or improvement of land (Para 9A) and storage and use of building wastes (Para 19A)) and incorporation of the results into the Environmental Permitting Regime - expected 2009.
- Landfill tax for active waste raised £8/tonne in April 2008 and will continue to rise by £8 per tonne from £32/tonne this year to £48/tonne in 2010.
- Landfill tax for inert waste raised by £0.50 to £2.50/tonne in April 2008. Possibility of further increases for inert waste?
- In April 2008 the aggregates levy rose 35p to £1.95/tonne. Possibility of further increases?

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