

Annex F: Illegal Waste Activity

1. Chapter 7 of *Review of England's Waste Strategy: A Consultation Document*¹ highlighted the potential for a significant increase in all forms of illegal waste activity, including fly-tipping, as a result of legitimate forms of waste management becoming more complex and more expensive. It explored additional actions required to improve enforcement, preventative measures and evidence linking waste collection services to levels of fly-tipping.

2. Most respondents to this chapter² agreed on the need for a multi-stringed approach consisting of more resources for enforcement, harsher penalties for offenders, better liaison and coordination among those responsible for policing, and a campaign of information and education to help prevent illegal waste activity. Numerous other suggestions were made, including clearer guidance for courts and a review of relevant legislation. There were also suggestions about reducing the motivation to commit such offences by providing more facilities and reducing the economic drivers.

3. Opinion was divided on links between the type and quantity of local waste collection services and levels of fly-tipping, with local authorities thinking that there was a link whereas other respondents did not. A number of different solutions were recommended to help overcome any problems that did exist including better policing and enforcement, education and publicity, low or no charges for the collection of bulky items, and providing better access to facilities, for example, longer opening hours at civic amenity sites.

Developing the evidence base for action

4. On 31 July 2006, Defra published two important additions to the evidence base for illegal waste activity and fly-tipping. Data from Flycapture, the national fly-tipping database, for 2005–06³ showed the following:

- local authorities and the Environment Agency are currently spending £50 million a year in clearing fly-tipping from streets and the countryside. Once the clearance costs to private landowners and the enforcement costs associated with investigating and prosecuting offenders are included, the real costs of fly-tipping alone could be as high as £100 million a year;
- local authorities reported that they had dealt with over one million incidents of fly-tipping;
- most fly-tips were on highways or council land;
- 51% of fly-tips dealt with by LAs are household waste, either black bin bags or other household waste;
- the other main types of waste disposed of illegally are construction and demolition and commercial waste;
- 86% of fly-tipping takes place in urban areas, where 63% of the population live; and
- more than half of all fly-tipping happens in the local authority districts containing the 88 most deprived wards.

¹ The consultation document can be found at <http://www.defra.gov.uk/environment/waste/strategy>

² A summary of responses to the consultation can be found at <http://www.defra.gov.uk/environment/waste/strategy>

³ See <http://www.defra.gov.uk/environment/localenv/flytipping/pdf/flycapture-data0506.pdf> for further information.

5. Defra also published a research report by the Jill Dando Institute (JDI) of Crime Science, University College London entitled, *Fly-tipping: Causes, Incentives and Solutions*.⁴ The researchers found that fly-tipping is widespread and that there is not one problem but a variety of separate ones, distinguishable in terms of places, people, materials and opportunities for legal and illegal disposal.

6. The JDI also found that local authority practices can inadvertently create temptations and opportunities for fly-tipping. Opening hours of, information systems relating to, sites for, rules of, accessibility to and patterns of charges for civic amenity sites can all be conducive to fly-tipping. At a national level, waste carrier registration arrangements, duty of care responsibilities and penalties for fly-tipping also emerged as significant for increasing the risks of and rewards for fly-tipping or illegal disposal of waste material.

7. The researchers conclude that there is scope for a more strategic problem-solving approach to fly-tipping with more cooperation between authorities, the police and the Environment Agency, and stronger evaluation of initiatives to build a firmer knowledge-base. It was their view that this would be more promising than current approaches which tend to focus primarily on clean-up after the event and enforcement when the opportunity arises.

8. The JDI also produced a good practice guide for local authorities on how they might be able to reduce fly-tipping.⁵

9. In the consultation document, the Government said that it would work with the Environment Agency to research the scale and impacts of other illegal activities and to develop prevention and enforcement strategies for tackling them. Defra has funded the Environment Agency to carry out a scoping report into the nature and possible extent of four other areas of illegal waste activity:

- the involvement and role of waste brokers;
- the abuse of exemptions from waste management licences;
- the deliberate mis-description of waste; and
- the avoidance of permitting controls.

10. Changes to the legislation and more intelligence-led enforcement might be needed to curtail abuses. Further research may be necessary to better understand the potential drivers for these forms of illegal activity and to develop more effective prevention strategies.

11. In tackling illegal activities, we are encouraging the Environment Agency and other regulators to adopt the National Intelligence Model (NIM). This is a business model that assesses the current and likely levels of illegal activity and helps prioritise action in a targeted and risk-based way. It promotes both prevention and enforcement approaches to solving the problems associated with illegal activities. It has been identified by the Audit Commission as a Value for Money approach and has been adopted by police forces and some other regulators across the UK.

⁴ *Fly-tipping: Causes, Incentives and Solutions*, Jill Dando Institute of Crime Science, University College London, 31 May 2006. www.defra.gov.uk/environment/localenv/flytipping/research/index.htm

⁵ *Understanding and preventing fly-tipping: A summary guide to good practice*, Jill Dando Institute of Crime Science, University College London, 30 June 2006. <http://www.defra.gov.uk/environment/localenv/flytipping/pdf/flytipping-goodpracticesummary.pdf>

Action plan for tackling illegal waste activity

12. The Government will work with the Environment Agency, local authorities and other key groups to develop and implement actions to tackle illegal waste activity outlined below as and when resources are available. Where the Government is able to commit to a timetable, this is also indicated in Table F.1 below. The action plan fits in with the Government's overall strategy to tackle illegal waste activity which is to:

- ensure better prevention, detection and enforcement of illegal waste activity, including fly-tipping;
- make existing legislation more usable and effective;
- extend the powers available in the toolkit so that the Environment Agency and local authorities can be more flexible when dealing with illegal waste activities;
- improve the data and knowledge base to effectively target resources at reducing illegal waste activity; and
- ensure that waste producers and handlers take responsibility for having the waste managed legally.

Table F.1: Illegal waste activity action plan

Measure	Benefit	Timetable
Legislative improvements		
The Government is reviewing legislation on the registration of waste carriers, the waste duty of care and the registration and control of waste brokers ⁶	The review aims to reduce levels of illegal waste activity and improve environmental protection, make it easier for businesses to understand and comply with the regulations and easier for the enforcing authorities to use	The Government will consult further on draft regulations later in 2007. Implementation in 2008
The Government is reviewing the powers of the regulators in relation to imports and exports of waste in the light of changes to the EC Waste Shipments Regulation. This issue is covered in more detail below	The review aims to improve the ability of regulators to combat illegal shipments of waste, as well as to reduce the burden on the compliant	The revised Transfrontier Shipment of Waste Regulations should come into force before 12 July 2007

⁶ See <http://www.defra.gov.uk/corporate/consult/waste-controls/index.htm> for further information.

Waste Strategy 2007

Measure	Benefit	Timetable
The Government is consulting on proposals to introduce site waste management plans as a statutory obligation on those responsible for construction and demolition projects above a specified value ⁷	This requirement should help to reduce the amount of construction and demolition waste that is fly-tipped and other illegal waste activity. It should also improve resource efficiency and waste management in the sector	The aim is for final regulations to be made in time for them to come into force in April 2008
The Government is developing regulations to implement the provisions of the Clean Neighbourhoods and Environment Act 2005 relating to powers to stop, search and instantly seize vehicles being used to commit certain waste offences	The regulations will enhance the enforcement authorities' ability to tackle illegal waste activity	Consultation in autumn 2007. The aim is for the amending regulations to come into effect in 2008
Projects to promote changes to waste controls to make businesses and others aware of new legal responsibilities and support implementation	Better awareness of legal requirements can help to close down the market for illegal operators	These projects will be subject to funding being available
The Serious Crime Bill creates powers for Serious Crime Prevention Orders. Serious crime is defined in schedule 1 of the Bill, and offences under section 33 of the Environmental Protection Act (EPA) 1990 (the illegal disposal of waste) are included in the list	Will further extend the range of sentencing provisions that can be used against serious and repeat offenders to help prevent organised illegal waste activity	The Bill was published in January 2007 ⁸
Working with local authorities		
ENCAMS is running Flycapture Enforcement, a training programme aimed at local authority enforcement officers and their lawyers	Will help local authority enforcement officers and lawyers to improve their skills in dealing with fly-tipping	Courses are available around England and Wales ⁹

⁷ For further information see <http://www.defra.gov.uk/corporate/consult/construction-sitewaste/index.htm>

⁸ See http://www.publications.parliament.uk/pa/pabills/200607/serious_crime.htm for further information.

⁹ See <http://www.encams.org/events/sub.asp?sub=11> for further information.

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<p>Defra will promote the findings of the good practice guide developed by the Jill Dando Institute report and consider how the recommendations can be taken forward. Defra is interested in working with some local authorities who would be prepared to develop and implement prevention strategies for illegal waste activity across their services and geographical area</p>	<p>Further work would be aimed at helping local authorities to develop strategies that best reflect their own situation. Further good practice could be developed to help other local authorities who wanted to focus on prevention of illegal waste activity</p>	<p>Further work with local authorities will be subject to funding being available</p>
<p>Proposals in the waste strategy to consult on new powers for local authorities to introduce household financial incentives for recycling and waste minimisation for household waste collections might impact on fly-tipping levels in those areas but careful scheme design and strong enforcement can prevent rises in fly-tipping. Subject to the outcome of the Government's consultation on household financial incentives and in view of whether local authorities are given voluntary powers to introduce such schemes, the Government will analyse potential and actual impacts before, during and after implementation of the first schemes and produce guidance. The Government would require local authorities to have good enforcement strategies in place before introducing a financial incentive scheme</p>	<p>The monitoring, assessment and guidance should help to reduce any negative impacts on fly-tipping levels</p>	<p>Dependent on outcome of consultation</p>

Waste Strategy 2007

Measure	Benefit	Timetable
<p>Since April 2007, local authorities are being assessed on fly-tipping reduction and enforcement action under the Best Value Performance Indicator on cleanliness (BV199d). Through the existing BVPI on local authorities' performance in delivering improvements in local environmental quality it has been possible to assess how effective local authorities are in tackling fly-tipping¹⁰</p>	<p>Local residents and others will be able to assess local authority performance on illegal waste activity. Management information will help local authorities to target action and encourage the development of prevention strategies for illegal waste activity</p>	<p>The BV199d assessments will be made in April 2007 and 2008</p>
<p>Targeting specific sectors</p>		
<p>Defra and the Environment Agency will work to better understand the role of waste brokers and dealers in waste management, and how they might be encouraged to comply with waste legislation and promote compliance by those with whom they do business</p>	<p>Increase awareness among waste brokers of waste management controls. It could help to prevent illegal waste activity, including illegal shipments abroad</p>	<p>This project will be subject to funding being available</p>
<p>Defra will work with ENCAMS to look at possible communication opportunities that local authorities could use if they want to in order to raise awareness among householders of their obligations and the need to guard against passing their waste on to illegitimate operators</p>	<p>This could help to close down the market for illegal operators. It will also raise awareness among householders of the importance of contributing to improvements in local environmental quality</p>	<p>This work will be carried out during 2007/08</p>

¹⁰ This assessment is based on data submitted by local authorities to Flycapture, the national fly-tipping database. For the latest published Flycapture data visit <http://www.defra.gov.uk/environment/localenv/flytipping/flycapture-data0506.pdf>

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<p>Defra will continue to provide the Agency with Business Resource Efficiency and Waste (BREW) funding to continue with its illegal waste activity projects during 2007/08. The Agency's targeted campaigns will help to disseminate good practice to businesses, especially small businesses, and raise their awareness of the importance of good waste management procedures</p>	<p>This could help to close down the market for illegal operators and to encourage those wishing to comply with the law</p>	<p>The project will continue during 2007/08</p>
<p>Further improvements to the evidence base</p>		
<p>Defra and the Environment Agency will arrange for a threat assessment of the extent of the involvement of organised crime in illegal waste activity to be carried out</p>	<p>This project will help to build the evidence base for action on illegal waste activity and identify policy or legislative changes that may reduce the level of threat, and help the Agency to target enforcement action</p>	<p>This project will be subject to funding being available</p>
<p>Defra is interested in working with the Agency to develop a project to map specific waste streams at the national level and identify gaps in data, possible loop-holes in the system and where any waste might be going 'missing'. We could also develop a guide for local authorities on what types of data are needed to map illegal waste activity patterns in local areas and how they could use data analysis more effectively to prevent illegal waste activity and to target enforcement activities</p>	<p>Would help to build up intelligence-led enforcement and evidence base for further action. Projects would fit in with the Government's wider vision for more information sharing between public sector organisations to help prevent and reduce illegal activities. There would also be wider benefits for the community in terms of tackling deprivation and improving local environmental quality</p>	<p>These projects will be subject to funding being available</p>

Waste Strategy 2007

Measure	Benefit	Timetable
<p>Defra will work with the Flycapture Stakeholder Groups to consider how Flycapture (the national fly-tipping database) can be enhanced or improved. Flycapture is now providing a valuable management information tool for many local authorities and central government. But there might, for example, be scope to extend it on a voluntary basis to others</p>	<p>Further enhancement of Flycapture would help to provide enforcement authorities and policy officials with an even more authoritative data set that will help to profile specific problems, target action and monitor the effectiveness of any action that is taken</p>	<p>This project will be subject to funding being available</p>
<p>Defra and the Environment Agency will follow up the recommendations for further work that have been identified in the scoping report on illegal waste activity, in particular, on the role of waste brokers, the abuse of exemptions, the deliberate mis-description of wastes and the avoidance of permitting controls</p>	<p>Further research in this area will help to target any further preventative and enforcement action that might be necessary to reduce levels of these illegal waste activities</p>	<p>This project will be subject to funding being available</p>

13. In the consultation document, the Government noted that there may be a case for some possible transfer of responsibilities and extension of enforcement powers from waste collection authorities to waste disposal authorities, as it believed this would encourage more partnership working. Following the consultation, the Government carried out some further investigations and found several examples of local authorities who are using existing legislation to form partnerships, pool resources and work together to tackle illegal waste activity on a county-wide basis. For example, in Buckinghamshire, the waste collection and disposal authorities have used section 113 of the Local Government Act 1972 to set up a county-wide enforcement team. Others are using arrangements such as Crime and Disorder Partnerships, or are pooling resources to jointly fund full-time fly-tipping enforcement officers or a dedicated police officer. The Jill Dando Institute good practice guide for local authorities has further details of such examples. The Government has therefore decided that there is no need for further legislative change on this issue.

Controls on imports and exports of waste

14. In the Waste Strategy consultation document we asked how we can improve compliance with controls on the export of waste for recycling. Many respondents focused on enforcement of the existing controls, including the duty of care, together with an expansion of policing, monitoring and prosecuting those who abuse them. Better liaison with countries receiving our waste is part of the solution for some, along with a clearer framework for what is allowed.

15. The Government agrees that domestic controls on the movement of waste are important, such as the duty of care and the Hazardous Waste Regulations, as they provide the first level of control before a shipment commences. We are reviewing the legislation on the duty of care, including placing a general duty of care on those involved in the export of waste, and the possibility of a specific offence to transfer waste where the person transferring it knows or ought to reasonably suspect that the waste is being or will be illegally exported.

16. The main control mechanism for the import and export of waste is the recently revised EC Waste Shipments Regulation (1013/2006). This instrument is legally binding in Member States, and implements the EU's obligations under the UN Basel Convention and related OECD decisions. Penalties and powers for UK competent authorities are currently provided in domestic Regulations dating from 1994 (SI No. 1137).¹¹ Within the framework Member States have some scope to prescribe additional controls on the shipments of waste, particularly on the movement of waste for disposal, and in the UK these are set out in the legally binding UK Management Plan for Exports and Imports of Waste (the UK Plan).

17. The revised Waste Shipments Regulation (WSR) provides greater control over the transfrontier movement of waste without unduly burdening the legitimate trade in waste, and will apply throughout the EU from 12 July 2007. In support of the WSR the UK has reviewed the Transfrontier Shipment of Waste Regulations (TFS Regulations) and the UK Plan,¹² to make them compatible with the main EC Regulation, to reduce the burden on the compliant and to strengthen the controls against illegal shipments.

18. The revised Waste Shipments Regulation contains new provisions which place an obligation on anyone shipping green listed waste (recyclables) for recovery to provide certain information (as set out in Annex II of the Waste shipments regulations) to accompany the waste. There is also a provision which enables Member States to request that the information be provided for inspection, planning and statistical purposes.

19. Regulators would then have access to better information on the scope, scale and pattern of trade, which could be used to target enforcement action, and there would be greater knowledge of who is involved in the export of green list waste.

¹¹ See http://www.opsi.gov.uk/si/si1994/Uksi_19941137_en_1.htm for further information.

¹² See <http://www.defra.gov.uk/corporate/consult/tfs-regs/index.htm> for further information.

20. We have also reviewed the TFS Regulations in terms of the powers of the regulators in relation to exports of waste. Defra has proposed a provision which makes shippers and transporters of waste liable for any illegal export of waste carried by them. We propose that HM Revenue and Customs' powers in relation to detaining of waste at ports enable them to detain suspect shipments for up to five days rather than three days at present. There will be powers for regulators to enable them to seize waste. Furthermore, the Government will encourage the Environment Agency, as the regulator in England and Wales, to give a high priority to inspections, dissemination of advice and enforcement of the TFS regulations.