

CLEARING FLY TIPPED WASTE FROM LAND

Partial Regulatory Impact Assessment

Title of proposed measure

More robust powers for clearing fly tipped waste from land.

Issue & objective

Issue: The illegal deposit of waste, or fly tipping, is an increasing anti-social problem that can adversely affect the environment and, in some cases, people's health. The overall objective of any system for combating fly tipping should be to meet Article 4 of the Waste Framework Directive (91/156/EEC) amending Directive 75/442/EEC on waste which requires:

“Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste”

Section 33(1) of the Environmental Protection Act 1990 (the 1990 Act) makes it an offence to:

- a. Deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited without a waste management licence;
- b. Treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of except under or in accordance with a waste management licence; or
- c. Treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

At the moment, this section does not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling by or with permission of the occupier of the dwelling. However, the Government is about to consult on amending regulations that will apply (c) above to these circumstances.

It is difficult to gain exact figures on current levels of fly tipping as there is no standard system in use for reporting and monitoring the incidence of fly tipping. The Government has included a measure in the Anti-Social Behaviour Act, which gained Royal Assent on 20 November 2003 that should allow for the development of a national database on fly tipping. However, there is some local evidence that levels have increased in recent years. For example, the London Borough of Lewisham counted 13,600 fly tipping incidents in 2002, costing over £500,000 to clean up. This figure is 50% higher than in 2001 which, in turn, was 50% up on the year before. 1112 incidents of fly tipping were reported in 2001/02 by the Borough of Broxbourne. The Local Government Association (LGA) Survey in June 2001 analysed responses from 128 local authorities. 94% of these recorded incidents of fly tipping, with

20% recording more than 1,000 cases. It is, however, important to note that the reporting of fly tipping incidents varies significantly throughout local authorities. 84% of respondents to the LGA Survey believed that local authorities did not have sufficient powers to deal with fly tipping, and 97% supported a change in legislation.

The Government plans to carry out research during 2004 into the reasons why people dispose of their waste illegally. At the moment, people believe there are a variety of reasons including the cost of legal disposal which, for landfill sites can typically be between £12 and £38 a tonne for commercial waste. Another cause of fly tipping could be the charges imposed by councils for the collection of bulky household goods or the costs for the disposal of trade waste. Problems with access to Civic Amenity (CA) sites could also contribute to increased levels of fly tipping, for example, a report by Maidstone Borough Council highlighted height barriers and opening times of CA sites as potential factors.

A range of legislation exists to help tackle the problem of fly tipping. However, the Government has already made some proposals and is planning other changes to legislation to make the legislation more usable and effective and to extend the toolkit of powers available to the Environment Agency (the Agency) and local authorities.

This proposal relates to a specific area where the Government, the Agency and waste collection authorities feel that current legislation needs amendment.

Section 59 (S59) of the 1990 Act provides powers for the Agency and waste collection authorities to serve a notice on the occupier of any land where fly tipping takes place. The notice requires the occupier to remove the waste from the land within a specified period. The occupier has the right to appeal and the court is required to quash the notice if it is satisfied that the appellant neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste.

S59 gives the Agency and waste collection authorities the additional power to remove the fly tipped waste and to recover the costs of doing so from the occupier of the land. The occupier, however, has recourse to the above defence if he was not responsible. Costs could also be recovered from those responsible for depositing the waste if they can be traced.

The provisions of current legislation therefore provide some powers for clearing the waste but:

- clearance costs often cannot be recovered in cases where there is no occupier of the land. The Agency and waste collection authorities are therefore often reluctant to clear the waste themselves since it would mean an additional burden on their financial resources. Such a move would also be against the “polluter pays” principle;

- there is no incentive for the owners of the land to take responsibility for fly tipping and to prevent their land from being used for fly tipping;
- both of the above problems have led to the development of some areas, particularly on derelict sites in inner city areas, where large, unofficial dumps have been created, causing nuisance to local residents and damage to the environment.

Objective: The objective of this proposal therefore is to amend the legislation so that the Agency and waste collection authorities can require owners as well as occupiers to clear fly tipped waste, or to pay the costs of the clearance, in cases when they deposited or knowingly caused or knowingly permitted the deposit of the waste. The amendment would form part of the Clean Neighbourhoods Bill.

The aim of the proposal is to reduce levels of fly tipping by making land owners as well as occupiers more responsible for fly tipping where they are aware it takes place. It should also allow the Agency and waste collection authorities to deal with some long standing problem areas where there is no occupier.

There will also need to be a technical change made to section 59 to bring it into line with the language used in the Waste Framework Directive, which was published after the Environmental Protection Act 1990. The necessary change was made to section 33 of the 1990 Act via the Waste Management Licensing Regulations 1994 but was not carried through to section 59 at that time. This amendment will not incur any costs.

Risk assessment

In the context of this specific proposal, there is no perceived situation which would lead to any harm or detriment to any individual or organisation.

Options 2 & 3 will ensure that, in many cases, fly tipped waste is cleared from land. This will lead to an increase in the general amenity of an area and reduce the risk of injury, bad odour and infestation of, for example, rats. Fly tipping can have a serious impact on the environment both in terms of pollution and the effect on wildlife. The environmental impact of fly tipping tends to be direct, for example, with wildlife becoming trapped or injured by the waste. Waste left lying around tends to attract other waste so, by ensuring that fly tipped waste is cleared promptly from private land, the risk of subsequent incidents and expense may be reduced. It is also important to note that even fly tipped waste on private land with no public access can still pose a risk to the local environment.

Options

Three options have been considered:

Option 1 – No Change. Maintain the current provisions in S59 of the 1990 Act, i.e. that the law only applies to the occupier of the land.

Option 2 – Amend the provisions within S59 of the 1990 Act and extend it to landowners as well as occupiers. It would apply to occupiers in the first instance and then to the landowner, if different. A defence would still be available if the appellant neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste.

Option 3 – Amend the provisions within S59 of the 1990 Act and extend it to landowners as well as occupiers and, in addition, to amend the existing defence that the appellant can use that he did not deposit nor knowingly cause nor knowingly permit the deposit of the waste to one of reasonableness. This would mean that the appellant would be expected to show that they had taken reasonable measures to prevent the fly tipping taking place. To help decide what would be reasonable in particular circumstances, guidance could be issued but it would ultimately be down to the courts to decide on a case-by-case basis.

Issues of equity and fairness

It is perceived that options 2 and 3 would impact equally across all land owners and occupiers. Rights of appeal would still be provided in the legislation, although the circumstances in which someone could appeal would differ.

Option 2 is seen to be the most equitable option. It would introduce powers that would make the occupier responsible in the first instance or, if there was no occupier, the landowner.

Option 2 is mainly aimed at the commercial and industrial sector. However, the change would also cover land owned by farmers and non-profit making land owners like the National Trust and so the proposal may have some impact on them. It is envisaged that the powers will be used mostly in urban areas such as industrial sites and derelict unused land rather than some of the more extensive open farmland.

The measure will impact most on the owners of land where repeated fly tipping takes place.

Benefits

Option 1

This option would be in full compliance with the “polluter pays” principle as only those responsible for the crime are required to pay for cleaning up the fly-tipped waste.

There would be no additional impact on land occupiers or land owners.

Option 2

This option would ensure that the waste is cleared either by the land owner or occupier if they caused or knowingly permitted or knowingly allowed the waste to be fly tipped. It would help to protect the environment and human health and it would add to the amenity value and liveability of an area.

The option would allow the Agency and local authorities to deal with sites where there was no occupier of the land and where the owner knew or allowed the site to be used for fly tipping. Although costs may be involved for local authorities that are currently not doing anything to deal with fly tipping it is believed that in time reduced clearance costs will offset these.

Option 3

This option would encourage land owners and occupiers to be more responsible for dealing with areas where repeated fly tipping takes place. It would ensure that waste in fly tipping trouble spots is cleared from land and that the land owner or occupier paid for the cost of clearance, unless they could demonstrate that they had taken reasonable steps to prevent the fly tipping taking place.

The landowners or occupiers would install preventative measures to deal with the fly tipping or meet the costs of clearance so there would be no additional financial burden for the Agency or waste collection authorities.

This option would help to protect the environment and human health and it would add to the amenity value and liveability of an area. Furthermore it would also be a first step towards dealing with fly tipping in a pro-active manner rather than just concentrating on high cost clearance afterwards.

Question: Are there other benefits that any of these options would bring? Can any of them be quantified?

Competition Assessment

Retaining the existing legislation under Option 1 would not have a significant impact on competition since this would maintain the status quo.

Amending the existing legislation to apply the notice to landowners as well as occupiers (Option 2) or, amending the defence provisions within s59 of the 1990 Act to a reasonableness test (Option 3) would be expected to create a range of compliance costs for businesses in various markets. However, we do not anticipate that these will have adverse consequences for competition in those markets since costs would be proportionate and would be applicable for all private landowners and occupiers. Option 2 should raise fewer costs for businesses as owners or occupiers would only be billed for clearing fly-tipped waste if they knowingly caused or permitted the fly tipping to take place.

We will, however, keep this initial assessment under review as work progresses, and will seek to obtain further information to assist us in identifying any possible competition concerns. In this context, we would welcome views from stakeholders.

Business sectors affected

Option 1 would affect the occupiers of land.

Option 2 would affect all land owners and occupiers.

Option 3 would affect all land owners and occupiers.

Costs

The proposed measure is intended to reduce levels of fly tipping and to clear waste from land to protect the environment and human health. It is difficult to provide details of the costs involved with such a measure, since clearance costs would depend on the size of the site, the scale of the fly tipping, the types of waste that have been deposited, etc. The aim of the measure is, however, to allow the Agency and waste collection authorities to recover the costs of clear up in particular circumstances and the occupier will have primary responsibility.

It is recognised that fly tipping is a growing problem. The Environment Agency estimate there are around 50,000 fly tipping incidents each year with costs estimated to be in the region of £100 million per annum. Based on responses to the Local Government Association's fly tipping survey, the average cost of clean up of fly tipping incidents in 2002/03 was £64,482 per waste collection authority. If these costs were extrapolated for all 353 waste collection authorities in England, then the total costs of clear up could be £23.53 million.

Some other examples of clearance costs are as follows. West Wiltshire Council recently estimated that it spends £22,000 per annum on clearing fly tipping. The Agency estimates that fly tippers of tyres cost the tax payers of England and Wales more than £2 million in clean-up bills every year. In 2001, one incident involving tyres in Cleveland was estimated to have cost over £150,000 in fire response time and property damage. Barnsley Metropolitan Borough Council reported that, last year, it recovered 3,500 tyres at a cost of £1 each. Responses to the survey of Fly Tipping on Agricultural Land suggested that the most common type of waste fly tipped on farms was green waste, followed by construction and demolition waste. Other waste dumped included furniture, tyres and white goods. The estimated cost to farmers for collection and disposal of fly tipped waste on agricultural land for 2001 was £47 million.

Option 1

Costs to the land occupier/ owner

Maintaining the status quo is likely to result in the continued under-use of the powers available in s59 of the 1990 Act. The Agency and waste collection authorities will continue to incur high clean-up costs due to irresponsible landowners and occupiers. Neighbourhoods that suffer from fly tipping will continue to be adversely affected.

Costs to the enforcing body

There is anecdotal evidence of an increase in the level of fly tipping in recent years. The enforcing bodies, many of which are already struggling to cope with the current costs incurred by fly tipping, would become increasingly stretched if this trend continues. It is therefore likely that more of the illegal deposits of waste would be left, resulting in increased problems such as unsightly deposits, odour problems and health problems resulting from vermin being attracted to the waste. Since waste attracts more waste, these problems could further increase.

Option 2

Costs to the landowner/ occupier

The occupier or landowner could incur costs in dealing with fly tipping but would be able to claim the defence that they did not knowingly cause or permit the dumping to take place. Instances where further costs may be involved would include derelict land in inner city areas where the absentee landlord is allowing waste to be illegally dumped on their land.

Costs to the public sector

Costs and benefits as estimated are attached in the form at Annex A.

This option would ensure that local authorities and the Environment Agency would be able to recover costs from landowners as well as occupiers where they knew about or caused the fly tipping. There may be costs for some local authorities that are currently not taking any action to combat fly tipping but it is estimated that in time this initial set up cost will be saved by reduced costs of clearing fly tipped waste. It is important to ensure that local authorities focus on prevention of future fly tipping incidents rather than paying expensive clearance costs.

Other costs and dis-benefits

It could be argued that this provision does not fully comply with the "polluter pays" principal. However, this option aims to encourage social responsibility for landlords and does not intend to penalise those who are victims of fly tipping. If they did not knowingly cause or permit the fly tipping to take place then they will not have to pay for the clearance costs. It should also be noted that the requirement for the landowner/occupier to clear the land is only used if the authorities are unable to trace the perpetrator. The number of clear up operations may increase slightly as local authorities and landowners become more efficient at clearing fly tipped waste. However, this will also lead to

benefits by preventing further incidents and saving some of the expensive clearance costs.

Option 3

Costs to the owner/ occupier of the land

This option could lead to two sorts of additional costs to the landowner or occupier:

- costs of taking 'reasonable' measures to secure their land against repeated incidents of fly tipping. Preventative measures could include installation of barriers and gates, erecting signs, surveillance equipment, investigations in conjunction with the Agency, and joint working with other relevant bodies; and
- where reasonable steps are not taken, the occupier or owner could be required to clear the land and to cover the costs of doing so.

Costs to the enforcing body

Under this option, the landowner or occupier would only be required to clear the waste or to pay for the clearance if the Agency and/or the waste collection authority have first attempted to trace the perpetrator. This investigative work will incur administrative costs through, for example, staff time and travel.

There would be costs involved in enforcing the notices and in prosecuting those who fail to adhere to the provisions. However, there may also be some transfer of benefits as the Agency or waste collection authority would be reimbursed some of the money that they are currently spending on clearance.

Other costs/ dis-benefits

It may be the case that enforcing such a measure would only act to displace the problem rather than solving it. With the amended defence, landowners and occupiers may be tempted to simply move the waste and fly tip it elsewhere.

There are serious concerns that this option would effectively create a "fly tippers charter". Perpetrators of the crime would be able to fly tip waste safe in the knowledge that the waste would be cleared up. This is not what Government wishes to encourage. It would be difficult to create guidelines about reasonable preventative measures for certain situations particularly in rural areas.

This policy goes against the "polluter pays" principle and issues of fairness and equity may be raised.

Questions

What do you estimate the compliance costs to businesses of each option might be?

Can any indication be given by local authorities as to the frequency with which individual properties/ areas are subject to fly tipping?

How much will it cost local authorities to serve notice on the landowner/ occupier?

Do you think the landowner should be required to work with the authorities to ensure that fly tipping is prevented in future? Could the 'reasonableness' test be introduced just for repeated incidents where a fly tipping hot spot is identified but the landowner doesn't act?

What would you consider reasonable steps to prevent land from fly tipping (e.g. private domestic residences, farm land, Local Authority land, land owned by charities such as the National Trust etc)?

What would be the estimated cost of securing a known fly tipping trouble spot?

Where there is joint ownership of the land, should costs of clear up or securing the property be equally split between the owners?

What costs would be incurred by the local authority in trying to trace the perpetrator of the crime?

Consultation with small business

No consultation with small businesses has been instigated. We would be grateful for any representations to be made.

Summary & Recommendations

In light of the discussions above, the Government recommends that Option 2 is the most appropriate way forward.

Waste collection authorities will have new powers that will enable them to ensure that fly tipped waste is cleared up promptly. The proposed changes will also ensure that the owner as well as the occupier can be issued a notice to clear the waste if they knowingly caused or permitted the fly tipping to take place. The Agency and waste collection authorities can require occupiers in the first instance or in the second, owners of land to clear fly tipped waste, and to pay the costs of the clearance. They still have the right to appeal in the courts.

Although there may be increased costs involved due to the increase in overall clearance, it should be noted that there would be a reduction in further incidents of fly tipping due to the prompt clearance of waste that would otherwise attract other waste. There will also be a transfer of powers between authorities as statutory guidance is issued to clarify the role of local authorities

and the Environment Agency. These proposals will lead to an increase in general amenity and environmental quality for everyone. Some of the costs that the Agency and waste collection authorities currently spend on cleaning up fly tipping incidents will be able to be saved with the new powers. There may be some increased costs to landowners who knowingly allow waste to be illegally dumped on their land.

It is important to ensure that the system of dealing with fly tipping is working as effectively as possible. It is difficult for local authorities to deal with irresponsible landlords in certain situations that allow illegal dumping on their land.

Enforcement sanctions, monitoring & review

The Agency and waste collection authorities will issue notices to landowners and occupiers. It is envisaged that the Agency and waste collection authorities will issue the notices and that they will monitor the effectiveness of the legislation.

Measure	Desired outcome(s)	Impact	Is it a cost or a benefit?	Volume			Volume Assumptions	Cost (+) or Benefit (-)/£			Monetary Assumptions	Headcount of Public Sector Manpower impact	Who bears the cost/receives the benefit?
				2004-05	2005-06	2006-07		2004-05	2005-06	2006-07			
More robust powers for clearing waste from private	Increased enforcement of current legislation. Reduction in the level of fly tipping. Ensuring land owners and occupiers can be issued with notices to clear fly tipped waste from private land.	LAs/Environment Agency can take further action to clear fly tipped waste from private land but any clearance costs should be recovered through prosecutions. There will be costs associated with taking extra prosecutions.	cost		630	630	Assume 200 LAs pursue three prosecutions a year and Agency pursues 30 cases a year		£189k	£189k	Assume average cost of £300 for each prosecution	No data	LA/Agency bears the cost, although some costs may be awarded
		Increased burden for courts through more prosecutions brought for fly tipping offences	cost		630	630	As above		£24k-69k	£24k-69k	Assume average cost of £38 per uncontested case and £110 per contested case	No data	Court bears the cost
		Will be costs on private/voluntary sector but not possible to provide data. Will depend on measures taken and size of property - see RIA for some examples of costs	cost										No data

		Amenity benefits of removing eyesores in form of fly tipped waste -no data available on extent of benefit	benefit										
		Fewer resources spent by LAs/Agency on clearing up fly tipped waste	benefit		158 incidents prevented	189 incidents prevented	Assume 25% of prosecutions lead to prevention of further incidents. Assume 5% increase in number prevented in 05/06		(-) £316k	(-) £378k	Estimate that 50,000 incidents a year costing £100m to clear. This equates to average cost of £2,000 per incident	No data	LA/EA receives the benefit
		Net Cost / Benefit							£58k Benefit	£120k Benefit			