EXPLANATORY MEMORANDUM TO

THE CONTROLLED WASTE (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2012

2012 No. 2320

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends, in England, the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811) to ensure the correct expression of intended policy.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 As this instrument is being made to ensure the correct expression of intended policy in S.I. 2012/811, it is being issued free of charge to all known recipients of that instrument.

4. Legislative Context

4.1 Part 2 of the Environmental Protection Act 1990 ("the 1990 Act") is the principal primary legislation relating to waste. Section 75 defines certain types of waste as "household waste", "industrial waste" and "commercial waste", and contains a regulation-making power to provide that waste of a prescribed description is to be treated for the purposes of provisions of Part 2 as being or not being household, industrial or commercial waste. The Controlled Waste (England and Wales) Regulations 2012 ("the 2012 Regulations") provided for the classification of certain types of waste, based on the place of production, its nature or the activity that produced it.

4.2 Classification affects the duties and powers of local authorities under Part 2 of the 1990 Act in relation to waste. In particular, the powers in section 45 relating to the collection of waste and charging for its collection and subsequent disposal are applicable depending on the classification of the waste.

4.3 Section 45(1) and (2) of the 1990 Act set out duties and powers of waste collection authorities in relation to the collection of waste. Subsection (3) provides that no charge can be made for the collection of household waste except in cases prescribed in regulations (in which case a reasonable charge may be made). Subsection (4) empowers a reasonable charge to be made for the collection and disposal of waste other than household waste. Section 52(9) of the 1990 Act provides that a waste disposal authority is entitled to receive from a waste collection authority reimbursement for the reasonable cost of making arrangements under section 51(1) for the disposal of commercial and industrial waste collected in the area of the waste disposal authority.

4.4 Paragraph 2 of Schedule 1 to the 2012 Regulations set out classifications based on the place of production of the waste. Paragraph 3 set out classifications based on the nature of the waste or the activity that produced it. Paragraph 4 of Schedule 1 prescribes certain types of household waste in relation to which a collection charge can be made, and provides that certain types of household waste are to be treated as commercial waste for the purposes of liability to pay disposal charges under sections 45(3) and 52(9).

4.5 The Controlled Waste (England and Wales) Regulations 2012 were made under the 1990 Act on a composite basis by the Secretary of State in relation to England and the Welsh Ministers in relation to Wales. This instrument, relating solely to policy in England, is made only by the Secretary of State in relation to England.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales but applies in England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- **What is being done and why**

7.1 The Controlled Waste (England and Wales) Regulations 2012 describe waste which is to be treated as household waste, industrial waste or commercial waste. They also specify the types of household waste for which a collection charge may be made, and provide that certain types of household waste are to be treated as commercial waste for the purposes of liability to disposal charges under sections 45(3) and 52(9) of the 1990 Act. The 2012 Regulations replaced the Controlled Waste Regulations 1992 (S.I. 1992/558) ("the 1992 Regulations").

7.2 To minimise the effect of the 2012 Regulations on small and micro businesses, that instrument contained a provision intended to ensure that no new charges would be payable by small business for the disposal of waste, provided that (a) immediately before those Regulations came into force, such businesses were not liable to pay charges for disposal of their waste, and (b) they are entitled to Small Business Rate Relief ('the small business exemption'). This provision was contained in paragraph 4(5) of Schedule 1, and was expressly linked to the operation of paragraph 4(3). Paragraph 4 set out the types of household waste for which collection charges could be made, and which was to be treated as commercial waste for the purposes of liability to disposal charges under sections 45(4) and 52(9) of the 1990 Act.

7.3 However, uncertainty has been expressed by business and waste collection authorities as to whether the linking of the small business exemption to the operation of paragraph 4(3) of Schedule 1 has the effect of excluding the operation of that exemption in relation to waste that is not mentioned in paragraph 4, but which is brought within the

scope of sections 45(4) and 52(9) of the 1990 Act for the first time by the operation of paragraph 2 or 3 of Schedule 1. For example, waste from camp sites and from domestic property used in the course of a business for the provision of self-catering accommodation were both classified as household waste under the 1992 Regulations (and hence were not liable for disposal charges under the 1990 Act), but have been reclassified as commercial waste by paragraph 2 of Schedule 1 to the 2012 Regulations (and within the scope of sections 45(4) and 52(9)). However, neither category of waste is listed in paragraph 4 of Schedule 1, to which the small business exemption is expressed to be linked.

7.4 This instrument amends the 2012 Regulations to ensure that they clearly give effect to the intended policy, by removing the link between the small business exemption and paragraph 4(3) of Schedule 1, and expressing it instead to be of application to regulation 4 of the 2012 Regulations (which gives effect to Schedule 1 as a whole). The wording of the two conditions for the small business exemption to have effect are substantially unchanged.

8. Consultation outcome

8.1 Details of consultation relating to 2012 Regulations is given in the explanatory memorandum relating to that instrument. No separate consultation has been undertaken in relation to this instrument.

9. Guidance

9.1 No guidance on this instrument is being published.

10. Impact

10.1 An Impact Assessment of the cost of the 2012 Regulations on business, charities or voluntary bodies was attached to the Explanatory Memorandum for that instrument. No separate assessment has been carried out for this instrument.

11. Regulating small business

11.1 The effect of the 2012 Regulations on small business was explained in the Explanatory memorandum for that instrument. This instrument also affects small business, in that it is ensuring that the policy exemption for liability of certain small businesses to pay disposal charges for waste is given effect to clearly.

12. Monitoring & review

12.1 As this instrument is amending the 2012 Regulations, the amendments will fall within the scope of the Post-Implementation Review Plan explained in the Explanatory Memorandum to those Regulations.

13. Contact

Helen Matthews at the Department for Environment, Food and Rural Affairs Tel: 0207 238 2048 or email: helen.matthews@defra.gsi.gov.uk can answer any queries regarding the instrument.