

# **Fly-Tipping Strategy**

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## Introduction

1. The quality of life in urban and rural areas is being lowered by the illegal disposal of waste, including fly tipping. This anti social behaviour is adversely affecting the amenity of our local environments and reducing civic pride. Too often, people come across unsightly, illegal dumps that have appeared in their street, in their community and on their land. At its worst, fly tipping can lead to serious pollution of the environment and harm to human health. It can cost innocent victims of fly tipping and public bodies such as local authorities and the Environment Agency, large amounts of money to remove the waste. Fly tipping can also undermine legitimate waste management businesses activities.
2. Illegal dumps of waste can vary in scale, and the type of waste involved. Individuals leaving a mattress, an electrical item or bin bag of rubbish in the street causes local nuisances. Dumping household items, small-scale building or garden waste in open spaces reduces their amenity value to the community. At the other end of the scale there is a growing trend for large scale fly tipping which involves several truck loads of construction and demolition waste<sup>1</sup> in particular being dumped on a range of different types of land. Some illegal dumps, whilst small in size can be serious, particularly if hazardous waste is involved.

On one site in West London, public playing fields owned by a London charity was involved. On one side, mounds of fly tipped construction waste covered the high-voltage cable of the Heathrow Underground link, to a height of 3 metres for the length of two football fields. On the other side, fly tipped waste caused the collapse of the playing field into the neighbouring canal. If the charity, which owns several London playing fields, was required to remove the waste it would become insolvent.

3. There are many reasons why fly tipping occurs. In some cases it results from producers of waste being ignorant of their responsibilities for the waste that they produce. For example, householders or small businesses often pay to have their waste taken away by private traders who offer waste collection services. They may assume that these traders will dispose of it legitimately rather than keep the money and dump the waste anywhere they can find. Other householders would rather throw their bulky waste away in a lay-by rather than ask their local authority to come and collect it, especially as some local authorities charge for this service. The Environment Agency has some evidence which shows that the level of criminal activity, which can sometimes be organised, is increasing and that fly tipping can provide significant financial rewards for the truly unscrupulous criminal.
4. No national data on the scale of fly tipping currently exists, but there is evidence that the amount of fly tipping has increased in recent years.

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<sup>1</sup> In this report, the term “construction and demolition waste” is taken to include excavation wastes and other wastes produced in construction, demolition and associated operations.

The Environment Agency records the incidents it deals with, and has noted a 19% increase in levels in England and Wales between 2001 and 2002, and a 70% increase in the Thames region alone where fly tipping is dominated by construction, demolition and excavation wastes. Many local authorities are also noticing and recording more incidents. For example, in 2002, the London Borough of Lewisham counted 13,600 fly tipping incidents, costing over £500,000 to clean up. This figure was 50% higher than in 2001 which, in turn, was 50% up on the year before. Both urban and rural areas appear to be equally affected by the rise.

5. Many are concerned that levels of fly tipping will rise in the future. There are good reasons why European and UK legislation is being tightened to ensure that we move towards a more sustainable way of managing the growing levels of waste that we are producing. But any tightening of the regulation of waste disposal which increases the costs of waste disposal, is likely to lead to increased levels of fly tipping. As the cost of legitimate waste disposal rises, the more attractive illegal disposal becomes. There is also a concern that fly tipping could, in the future, involve more hazardous waste.

Enforcement personnel from the Environment Agency have had a number of meetings and contacts with Police Agencies dealing with the problem of Northern Irish criminals expanding their diesel stripping operations onto the mainland. The illegal construction waste industry provides a potential customer for stripped diesel – and the process leads to large volumes of acidic sludges being illegally dumped that are potentially very dangerous to the environment and health.

6. Fly tipping is a criminal offence; a range of legislation already exists to empower the Environment Agency and local authorities to deal with the problem. However, it is important to ensure that a coherent approach is taken across the board, and that the enforcement bodies have a range of tools available to tackle the full range of fly tipping problems.
7. The Government is developing this strategy to improve local environmental quality and deal with fly tipping. This document also provides details of the other action being taken to help combat fly tipping, on which there may be further consultation during 2004. It should also be noted that this strategy does not cover the issue of abandoned vehicles, since action is being taken separately to deal with these and they are covered by a different legislative framework.

## Tackling the illegal disposal of waste

8. The illegal disposal of waste, including fly tipping, is one of the most widespread and growing environmental crimes. This consultation document includes a brief summary of the problems that need to be resolved, details of the primary legislative changes that the Government is proposing to make at the next legislative opportunity and, to complete the picture, details of other measures that the Government is currently considering, including changes to secondary legislation. All the proposals have been developed in consultation with the Environment Agency (the Agency) and the Local Government Association (LGA).
9. A partial Regulatory Impact Assessment (RIA) for the more robust powers for clearing fly tipped waste option and draft costs are also attached. **Comments or revised cost estimates would be welcome on these as well as the proposals outlined below.**

Illegal site tipping is often managed in such an apparently professional manner (by personnel with two way radios, in hard hats and high-visibility coats who control traffic and even import heavy earth-moving equipment) that passers-by are deluded as to the legitimacy of the operation. In one case in North London, Police attended a fenced development site as the result of the complaint of a suspicious passer-by and were persuaded that an illegal operation was legitimate. This is the subject of a current prosecution – but only in relation to three loads out of dozens. This cost the landowner £34,000 to clear, plus broken locks and fencing and a damaged vehicle.

### The current situation

10. There is a range of European and domestic legislation already in place. Article 4 of Council Directive 91/156/EEC on Waste requires:

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

Article 8 of the Directive requires that:

“Member States shall take the necessary measures to ensure that any holder of waste:

- has it handled by a private or public waste collector, or by an undertaking which carries out the operations listed in Annex II A or B; or
- recovers or disposes of it himself in accordance with the provisions of this Directive.”

11. Domestically, the unlawful disposal of waste, commonly known as fly tipping and illegal dumping, is a criminal offence. Section 33 of the Environmental Protection Act 1990 (EPA 1990) makes it an offence to:
  - Deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited without a waste management licence;
  - 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
  - Treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.
12. Section 33 has been amended by paragraph 9 (3), (4), (5) and (6) of Schedule 4 to the Waste Management Licensing Regulations 1994 to ensure that any reference to the deposit of waste shall also refer to recovery and disposal as defined by the Waste Framework Directive.
13. The penalties for anyone convicted of an offence under section 33 can be a maximum of £20,000 or six months imprisonment if convicted in a Magistrates' Court, or an unlimited fine and up to two years imprisonment if convicted in a Crown Court. The sentence can be up to five years imprisonment if the offence involves hazardous waste. Both the Agency and local authorities can enforce section 33. A voluntary agreement, known as the fly tipping protocol, exists between the Agency and the LGA which sets out the different types of incidents with which each authority should deal. Landowners affected by fly tipping can also seek redress through the courts.
14. There is no complete national picture of fly tipping but the Agency has recorded average fines of £2,000 being handed down in 2001/02 for the offences it deals with, mainly the more serious crimes. There is anecdotal evidence that Magistrates' often only hand down fines of a few hundred pounds for the cases they hear. ENCAMS recently reported that only a quarter of local authorities pursue section 33 prosecutions due to the difficulties of obtaining a successful outcome. Defra recently commissioned Environmental Resources Management (ERM) to examine current levels of sentencing for environmental offences<sup>2</sup>. The report noted the absence of centralised data.
15. A range of other domestic legislation exists which relates to fly tipping. Section 34 of the EPA 1990 imposes a duty of care on businesses to secure a waste transfer note whenever waste is transferred<sup>3</sup>. These notes must be kept for up to two years and can be inspected by the Agency and local authorities when investigating illegal dumping and fly tipping incidents. In the case of hazardous waste, a special waste consignment note must accompany the load. Section 34 also requires that anyone who transports waste in the course of their business must

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<sup>2</sup> Available online: <http://www.defra.gov.uk/environment/justice/pdf/erm-sentencing.pdf>

<sup>3</sup> A written description of the waste is also required

be registered with the Agency, although some exceptions exist, for example, producers transporting their own waste. Section 34 does not apply to householders. The Agency currently has a power to stop and search vehicles and can demand to see waste carrier registration papers which must be produced within 14 days. It can also seize vehicles in certain circumstances.

16. Section 59 of the EPA 1990 allows the Agency and local authorities to require the occupier of land affected by fly tipping to clear the waste, or they can enter the land and clear it themselves and recover the costs from either the occupier or those responsible for the fly tipping if they can be traced. However, the occupier does not have to pay if he can demonstrate that he neither deposited nor knowingly caused nor knowingly permitted the waste to be deposited. Under Section 59, there is no obligation on the land owner, nor any statutory duty on the Agency or local authorities to clear the waste since this would be against the 'polluter pays' principle.
17. Local Authorities also have several other powers to deal with illegally dumped waste under other legislation such as the Prevention of Damage by Pests Act 1949, the Refuse Disposal (Amenity) Act 1978, Highways Act 1980, Public Health Act 1961, and the Town & Country Planning Act 1990.

### **Potential future pressures on fly tipping levels**

18. Many people are concerned that levels of fly tipping will increase as a result of other policies that are being brought forward to help encourage more sustainable management of waste. These policies are likely to mean that the costs of legitimate waste disposal will rise. When this is considered alongside other factors such as continued economic growth and major redevelopment of brownfield sites, the indications are that levels of fly tipping could well rise significantly in future years.

#### *Landfill Directive*

19. Some people are concerned about the effect of the Landfill Directive on hazardous waste, as the end of co-disposal and the requirement for all hazardous waste to be treated before landfill will increase the cost of disposal. This, combined with a rise in landfill tax, should encourage the minimisation of hazardous waste. The Hazardous Waste Forum is investigating the impact of these effects and considering the likely impact on arisings of hazardous waste. But it is difficult to predict with any accuracy the likely effect on fly tipping. This is compounded by a lack of a complete set of base data on fly tipping levels.

One of the problems in large conurbations is that there are few sites able to receive construction and demolition waste within easy access of the urban areas. Landfills, the usual disposal route at the moment, tend to be around the urban fringes. In larger conurbations, this can mean waste must travel many miles to a legitimate site. This encourages fly tipping at easily accessible urban sites.

### *WEEE Directive*

20. Some have also raised concerns about the potential impact of the Waste Electronics and Electrical Equipment (WEEE) Directive on fly tipping levels. The WEEE Directive requires Member States to adopt appropriate measures to achieve a high level of separate collection of WEEE. Collection points for WEEE should take into account population density, be accessible and be free for final holders. Retailers are also obliged by the Directive to take back WEEE on a “one-to-one” basis when supplying new equipment. They can discharge this obligation either by providing in store take back, or some other means, provided that it is not made more difficult for final holders to return their WEEE.
21. A revision to Article 9 of the WEEE Directive, which is due to be in force by the time the Directive is transposed in the UK, will make businesses that use electrical or electronic equipment, responsible for the costs of disposal and recycling of WEEE if they are not purchasing replacement products at the time of disposal. This applies only to ‘historic’ (produced before August 2005) WEEE, and may slightly increase the costs of the disposal of business WEEE for a transitional period (while there is still historic, business WEEE in the waste stream). Therefore, while there is an outside chance of some fly tipping by small businesses, we would expect instances of fly tipping by private householders of these types of products to decrease.

### **Developing the Fly Tipping Strategy**

22. Many local authorities already have good strategies in place for tackling fly tipping and are keen to do more. However, many rely on the Agency to deal with the majority of the problem in their areas, and some simply clear away fly tips without focusing any attention on stopping it happening in the first place or on enforcement action against those criminals dumping the waste. The Agency estimates that fly tipping currently costs it, local authorities and private landowners around £100 - £150 million per year to clear up the illegal dumps of waste. There is a clear need to make more effective use of these resources.
23. The strategy the Government is developing will put local authorities in the front line for dealing with small scale local fly tipping issues. It will, for some, require a major shift in the way they deal with fly tipping. The Agency will focus on tackling the large scale fly tipping of non-hazardous wastes, the fly tipping of certain hazardous wastes and the

involvement of organised crime in fly tipping and illegal waste management. They are also well placed to ensure strategic support for local authorities and advice on implementation of environmental regulation.

24. In liaison with the Agency and local authorities, the Government has been developing a strategy which has five strands:
- ensuring better prevention, detection and enforcement of fly tipping and other forms of illegal waste dumping. The Government is of the firm belief that more effort spent on these aspects will mean less needs to be spent on clear-up and will result in cost savings;
  - making existing legislation more usable and effective;
  - extending the range of powers available in the toolkit so that the Agency and local authorities can be more flexible when dealing with fly tipping;
  - improving the data and knowledge base so that resources can be targeted; and
  - ensuring the Agency and local authorities can do their job as effectively as possible and ensuring that waste producers take responsibility for having their waste legally managed.

One particular problem is the material that is thrown into rivers and canals, some of which sinks to the bottom and has to be removed by dredging operations. Other materials float and these tend to collect at weir booms and at lock approaches. Fly tipping also occurs on land adjacent to the waterways. One such site close to the centre of Leeds suffered from regular tipping. The material, including building waste, discarded white goods, car wheels and tyres was deposited on a private road giving access to a development site. In these cases, British Waterways has to clear the material and dispose of the waste at its own cost. Action taken to prevent fly tipping by British Waterways can also mean the fly tipping is transferred, in the Leeds' case, to a nearby public highway where it then becomes the local authority's problem.

25. The Government is aware that, due to the nature and extent of fly tipping, different measures will be needed to tackle the full range of offenders and waste streams involved. The measures outlined here are its current priorities for action, but the Government will keep their effectiveness under review and will bring forward additional measures in the future if they are needed.

## **Beginning to Implement the Strategy**

26. The Government is helping local authorities to enhance their toolkit for dealing with fly tipping incidents by extending powers that will allow them to use their local knowledge to react to incidents quickly and

effectively freeing up the Agency to dedicate its resources to combating larger and more serious incidents. To date, the Government has taken the following action:

- Consulted on changes to legislation as part of document, *Living Places: Powers, Rights and Responsibilities*.
- Included a section in the Anti-Social Behaviour Act, given Royal Assent on 20 November, covering the following measures:
  - Give local authorities the Agency's powers to stop, search and seize vehicles suspected of being used for fly tipping (a police constable must be present to stop a vehicle on the road);
  - Give local authorities the Agency's powers to investigate incidents. This should help to achieve more successful prosecutions;
  - Give the Secretary of State the power to issue statutory directions that will formalise the division of responsibilities between the Agency and local authorities, ensure all local authorities have a strategy for dealing with fly tipping, and require monthly data returns to be made to Defra so that national statistics can be compiled.
- Provided funding to the Agency for it to develop a national database for the collection of fly tipping statistics. This will help to inform local and national decisions and target resources more effectively. Data should be available from April 2004 onwards.
- Begun a research project into the reasons why people fly tip their waste, the relationship between cost and fly tipping levels and for the production of a good practice guide for local authorities on effective ways of preventing fly tipping. The results of this project should be available in 12 months time.
- Included a power in the forthcoming Hazardous Waste Regulations that will give the Agency the power to issue fixed penalty notices for failure to have a special waste consignment note. At present, the draft regulations have fine receipts being returned to the Secretary of State.
- Developed a system of producer registration that will also be included in the Hazardous Waste Regulations. This will enable the Agency to carry out more focussed inspections of producers, advise on disposal and treatment options and better address illegal disposal issues at source.

## Options for changes to primary legislation

27. The Government is recommending that the following options are brought forward.

### More flexible and effective enforcement of the duty of care

28. At present, the Agency and local authorities only have two options available for enforcing section 34 of the EPA 1990 (the duty of care provisions). They can either prosecute through the courts where the penalties involve a fine or take no action. When the system was introduced it was intended to be self-policing by industry, consequently many chose to do the latter which has only increased people's perception that they can "get away with it". The Government would therefore like to allow the enforcing bodies to make use of fixed penalty notices as a more flexible way of issuing penalties that should also help to ensure that more businesses are punished for breaches of the legislation. We are exploring the options of whether the Agency and local authorities should keep the receipts from such fines, in the same way as local authorities are now able to do for litter, graffiti and fly posting offences. The level of fines should be set high enough to provide a sufficient deterrent, for example, at £300.

We do not anticipate that the option of issuing a fixed penalty notice should deter the Agency or local authorities from prosecuting offenders in more serious cases but should be part of the modern toolkit of enforcement responses that are available to regulators.

29. The specific measures being proposed are:
- **Give local authorities and the Environment Agency additional powers to issue fixed penalty notices of £300 on failure to produce valid waste transfer notes or written descriptions of waste as required by the duty of care .**

The Agency and local authorities already have the power to inspect businesses' waste transfer notes and the written description of waste, to check that they have passed their waste to an 'authorised person' (eg. a waste carrier or another lawful source of waste disposal). The Government would give them (the Environment Agency and local authorities) additional powers to issue fixed penalty notices of £300 on failure to produce either a valid waste transfer note or a valid written description. We are looking into to possibility for penalty fines to be recycled to help cover the additional costs associated with inspections. More inspections and more immediate penalties should help to ensure that levels of fly tipping are reduced and fewer resources are spent on clear up.

- **Give powers for the Environment Agency and local authorities to issue fixed penalty notices on failure by waste carriers to produce**

**their registration details or evidence they do not need to be registered.**

The Agency has, and local authorities will shortly have, the power to stop and search vehicles suspected of being used for fly tipping. The Government would give them the additional power to issue fixed penalty notices of £300 on failure by those carrying waste to produce either their valid registration details or evidence that they do not need to be registered (charities and voluntary organisations, for example, do not need to be registered). We are looking into the possibility for penalty fines to be recycled to help cover the additional costs associated with operations. Again, we see this measure as one where more immediate penalties should help to ensure that levels of fly tipping are reduced and fewer resources are spent on clear up.

**Q: Do you think that these measures would be effective at enforcing the duty of care provisions?**

**Q: Would your local authority want to use these powers?**

**Q: Do you think that the Agency and local authorities should be able to keep the receipts from fines issued?**

**Q: Do you think that the suggested level of £300 would provide a sufficient deterrent?**

30. We expect that, in time, these measures will become cost neutral as increased investment in prevention, detection and enforcement should result in savings from not having to clear illegally deposited waste.

**Q: Do you agree with these estimates? Estimates of costs involved in enforcement action would be welcomed.**

31. During discussions with stakeholders, some other suggestions were made for legislative changes which the Government has decided not to pursue. For example, it was suggested that the Agency and local authorities could be allowed to set the level of the fixed penalty notice themselves. However, it was felt that this could lead to confusion in situations where the Agency and a particular local authority were issuing different levels of fines in the same area. It could also lead to situations where the offences were displaced and simply committed in areas where one local authority was less strict than its neighbour.

32. It was also suggested that registered waste carriers should be required to carry their registration details with them at all times so that fixed penalty notices could be issued 'on the spot'. Government is considering how this proposal could work in practice. A problem could be that a number of people are exempt from the need to register as waste carriers, for example, householders and businesses transporting their own waste to a point of disposal. Anyone who was stopped and

asked to show their registration papers could simply say the waste was their own and the enforcing authorities would have no way of proving otherwise. The power would therefore be meaningless or there could be many situations where innocent people were issued with spot fines. However, the registration certificate could also be displayed like a tax disc. Those who are carrying waste would have to prove that they were 'householders' or 'charities'.

Such measures could assist waste producers check that the person they pass their waste on to is a registered waste carrier and so make it easier for many, especially small, business comply with their responsibilities.

**Q: We would be interested on your views as to how this proposal could work in practice.**

33. The Government does intend however to review of the existing duty of care system during 2004, to consult on proposals and to bring forward any necessary changes by way of secondary legislation.

For non-hazardous waste, pads of pro forma waste transfer notes produced by waste brokers/and others, are carried by truck drivers. Current secondary legislation does not provide for these to be in a standardised format nor does it require any unique numbering system. Situations occur where material leaves the site of production as contaminated waste (e.g. soil contaminated with arsenic, lead, cadmium) and is booked into an inert site (golf course) on a different waste transfer note as inert waste.

34. The Government previously consulted as part of the document, "*Living Places: Powers, Rights and Responsibilities*" on applying section 34 of the EPA 1990 to householders as, at present, section 34 does not apply. If the duty of care system were to be applied to householders, it would mean that they would have to ensure that any transfer of household waste, for example to their local authority, were covered by the necessary paperwork. Householders would have to keep these records for up to two years, and the system would need to be enforced by the local authority with inspections and penalties for non-compliance. The response to the earlier consultation was mixed, with many local authorities, in particular, concerned about the cost and additional burden that implementing and enforcing such a measure would bring. The Government has therefore decided not to pursue this measure at the present time but will review the matter as necessary in the light of the European Court of Justice's decision on the European Commission's argument that the UK is in breach of Article 8 of the Waste Framework Directive in respect of household waste. It will also consider further how householders could be made more responsible for the disposal of the waste that is not collected as part of their weekly household collections by their local authority.

## Ensuring the main fly tipping offence provides a greater deterrent

35. Section 33 of the EPA 1990 is the main fly tipping offence and provides the penalties available to the Courts. The current penalties for anyone convicted of an offence under section 33 can be a maximum of £20,000 or six months imprisonment if convicted in a Magistrates' Court, or an unlimited fine and up to two years imprisonment if convicted in a Crown Court. The sentence can be up to five years imprisonment if the offence involves hazardous waste. However, as also noted above, the average level of fine handed down is very low in comparison. Obtaining successful prosecutions is also difficult, although the measure included in the Anti-Social Behaviour Act giving local authorities greater powers of investigation should help to overcome some of these difficulties for local authorities.
36. Some waste activities, for example, landfill sites are being brought within the control of the Integrated Pollution Prevention and Control Directive (IPPC) which has been transposed in UK legislation by the Pollution Prevention and Control Act (PPC) 1999 and the Pollution, Prevention and Control (England and Wales) Regulations (PPC) 2000. The penalties in section 33(8) and 33(9) of the EPA 1990 were reproduced in paragraph 25(2) of Schedule 1 to the PPC Act 1999. It therefore makes to sense to make the same change to both Acts, so that the same penalties are applied to all waste management activities.
37. We therefore recommend making the following amendments:
- **Amendments to sections 33(8) and 33(9) of the Environmental Protection Act 1990 and paragraph 25(2) of Schedule 1 to the PPC Act 1999 so that the penalties provide a stronger deterrent against committing an offence**
  - We recommend amending the above pieces of legislation so that higher fines of £50,000 are prescribed for those convicted in a Magistrates' court of repeat offences. This would mean that a sliding scale of penalties was introduced as follows
    - A maximum fine of £20,000 or imprisonment for a term not exceeding six months or both for **first** offences involving both non-hazardous and hazardous waste heard in a Magistrates' Court;
    - A maximum fine of £50,000 or imprisonment for a term not exceeding six month or both for **repeat** offences involving both non-hazardous and hazardous waste heard in a Magistrates' Court;
    - Unlimited fines for offences involving both kinds of waste or imprisonment for a term not exceeding two years for

offences involving non-hazardous waste or five years for those involving hazardous waste that are heard in a Crown Court.

- Section 33(7) of the EPA 1990 also provides the defence for a person charged with an offence under this section. One of the defences is that “he acted under instructions from his employer and neither knew nor had reason to suppose that the acts done by him constituted a contravention of [this section]”. The Government no longer sees any justification for keeping this defence, as people should be made responsible for their own actions. We therefore recommend that it be removed. Two defences would remain: “that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence”; and “that the acts...were done in an emergency in order to avoid danger to the public....”
38. This proposal would be in line with the Government’s desire to take a tougher stance on environmental crime. Many responses to the consultation document, *“Living Places: Powers, Rights and Responsibilities”*, also recommended the introduction of a sliding scale of fines. There are no costs involved in this measure as it currently being proposed.
- Q: Do you agree that this proposal would provide a stronger deterrent against committing an offence?**
- Q: Do you think that it would lead to more prosecutions?**
- Q: Do you think that it will help to send the message to the Courts and the public that fly tipping is a serious criminal offence?**
39. It is worth noting that the Government has considered allowing the use of Fixed Penalty Notices for those caught in the act of fly tipping but that it has rejected the idea. We believe that allowing fixed penalty notices of a few hundred pounds would undermine the deterrent we are trying to create in the two Acts mentioned above and downgrade the seriousness of the crime. It could simply encourage more fly tipping as many involved in it would be quite happy to risk a small fine rather than extremely high fines and possible imprisonment. There would be personal safety issues for those issuing fines (always assuming that people could be caught ‘in the act’) as much of this happens late at night in deserted areas. And many local authorities could see this as an easy way of discharging their obligations, rather than taking prosecutions against people who may well be serious criminals.
40. A further change is being made to section 33 of the EPA 1990 via regulations on which the Government will consult shortly. At present, section 33 (2) of the 1990 Act excludes “household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling by or with the permission of the occupier of the

dwelling” from the provisions of section 33(1). The amendment will ensure that the UK complies with the objectives of Article 8 of the Waste Framework Directive in relation to household waste. Householders will be liable for prosecution under section 33(1)(c) if they “keep, treat or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health”.

## **More robust powers for clearing waste from land**

41. Under section 59 of the EPA 1990, the Agency and local authorities can serve a notice on the occupiers of any land requiring them to clear unlawfully deposited waste. If the occupier does not comply with the notice, the Agency or the local authority can enter the land, clear the waste and recover the costs from the occupier or the person responsible for fly tipping the waste if they can be traced. There is no obligation on the land owner. Occupiers can also appeal to the Courts who are obliged to quash the notice if it is satisfied that the appellant neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste.
42. Local authorities and the Agency have, for some time, raised problems about the effectiveness of section 59. The power gives them no redress to the owner of the land in cases where there is no occupier, and this has led to problem areas, particularly on derelict land or when absentee owners take no interest, where unofficial dumps have been created and no steps can be taken to prevent more waste being dumped.
43. A proposal to amend section 59 so that it applied to land owners as well as occupiers was included in the consultation document, *“Living Places: Powers, Rights and Responsibilities”*. Up to 60 local authorities responded to that consultation and strongly supported the proposal, along with other organisations like the Open Space Society and the National Society for Clean Air. However, there was concern from organisations like the NFU, the Country Land and Business Association (CLA), the National Trust and Network Rail that this would unfairly penalise landowners.
44. The Government has continued its discussions with stakeholders and considered other changes to section 59, including amending the defence to one of ‘reasonableness’, whereby the owner or occupier would need to demonstrate that they had taken all reasonable steps to prevent the fly tipping taking place. Clearly, what constituted reasonable would differ between owners of derelict land in inner cities and farmers who are often victims of fly tipping. These options are discussed further in the partial RIA on more robust powers for clearing fly tipped waste from land.
45. Following these discussions, the Government is now proposing to amend section 59 as follows:

- **More robust powers for clearing waste from land**
- Amend section 59 of the EPA 1990 so that the Agency and local authorities can serve a notice on the occupier of the land in the first instance and then the owner(s) of the land to require unlawfully dumped waste to be cleared. Both the occupier and the owner would have recourse to a defence if they neither deposited nor knowingly caused nor knowingly permitted the disposal.
- The Government also wants to make a technical change to section 59 to bring it into line with the language used in the Waste Framework Directive, which was published after the EPA 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.

**Q: Do you agree that owners of land should come within the scope of section 59?**

**Q: Do you agree that the defence should remain as it currently exists?**

**Q: Do you agree with the cost estimates associated with this proposal? Do you have better estimates?**

**Q: Would your local authority use this power more if it was amended in this way?**

46. It should be noted that the Government does not want to place a statutory requirement on local authorities or the Agency to clear up fly tipped waste on private land. The costs of this measure for the taxpayer, local authorities and the Agency would be enormous (potentially well over £100 million per annum). It could simply encourage more fly tipping if the people responsible for the tipping knew that the waste would be cleared under any circumstances. It would not provide any incentive for occupiers and owners to play a part in preventing fly tipping happening in their area, and it would be against the 'polluter pays' principle. These arguments would also apply to some other ideas that have been suggested by stakeholders, including a public sector funded 'rescue fund' whereby land owners could reclaim the cost of clearance, or for fly tipped waste to be exempt from landfill tax. In the case of the latter, there would also be issues around proving the waste was fly tipped.

### **Consideration of the amount of construction, demolition and excavation waste being fly tipped**

47. Construction and demolition wastes can be separated into: waste arising from the construction and demolition of buildings and

foundations; and excavation waste such as material dug from the ground during levelling of a site and/or during the removal of contaminated soils. The Environment Agency and local authorities have highlighted the need to reduce the amount of construction, demolition and excavation waste being fly tipped. By volume, these types of wastes represent the greatest proportion of fly tipped material in larger urban areas. The Agency is also recording these particular waste types as one of the main growth areas for fly tipping.

In March 2003, Agency enforcement officers identified more than 6000 x 20 tonne loads [120,000 tonnes] of construction and demolition waste that had been fly tipped in the Greater London and the immediate surrounding area in the previous 16 months. This figure does not represent the full extent of the problem – as there are landowners who do not report illegal tipping and there are landowners who are complicit in illegal construction waste disposal that goes undetected because of its location. When discovered they are often found to compromise watercourses, floodplain areas or woodland etc.

48. The Government is looking into possibilities for dealing with the problem. We are keen to work with industry sectors in tackling fly tipping of waste produced by that sector. We are aware of the fact that there is a need to approach the issue from several angles to ensure enforcement and monitoring is improved as well as providing suitable sites for legal disposal.
49. It has been suggested that one approach could be for the local authority to require site waste management plans from those planning large-scale developments, to ensure that legal disposal routes for the waste were in place before work begins; local authority officers would be able to inspect these plans, waste transfer notes/written descriptions and waste carrier registrations to check that the site waste management plan had been observed. Such a change would represent a significant step forward.

**Q: Have you found that the illegal dumping of construction and demolition or excavation waste is a problem?**

**Q: Would you agree with an approach that involved site waste management plans at the planning stage?**

**Q: Are there any other measures that could help the authorities deal with the fly tipping of construction and demolition waste?**

### **Changes to secondary legislation**

50. The Government is also considering other measures to tackle fly tipping, but these do not need primary legislation. Details however are being included so that people are able to see the details of the overall strategy and **comments are also invited on these proposals.**

## **Review of the duty of care system**

51. Paragraph 33 above mentions a review of the duty of care system that will consider any changes needed to the operation of the waste transfer note system and the registration and inspection of waste carriers and brokers.

## **Refinements to the way that stop, search and seizure powers work**

52. The Agency and, following the Anti-Social Behaviour Act, local authorities, have the power to stop, search and seize vehicles suspected of being used for fly tipping. A police constable must be present to stop a vehicle on the road. Under the current legislation, there are some restrictions which can make these powers ineffective in particular circumstances. The legislation covering these powers is the Control of Pollution (Amendment) Act 1989 and the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991.
53. **The Government would welcome suggestions on how the legislation could be amended so that it was more effective and that more immediate action can be taken. We would also be interested in whether more effective sentences could be introduced.**

## **Additional measures that do not need legislation**

54. The Government would like to encourage more joint working between the Agency, local authorities, the police and possibly other organisations like HM Customs and Excise as it believes this would lead to more effective use of resources. It is currently considering ways in which this objective could be achieved.

In a recent case in the Thames Region, which benefited from Police support, drivers of 20 tonne trucks were caught red-handed illegally tipping construction waste on private land. The Police additionally charged one driver with carrying an offensive weapon and the other driver was subsequently found to have an extensive violent criminal history, including for assaulting Police.

55. In November 2003 the Magistrate's Association re-issued a training package that should help to inform them of the seriousness of environmental crime, including fly tipping. The Government will follow up this initiative to assess its effectiveness.
56. The Agency is developing proposals for a National Fly Tipping Abatement Force that will consist of dedicated enforcement teams who will specialise in tackling fly tipping and will provide guidance and assistance to local authorities.

57. Changes to the Special Waste Regime. The ending of pre-notification before hazardous waste can be transferred, the use of a computer database of consignment notes, and the introduction of quarterly returns rather than individual consignment notes being sent to the Agency, will all serve to free up Agency staff from desk-based work to enforcement in the field.
58. We will also work with the Agency to assess the extent of illegal waste shipments and to consider ways of tackling it, if necessary.
59. There is an existing problem caused by several large illegal dumps of tyres around the country. Some of these are in danger of causing serious pollution to the environment and major fire hazards. The Government will consider with the Agency and other stakeholders how these can be cleared and how to prevent any future dumps being created.
60. The Government will ask the Agency to develop a detailed implementation/delivery plan to demonstrate how it plans to use any new powers being made available to it, alongside existing legislation, and any additional funds. The Government will expect to see a proactive approach being taken, with firm targets to be delivered within specified timescales.
61. In liaison with the LGA and the Agency, the Government will also consider as part of its wider work on liveability whether there is a role, and whether funding can be found, for a national/local awareness raising programme to educate and inform householders about fly tipping, its consequences for human health and the environment, the increased likelihood of being caught, prosecuted and fined, and measures that can be taken to stop it. There could also be the opportunity to develop awareness within the business community concerning the duty of care and any changes that are being considered as part of the review of the regime.

## Responses

Responses to this consultation should be sent to the address below by **Friday 14 May 2004**:

By post: Fly-Tipping Strategy Responses  
Defra  
7/H11 Ashdown House  
123 Victoria Street  
London  
SW1E 6DE

By e-mail: [flytipping@defra.gsi.gov.uk](mailto:flytipping@defra.gsi.gov.uk)  
(Include '**Fly-Tipping Strategy**' in the subject line of the e-mail)

## Help with Queries

Tel: (020) 7082 8772

## Confidentiality

In line with Defra's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR. The information they contain may also be published in a summary of responses.

If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request. The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (tel: 020 7238 6575, e-mail: [defra.library@defra.gsi.gov.uk](mailto:defra.library@defra.gsi.gov.uk)). Wherever possible, personal callers should give the library at least 24 hours' notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

## Consultation Paper Availability

The consultation document is available on the Defra website ([www.defra.gov.uk](http://www.defra.gov.uk)) and may also be obtained on request from Ola Ladapo on the contact details above.

## The Consultation Criteria

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.

2. It should be clear who is being consulted, about what questions, in what time scale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure that lessons are disseminated.

The complete code is available on the Cabinet Office's web site address <http://www.cabinet-office.gov.uk/regulation/Consultation/introduction.htm>