

REGULATORY APPRAISAL

ENVIRONMENTAL PROTECTION, WALES

THE CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 (COMMENCEMENT NO.1 AND SAVINGS) (WALES) ORDER 2006

Purpose and intended effect of the measures

1. The effect of the Order will be to commence:

- section 47: local authorities will no longer be required to transfer waste disposal functions to specially-formed 'arm's length' companies (i.e. companies that are owned and financed by the local authorities but cannot in fact be managed by the local authorities itself) or wholly to the private sector. Waste disposal authorities have been required to carry-out their waste disposal functions by means of letting contracts. The contract-letting procedures for waste disposal authorities required by the 1990 Act were no longer considered necessary given the requirements of the Public Contracts Services Regulations 1993. The Public Contracts Services Regulations set the framework for letting public service contracts. These are requirements to tender etc and this is designated through the European Communities Act 1972, and it implements several European Union Procurement Directives.
- section 53: will allow waste collection authorities to: enter premises; bring an authorised officer, a constable and equipment; examine and investigate as required; direct that premises are undisturbed; take measurements and photographs as necessary; take samples of articles or substances found; dismantle or test any substance or article; take possession of these substances; require any person to give information relevant to the investigation; require production of relevant information and records; require any person to assist the investigation; and exercise any other power conferred by Regulations.
- section 104: modifies the arrangements for appeals against remediation notices, which are served under section 78E of Part 2A of the 1990 Act. In particular, section 104 amends section 78L of the 1990 Act to provide the person to whom a remediation notice is served by a local authority in Wales with a right to appeal to the National Assembly for Wales. This replaces the previous arrangement under section 78L, under which Magistrates' courts considered appeals where notice had been served by the local authority and the National Assembly for Wales considered appeals where the notice had been served by the Environment Agency. The new provision will therefore provide a single appellate authority for remediation notices served in Wales under Part 2A of the 1990 Act, whether served by the local authority or the Environment Agency. Remediation notices are served, where land has been identified as contaminated and there has been no satisfactory outcome to remediate the land voluntarily.

- paragraph 4 of Schedule 4 ,which makes some minor amendments to section 60(1) of the 1990 Act relating to the right to interfere with waste deposited at a site by a waste collection authority;
- various provisions in the 2005 Act to the extent (and only to such extent) that they enable the National Assembly for Wales to make, issue or give subordinate legislation. This is a technical legislative drafting device which is intended to avoid the ‘anticipatory exercise of powers’ issue in legislative drafting, i.e. it ensures that the power to make a piece of subordinate legislation under the 2005 Act is in force before that legislation is made. It does not avoid the need to make further Commencement Orders to bring into force the substantive elements of those provisions, nor does it affect the requirement for that future legislation to go through the appropriate Standing Orders; and
- make savings in relation to the commencement of section 47, with the effect that the existing provisions continue in effect, insofar as they apply to the activities of companies engaged in the collection, or the treating, keeping or disposal of waste, which remains under the control of waste disposal authorities on 16 March 2006 (the date on which the relevant provision is brought into force by this proposed Order) and to the functions of such authorities in relation to such companies.

Risk Assessment

2. If section 47 is not commenced Local Authorities would be unable to own, operate and hold licenses for their own waste management facilities, which would result in greater difficulties and higher costs in achieving waste strategy targets.
3. If section 53 is not commenced Local Authorities would be unable to undertake and use the powers of investigation under that section in investigating incidents or offences in relation to discharging any of their functions under Part 2 of the 1990 Act. If section 104 is not commenced, the Contaminated Land (Wales) Regulations 2006, which are currently progressing through the Assembly’s legislative process cannot be made

Options

Option 1: Do Nothing

4. This will mean that local authorities will continue to contract-out their waste disposal functions and prevent them from effecting improvement in the way that best fits their local circumstances; deprive local authorities of increased investigative powers needed for waste law enforcement work and mean that appeals against the requirement to remediate contaminated land will be considered by different authorities, depending on whether a local authority or the Environment Agency served the remediation notice.

Option 2: Make the Legislation

5. Commencing section 47 will give local authorities greater flexibility in determining how best to affect change in their waste disposal services, and

allow them to meet their Best Value duty to secure continuous improvement in the way in which their functions are exercised.

6. Commencing section 53 will give local authorities new investigative powers to tackle various offences and allows a fine to be imposed (of up to £50,000 under section 41 of the CNEA) in cases of non compliance.
7. Commencing section 104 will make the National Assembly for Wales the sole appellate body in contrast to the current regime, where the Magistrates' court is the appellate body when a local authority issues a remediation notice and the National Assembly for Wales when the notice is issued by the Environment Agency.

Benefits

8. The benefits of implementing the proposed Regulations are that it will:
 - allow local authorities to manage their own services and facilities and may result in improved recycling and composting and other waste management activities at lower costs;
 - give local authorities effective investigative powers, which may result in better enforcement, more fines and penalties for e.g. flytipping and, in due course, a reduction in this activity;
 - benefit the Magistrates Courts as they will no longer have to deal with land remediation appeals, which could involve considerable legal and technical complexity; and
 - benefit members of the public who are issued with land remediation notices, as there will be one clear route of appeal.

Costs

9. There are no financial implications, other than some potential cost savings from more efficient enforcement action in relation to section 53. In relation to section 47 Local Authorities may be able to save money from being allowed to manage their own waste disposal services and facilities rather than necessarily having to contract out to private companies. There are no costs to waste disposal companies or others as a result of implement this Order.
10. Section 104 will allow a potential reduction in the legal costs to parties of preparing cases given the less formal requirements. Public sector cost savings through more rapid development of expertise in hearing cases through having a single appellate authority to consider all appeals under the regime. There will be increased costs for the Assembly due to its increased responsibility for land remediation appeals. However, it is not possible to quantify these costs, because it is difficult to predict how many appeals may be received and no appeals have been received by the National Assembly for Wales since the scheme came into force in Wales (introduced by the Contaminated Land (Wales) Regulations 2001) from people where the notice has been served by

the Environment Agency. The average cost of an appeal currently stands though at approximately £1,080.

Competition Assessment

11. The competition filter has been applied, and it may be that companies tendering for local authority waste disposal contracts will be affected. However, local authorities will still have to seek best value in managing these services.

Consultation

With Stakeholders

12. A joint consultation paper, entitled "Clean Neighbourhoods" was issued on 15 July 2004. The consultation closed on 24 September 2004. It was sent to English and Welsh local authorities and various other interested bodies in England and Wales. A list of organisations consulted is attached at Annex A to the Regulatory Appraisal.

13. There were no responses from local authorities in Wales on section 104. The responses in relation to section 47 and section 53 are contained within the summary of responses attached at Annex B. The documents are also available on the Defra website: <http://www.defra.gov.uk/corporate/consult/clean-neighbourhood/index.htm>.

With Subject Committee

14. These Regulations were notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation on 1 February 2006 (EPC(2) - 02-06 (p.3) item No.27). They were not identified for detailed scrutiny.

Review

15. No formal arrangements are planned for the review of these measures. However, local authority performance indicators on waste management and fly-tipping will be considered as part of the review of the Wales Waste Strategy in 2007.

Summary

16. This Commencement Order will bring into force provisions of the Clean Neighbourhoods and Environment Act 2005 relating to the repeal of local authority waste disposal contracting-out requirements, the extension of waste collection authorities' powers of investigation and a change to the appeals system relating to contaminated land. It also brings into force other provisions of the 2005 Act to the extent (and only to the extent) that those provisions enable the National Assembly for Wales to make, give or issue subordinate legislation. The Order also makes a saving in connection with the above-mentioned waste disposal contracting-out provision.

Annex A

List of organisations consulted

A.C.P.O.
Action with Communities in Rural England
ADAS Pwllpeiran
Adshell
Adur District Council
Advantage West Midlands
Advisory Council for the Education of Romany & Other Travellers
AEP Energy Services Limited
AES Newenergy Ltd
AGIP (UK) Ltd
Airport Operators Association
Albion Water (Shotton) Ltd
Alcohol Concern
ALG Transport and Environment Committee
All Wales Ethnic Minority Association (AWEMA)
Allerdale Borough Council
Alnwick District Council
Amber Valley Borough Council
Amber Valley District Council
Anglers Conservation Association
Anglian Water Services Ltd
Aquila Energy Supplies Ltd
Arena Network
Arts Council in England
Arun District Council
ASDA
Ashfield District Council
Ashford Borough Council
Ashurst Morris Crisp
Associated British Ports
Association of British Chambers of Commerce
Association of Charity Shops
Association of Chief Police Officers of England
Association of Convenience Stores
Association of Cycle Traders
Association of Inland Navigation Authorities
Association of Licensed Multiple Retailers
Association of London Government
Association of National Park Authorities
Association of Police Authorities
Association of Town Centre Management
Association of Train Operating Companies
Association of Transport Co-ordinating Officers (ATCO)
Atlantic Electric & Gas Ltd
Audit Commission,
Automobile Association
Avon & Somerset Constabulary
Avon & Somerset Police Authority
Aylesbury Vale District Council
B&Q
Babergh District Council
Baglan Operations Limited
Bangladesh Community Council
Barnsley Metropolitan Borough Council
Barrow in Furness Borough Council
Basildon District Council

Basingstoke & Deane Borough Council
Bassetlaw District Council
Bath & NE Somerset Council
Beacon Gas Ltd
Bedford Borough Council
Bedfordshire C C
Bedfordshire County Council
Bedfordshire Police Authority
Berkshire County Council
Berwick upon Tweed BC
Betapack
Bevan Ashford
Bexley London Borough
Bicycle User Group
Biffa Waste Services Ltd
Biffpack
Bikerail
Birmingham Chamber of Commerce and Industry
Birmingham City Council
Bizzenergy Limited
Blaby District Council
Black Environment Network
Blackburn Borough Council
Blackburn With Darwen Borough Council
Blackpool Unitary Council
Blaenau Gwent County Borough Council
Blyth Valley Borough Council
Bolsover District Council
Bolton Metropolitan Borough Council
Bond Pearce (licensing solicitors)
Boots Company Plc
Borough Council of Kings Lynn & W Norfolk
Borough of Allerdale
Borough of Poole
Boston Borough Council
Bournemouth & West Hampshire Water PLC
Bournemouth Borough Council
BP Energy
Bracknell Forest Borough Council
Bradford City Council
Braintree District Council
Breckland District Council
Brecon Beacons National Park
Brentwood Borough Council
Bridgend County Borough Council
Bridgnorth District Council
Brighton & Hove City Council
Bristol City Council
Bristol Water PLC
British Parking Association
British Aerosol Manufacturers' Association
British Asian Society
British Astronomical Association
British Beer and Pub Association
British Chambers of Commerce
British Coatings Federation Ltd
British Council of Disabled People
British Cycling
British Deaf Association
British Energy Generation Ltd

British Entertainment and Dance Association
British Gas
British Institute of Innkeeping
British Marine Federation
British Muslim Research Centre
British Parking Association
British Ports Association
British Pyrotechnists Association
British Retail Consortium
British Schools Cycling Association
British Shops & Stores Association
British Tourist Authority
British Transport Police
British Trust for Nature Conservation
British Water
British Waterways
Broadland District Council
Broads Authority
Bromsgrove District Council
Broxbourne Borough Council
Broxtowe Borough Council
Buckinghamshire County Council
Budget Pack
Burger King Ltd
Burnley Borough Council
Bury Metropolitan Borough Council
Business in Sport and Leisure
Business in the Community
Butler Fuels
Caerphilly County Borough Council
Calderdale Borough Council
Cambridge City Council
Cambridge Gas & Electricity Company
Cambridgeshire Constabulary
Cambridgeshire County Council
Cambridgeshire Police Authority
Campaign for the Protection of Rural Wales
Campaign to Protect Rural England
Cannock Chase District Council
Canterbury City Council
Caradon District Council
Cardiff City & County Council
Carlisle City Council
Carmarthenshire County Council
Carrick District Council
Castle Morpeth Borough Council
Castle Point Borough Council
CBI
CBI Wales
Ceredigion County Council
Charnwood Borough Council
Chartered Institute of Environmental Health
Chartered Institute of Environmental Health
Chartered Institution of Wastes Management
Chartered Institution of Water and Environmental Management
Chartered Institution of Water and Environmental Management
Chelmsford Borough Council
Cheltenham Borough Council
Cherwell District Council
Cheshire Constabulary

Cheshire County Council
Cheshire Police Authority
Chester City Council
Chester Le Street District Council
Chesterfield Borough Council
Chichester District Council
Chiltern District Council
Cholderton & District Water Company Ltd
Chorley Borough Council
Christchurch Borough Council
Cinema Exhibitors Association
City of Bradford Met Council
City of London Police Authority
City of Sunderland
City of Wakefield Metropolitan Dist Council
City of Westminster Council
City of York Council
Civic Trust
Cleanaway
Cleveland Constabulary
Cleveland Police Authority
Colchester Borough Council
Colgate-Palmolive (U.K.) Ltd
Commission for Architecture and the Built Environment (CABE)
Commission for Integrated Transport
Commission for Racial Equality
Commission for Racial Equality Wales
Commission for Racial Equality Wales Office
Commissioner of Police for City of London
Committee of Registered Clubs Associations
Community Recycling Network
Compliance Link
Complypak
Composting Association
Confederation of Passenger Transport
Congleton Borough Council
Consortium of Bicycle Retailers
Contract Natural Gas Ltd
Conwy County Borough Council
Copeland Borough Council
Corby Borough Council
Cornwall County Council
Corporation of London
Cotswold District Council
Council for National Parks
Council of the Isle of Scilly
Country Land & Business Association
Countryside Agency
Countryside Council for Wales
Countrywide Energy
Coventry City Council
CPL British Fuels
Craven District Council
Crawley Borough Council
Credit Lyonnais
Crewe Nantwich Borough Council
Crime Concern
Crown Energy
Cumbria Constabulary
Cumbria County Council

Cumbria Energy Ltd
Cumbria Police Authority
Cycle Campaign Network
Cyclists' Rights Network
Cyclist's Touring Club
Dacorum Borough Council
Darlington Borough Council
Dartford Borough Council
Dartmoor National Park Authority
Dartmoor Preservation Association
Daventry District Council
Dee Valley Water PLC
Denbighshire County Council
Department for Constitutional Affairs
Department for Culture, Media & Sport
Department for Education and Skills
Department for International Development
Department for Transport
Department for Work and Pensions
Department of Health
Department of Trade and Industry
Derby City Council
Derbyshire Constabulary
Derbyshire County Council
Derbyshire Dales District Council
Derbyshire Police Authority
Derwentside District Council
Devon & Cornwall Constabulary
Devon & Cornwall Police Authority
Devon County Council
Difpak
Direct Selling Association
Disability Network
Disability Rights Commission
Disabled Ramblers
District Of Bolsover
Dogs Trust
Domino's Pizza UK
Doncaster Metropolitan Borough Council
Dorset County Council
Dorset Police Authority
Dover District Council
Driver and Vehicle Licensing Agency
Dudley Metropolitan Borough Council
Duke Energy International
Durham City Council
Durham Constabulary
Durham County Council
Durham Police Authority
DW Outdoor Limited
Dwr Cymru Cyfyngedig (Welsh Water)
Dyfed-Powys Police Authority
Easington District Council
East Cambridgeshire District Council
East Devon District Council
East Dorset District Council
East Hampshire District Council
East Hertfordshire District Council
East Lindsey District Council
East London Waste Disposal Authority

East Midlands Development Agency
East Midlands Regional Assembly
East Northamptonshire Council
East of England Development Agency
East of England Regional Assembly
East Riding of Yorkshire Council
East Staffordshire Borough Council
East Sussex County Council
Eastbourne Borough Council
Eastleigh Borough Council
Economy Power and Gas Ltd
Ecotricity
Eden District Council
EDF Trading Limited
EEF Cymru Wales
Electricity Direct (Uk) Ltd
Elf Business Energy
Ellesmere Port & Neston BC
Elmbridge Borough Council
Energy and Environment Group
Energy for Business Ltd
Energy Supplies UK Ltd
Engineering Employers Association
English Heritage
English Nature
English Partnerships
Environment Agency
Environment Agency Wales
Environmental Campaigns
Environmental Law Foundation
Environmental Services Association
Epping Forest District Council
Epsom & Ewell Borough Council
Equal Opportunities Commission
Erewash Borough Council
Essex & Suffolk Water
Essex County Council
Essex Police Authority
Eunomia
Eversheds
Exeter City Council
Exmoor National Park Authority
Explosive Industry Group
Fareham Borough Council
Farmers Union of Wales
Federation of Licensed Victuallers Associations
Federation of Multiple DIY Retailers
Federation of Small Businesses
Fenland District Council
Fieldfare Trust
Flintshire County Council
Focsa Services (UK) Ltd
Folkestone & Dover Water Services Ltd
Foreign & Commonwealth Office
Forest Heath District Council
Forest of Dean District Council
Forestry Commission
Fortum Direct Ltd
Fortum Energy Plus Ltd
Freight Transport Association

Friends of the Earth
Friends of the Earth Cymru
Friends of the Lake District
Friends, Families and Travellers Support Group (FFT)
Furniture Re-use Network
Fylde Borough Council
Gas Company
Gas Supply Company
Gateshead Metropolitan Borough Council
Gaz de France Energy Supply Solutions
Gedling Borough Council
Global Natural Gas Ltd
Gloucester City Council
Gloucestershire Constabulary
Gloucestershire County Council
Gloucestershire Police Authority
Gosport Borough Council
Government Office for London
Government Office for the East Midlands
Government Office for the East of England
Government Office for the North East
Government Office for the North West
Government Office for the South East
Government Office for the South West
Government Office for the West Midlands
Government Office for Yorkshire and The Humber
Gravesham Borough Council
Great Yarmouth Borough Council
Greater London Authority
Greater Manchester Passenger Transport Authority
Greater Manchester Police Authority
Greater Manchester Waste Disposal Authority
Green Alliance
Greenpeace
Greggs PLC
Groundwork UK
Groundwork Wales
Guide Dogs for the Blind Association
Guild of Master Victuallers
Guildford Borough Council
Gwent Police Authority
Gwynedd Council
Gypsy Council for Education, Culture, Welfare & Civil Rights
Halton Borough Council
Hambleton District Council
Hampshire Constabulary
Hampshire County Council
Hampshire Police Authority
Hanson Environment Fund
Harborough District Council
Harlow District Council
Harrogate Borough Council
Hart District Council
Hartlepool Borough Council
Hartlepool Water PLC
Hastings Borough Council
Havant Borough Council
HE Energy
Heatsave Limited
Herefordshire Council

Heritage Lottery Fund
Hertfordshire Constabulary
Hertfordshire County Council
Hertfordshire Police Authority
Hertsmere District Council
High Peak Borough Council
Highland Fuels Ltd
Highways Agency
Hinckley & Bosworth Borough Council
HM Treasury
Home Office
Homebase
Horsham District Council
House Builders Association
House Builders Federation
Huhtamaki UK Ltd
Humberside Police Authority
Huntingdon District Council
Hyndburn Borough Council
ICD Gas (Reepham Ltd)
ILAM - Institute Leisure and Amenity Management
Impact
Improvement and Development Agency
Industry Council for Packaging and the Environment
Innogy Cogen Ltd
Innogy PLC
Institute of Astronomy
Institute of Chartered Engineers
Institute of Directors
Institute of Environmental Assessment
Institute of Horticulture
Institute of Leisure and Amenity Management
Institute of Licensing
Institute of Public Rights of Way Officers
Institute of Welsh Affairs
Institution of Environmental Sciences
Institution of Highways & Transportation
Institution of Lighting Engineers
Ipswich Borough Council
Isle of Anglesey County Council
Isle of Wight Council
Isles Of Scilly Unitary Council
J Sainsbury
JC Decaux
Joint Committee on Mobility for Disabled People
Joseph Rowntree Foundation
Justices Clerk Society
Kennet District Council
Kent County Constabulary
Kent County Council
Kent Police Authority
Kerrier District Council
Kettering Borough Council
KFC Corporation
Kimbolton Fireworks Ltd
King's Lynn & West Norfolk Borough
Kingston Upon Hull City Council
Kirklees Metropolitan Council
Kite Environmental Solutions
Knowsley Borough Council

Lake District National Park Authority
Lancashire Constabulary
Lancashire County Council
Lancashire Police Authority
Lancaster City Council
Landscape Institute
Larnaca Gas (Reepham Ltd)
Law Officers' Department
LDA Headquarters
Leeds City Council
Leeds, Bradford and York Chamber of Commerce and Industry
Leicester City Council
Leicestershire Constabulary
Leicestershire County Council
Leicestershire Police Authority
Lesbian, Gay, Bisexual Forum
Lewes District Council
Licensed Private Hire Car Association Ltd
Licensed Taxi Drivers' Association
Licensed Victuallers Wales
Lichfield District Council
Lincoln City Council
Lincolnshire County Council
Lincolnshire Police
Linpac Plastics Ltd
Liverpool Chamber of Commerce and Industry
Liverpool City Council
Living Streets
Local Authority Recycling Advisory Committee
Local Government Association
London Borough of Barking & Dagenham
London Borough of Barnet
London Borough of Bexley
London Borough of Brent
London Borough of Bromley
London Borough of Camden
London Borough of Croydon
London Borough of Ealing
London Borough of Enfield
London Borough of Greenwich
London Borough of Hackney
London Borough of Hammersmith & Fulham
London Borough of Haringey
London Borough of Harrow
London Borough of Havering
London Borough of Hillingdon
London Borough of Hounslow
London Borough of Islington
London Borough of Lambeth
London Borough of Lewisham
London Borough of Merton
London Borough of Newham
London Borough of Redbridge
London Borough of Richmond Upon Thames
London Borough of Southwark
London Borough of Sutton
London Borough of Tower Hamlets
London Borough of Waltham Forest
London Borough of Wandsworth
London Bus Services Ltd,

London Cab Drivers Club Ltd
London Chamber of Commerce and Industry
London Cycling Campaign
London Development Agency
London Electricity Plc
London Energy Co. plc
London School of Economics, Environment Network
London South Bank University Faculty of Engineering, Science, and Built Environment
London Taxi Board
London Transport
London Underground Limited
London's Taxi Network
Low Frequency Noise Sufferers Association
Luton Borough Council
Macclesfield Borough Council
Magistrates Association
Maidstone Borough Council
Maldon District Council
Malvern Hills District Council
Manchester Chamber of Commerce and Industry
Manchester City Council
Mansfield District Council
Marine Conservation Society
MAVERICK ENERGY LTD
McDonalds Restaurant
Medway Council
Medway Ports
Melton Borough Council
Mendip District Council
Merseyside Police Authority
Merseyside Waste Disposal Authority
Merthyr Tydfil County Borough Council
Metronet
Metropolitan Borough of Solihull
Metropolitan Borough Of Wirral
Metropolitan Police Authority
Mid Bedfordshire District Council
Mid Devon District Council
Mid Kent Water PLC
Mid Suffolk District Council
Mid Sussex DC
Mid Wales Partnership
Middlesbrough Council
Midland Shires
Midlands Gas Ltd T/A Amerada
Mid-Yorkshire Chamber of Commerce
Milton Keynes Council
Ministry of Defence
Mobil Gas Limited
Mogden Residents Association
Mole Valley District Council
Monal Utilities Limited
Monmouthshire County Council
Morrisons
Musicians Union
Muslim Council of Britain
Nabarro
NACRO
Napier University, Department of Law
Nation Black Police Association

National Assembly for Wales
National Association for Local Councils
National Association of Citizens Advice Bureaux
National Association of Master Bakers
National Association of Probation Officers
National Association of Taxi and Private Hire Licensing and Enforcement Officers
National Association of Waste Disposal Officers
National Byway
National Consumer Council
National Council for Voluntary Organisations
National Farmers Union
National Federation of Anglers
National Federation of Fish Friers
National Federation of the Blind of the UK
National Federation of Women's Institutes
National Gypsy Council
National Private Hire Association
National Resources and Waste Forum
National Society for Clean Air and Environmental Protection
National Taxi Association
National Taxi Trades Group
National Trust
Neath Port Talbot County Borough Council
Network Rail
New Forest Committee
New Forest District Council
New Opportunities Fund
Newark & Sherwood District Council
Newbury District Council
Newcastle Under Lyme B C
Newcastle Upon Tyne City Council
Newport County Borough Council
NFU Cymru
Noise Abatement Society
Noise Network
Norfolk Constabulary
Norfolk County Council
Norfolk Police Authority
North Cornwall District Council
North Devon District Council
North Dorset District Council
North East Assembly
North East Derbyshire District Council
North East Lincolnshire Council
North Hertfordshire District Council
North Kesteven District Council
North Lincolnshire Council
North London Waste Disposal Authority
North Norfolk District Council
North Shropshire D C
North Somerset Council
North Tyneside Borough Council
North Wales Chamber of Commerce
North Wales Economic Forum
North Wales Energy/Energy Supplies UK Ltd
North Wales Police Authority
North Wales Pollution Group
North Warwickshire Borough Council
North West Development Agency
North West Leicestershire DC

North West Regional Assembly
North Wiltshire District Council
North York Moors Nat Park
North Yorkshire County Council
North Yorkshire Police Authority
Northampton Borough Council
Northamptonshire County Council
Northamptonshire Police Authority
Northern Electric & Gas Ltd
Northern Gas Supplies Ltd
Northern Ireland Office
Northumberland County Council
Northumberland Nat Park Division
Northumbria Police
Norvic Gas Ltd
Norwich City Council
Nothumbrian Water Ltd
Nottingham City Council
Nottinghamshire County Council
Nottinghamshire Police Authority
npower
NSALG -National Society of Allotment & Leisure Gardeners
Nuneaton & Bedworth Borough Council
Oadby & Wigston B C
Office for National Statistics
Office of the Deputy Prime Minister
Office of the Secretary of State for Wales
Office of the Welsh Assembly
Ofwat
Oldham Borough Council
OneNorthEast
Onyx Environmental Group PLC
Onyxpak
Open Spaces Society
Osbourne Clarke (licensing solicitors)
Oswestry Borough Council
Outdoor Advertising Association
Outdoor Advertising Council
Oxford City Council
Oxford Power Limited
Oxfordshire County Council
Paper Collect
Paperpak
Passenger Transport Executive Group (PTEG)
Peak District National Park Authority
Pembrokeshire Coast Nat Park Authority
Pembrokeshire County Council
Pendle Borough Council
Pennine Natural Gas Ltd
Pennine-pack
Pentex Oil & Gas Limited
Penwith District Council
Perfect Pizza Ltd
Perseco
Peterborough City Council
Pinsents
Pipedown
Pizza Hut UK
Planning Officers Society
Plymouth City Council

Police Federation of England and Wales
Police Superintendents Association of England and Wales
Poole Borough Council
Popleston Allen (licensing solicitors)
Port of London
Port of London Authority
Port of Newcastle upon Tyne
Portland Outdoor Advertising Ltd
Portsmouth City Council
Portsmouth Water PLC
Poster Publicity
POWERGEN (UK) PLC
Powys County Council
Preston Borough Council
Pret A Manger Ltd
Privy Council Office
Professional Anglers Association
Public Carriage Office
Purbeck District Council
Quantum Gas Management Ltd
Queen Mary's School of Medicine and Dentistry
RAC
Ramblers' Association
Reading Borough Council
Recycle 1st
Recycle-pak
Redcar & Cleveland Borough Council
Redditch Borough Council
Regent Gas Ltd
Reigate & Banstead Borough Council
Restormel Borough Council
Rhondda Cynon Taff County Borough Council
Ribble Valley Borough Council
Richmond upon Thames L B
Richmondshire District Council
RICS Wales
RNIB
Rochdale Borough Council
Rochford District Council
RoSPA
Rossendale Borough Council
Rother District Council
Rotherham Borough Council
Royal Association for Disability and Rehabilitation
Royal Astronomical Society
Royal Borough of Kensington & Chelsea
Royal Borough of Kingston Upon Thames
Royal Borough of Windsor & Maidenhead
Royal Commission on Environmental Pollution
Royal Environmental Health Institute of Scotland
Royal Institute of Public Health and Hygiene
Royal Institution of Chartered Surveyors
Royal National Institute of the Blind
Royal Society for Prevention of Cruelty to Animals
Royal Town Planning Institute
RSNC - Royal Society for Nature Conversation
RSPB
RTPI - Royal Town Planning Institute
Rugby Borough Council
Runnymede Borough Council

Rushcliffe Borough Council
Rushmoor Borough Council
Rutland County Council
RWE Trading Direct Ltd
Ryedale District Council
Salsbury District Council
Salford City Council
Salisbury District Council
Salmon and Trout Association
Sandwell Borough Council
Sandwell Metropolitan Borough Council
Saturn Gas Limited
Save Waste and Prosper
Scarborough Borough Council
Scotland Office
Scottish & Southern Hydro-Electric
Scottish Executive
Scottish Gas
Scottish Hydro-Electric Gas
Scottish Power
Sedgefield Borough Council
Sedgemoor District Council
Seaboard Energy Gas Ltd
SEEDA
Sefton Borough Council
Selby District Council
Sensory Trust
Sevenoaks District Council
Severn Trent Energy
Severn Trent Water Ltd
Sheffield City Council
Shell Gas Direct Ltd
Shepway District Council
Shrewsbury & Atcham D C
Shropshire County Council
SITA
Slough Borough Council
Slough Unitary Council
Small Business Service
Smartestenergy Ltd
Smith, Anderson & Co Ltd
Snowdonia National Park Authority
Society of Local Authority Chief Executives
Soho Society
Solihull Borough Council
Somerset County Council
South Bedfordshire District Council
South Buckinghamshire District Council
South Cambridgeshire District Council
South Derbyshire District Council
South East England Development Agency
South East England Regional Assembly
South East Wales Economic Forum
South East Water PLC
South Gloucester Council
South Gloucestershire Council
South Hams District Council
South Holland District Council
South Kesteven District Council
South Lakeland District Council

South Norfolk Council
South Northamptonshire Council
South Oxfordshire District Council
South Ribble BC
South Shropshire DC
South Somerset District Council
South Staffordshire Council
South Staffordshire Water PLC
South Tyneside Borough Council
South Wales Chamber of Commerce & Industry
South Wales Police Authority
South West of England Development Agency
South West Wales Economic Forum
South West Water Ltd
South Western Electricity plc
South Yorkshire Police Authority
Southampton City Council
Southend on Sea Borough Council
Southern Counties
Southern Electric Gas
Southern Water Services Ltd
Spelthorne Borough Council
Sport England
St Albans City and District Council
St Edmundsbury Borough Council
St Helens Metropolitan Borough Council
Stafford Borough Council
Staffordshire County Council
Staffordshire Moorland DC
Staffordshire Police Authority
Statoil UK Limited
Stevenage BC
Stockport Metropolitan Borough Council
Stockton-on-Tees Borough Council
Stoke on Trent City Council
Strategic Rail Authority
Stratford on Avon District Council
Stroud District Council
Subway
Suffolk Coastal District Council
Suffolk Constabulary
Suffolk County Council
Suffolk Police Authority
Sunderland City Council
Surfers Against Sewage
Surrey Constabulary
Surrey County Council
Surrey Heath Borough Council
Surrey Police Authority
Sussex Police Authority
Sustainable Development Commission
Sustrans
Sutton & East Surrey Water PLC
Swale Borough Council
SWALEC
Swansea City & County Council
Swindon Borough Council
SWS
TaG Pak
Tameside Borough Council

Tamworth Borough Council
Tandridge District Council
Taunton Deane Borough Council
TCPA - Town and Country Planning Association
Tees Valley Joint Strategy Unit
Teesdale District Council
Teignbridge District Council
TELECOM PLUS plc
Telford & Wrekin District Council
Tendring District Council
Tendring Hundred Water Services Ltd
Tesco plc
Test Valley Borough Council
Tewkesbury Borough Council
TfL Street Management
TGWU
Thames 21
Thames Valley Chamber of Commerce
Thames Valley Police Authority
Thames Water Utilities Ltd
Thanet District Council
The Commissioner of Police for the Metropolis
Three Rivers District Council
Three Valleys Water PLC
Thurrock Borough Council
Thurrock Council
Toddpak
Tonbridge & Malling Borough Council
Torbay Council
Torfaen County Borough Council
Torrige District Council
Total Energy Gas Supplies Ltd
Total Gas Marketing Ltd
Trafford Borough Council
Transport 2000
Transport for London
TRL Ltd
Tube Lines
Tunbridge Wells Borough Council
TXU ENERGI
TXU Europe (AHG) Limited
Tynedale District Council
UK ELECTRIC POWER LIMITED
UK Islamic Mission
UK Major Ports Group
UK Noise Association
UK Youth
UK Youth
United Utilities PLC
Urban Parks Forum
Utility Link Limited
Uttlesford District Council
Vale of Glamorgan County Council
Vale Of Whitehorse District Council
Vale Royal Borough Council
Valpak
Viacom Outdoor - Head Office
Visit Britain
Voluntary Sector Assembly Centre

Wakefield City Council
Wakefield M D C
Wales Co-operative Centre Ltd
Wales Social Partners Unit Ltd
Wales TUC Cymru
Wales Women's National Coalition
Walker Morris
Walsall Metropolitan Borough Council
Wansbeck District Council
Warner Village
Warrington Borough Council
Warwick District Council
Warwickshire Constabulary
Warwickshire County Council
Warwickshire Police Authority
Waste and Resources Action Programme
Waste Watch
Wastepack
Water UK
Watford Borough Council
Waveney District Council
Waverley Borough Council
Wealden District Council
Wear Valley District Council
Welsh Development Agency
Welsh Institute of Rural Studies
Welsh Local Government Association
Welwyn Hatfield District Council
Wespack
Wessex Water Services Ltd
West Berkshire District Council
West Devon Borough Council
West Dorset District Council
West Lancashire D C
West Lindsey District Council
West London Waste Disposal Authority
West Mercia Constabulary
West Mercia Police Authority
West Midlands Police Authority
West Midlands Regional Assembly
West Oxfordshire District Council
West Somerset District Council
West Sussex County Council
West Wiltshire District Council
West Yorkshire Police Authority
Western Riverside Waste Disposal Authority
Westminster City Council
Weymouth & Portland Borough Council
Whitbread Group PLC
Wigan Metropolitan Borough Council
Wildlife and Countryside Link
Wiltshire Constabulary
Wiltshire County Council
Wiltshire Police Authority
Winchester City Council
Wirral District Council
Woking Borough Council
Wokingham District Council
Wolverhampton Borough Council
Women's Environment Network

Woodland Trust
Worcester City Council
Worcester Transportation Partnership
Worcestershire County Council
Worthing Borough Council
WRAP
Wrexham County Borough Council
Wrigley Company Ltd
Wychavon District Council
Wycombe District Council
Wyre Borough Council
Wyre Forest District Council
YE Gas Ltd
York City Council
Yorkshire and Humber Assembly
Yorkshire Dales National Park
Yorkshire Electricity
Yorkshire Forward
Yorkshire Water Services Ltd
Young Muslims UK
Youth Hostels Association
Youth Justice Board

Annex B – Summary of Consultation responses

<http://www.defra.gov.uk/corporate/consult/clean-neighbourhood/responses-summary.pdf>
[Clean Neighbourhoods](#)

Consultation Summary

December 2004

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Defra Publications

Admail 6000

London

SW1A 2XX

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This document is also available on the Defra website.

Published by the Department for Environment, Food and Rural Affairs. Printed in the UK, January 2005, on material containing 80% post-consumer waste and 20% Elemental Chlorine Free pulp.

Product code PB 10491

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Introduction

1. In 2002 a review of the legislative framework for providing and maintaining a clean and safe local environment was carried out by Defra to accompany the cross-Government report *Living Places – Cleaner, Safer, Greener*. The review found that the current extensive set of powers, duties and guidance for dealing with problems associated with local environmental quality was not working as effectively as it should be, and produced options for delivering changes. These options were contained in the consultation paper *Living Places – Powers, Rights, Responsibilities* launched at the Urban Summit on 31 October 2002. Some were introduced into legislation in Part 6 of the Antisocial Behaviour Act 2003. The majority of the options were developed further and included as proposals for legislative action within the Clean Neighbourhoods consultation launched on 25 July 2004.

2. The findings have been taken into account in designing the **Clean Neighbourhoods and Environment Bill** which was published on 8 December and incorporates most of the proposals, amended as appropriate to meet the comments made by respondents. A copy of the Bill can be found at: <http://www.publications.parliament.uk/pa/pabills.htm>

General Overview

3. The *Clean Neighbourhoods* consultation document described 35 proposals for changes to the law. The proposals, which covered a broad range of issues, focused on enhancing local authorities' ability to improve the quality of the local environment, through a combination of amendments to existing powers and new powers. In total 533 responses were received to the consultation. In addition, five seminars were held during September in London (two), Cardiff, Birmingham and Manchester to enable local authorities and other stakeholders to discuss the proposals. All responses received, together with minutes of the seminars will be made available at the **Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London, SW1P 3JR**.

Responses

4. Local authorities and parish councils tended to comment on the majority of measures. Proposals on fly-tipping, abandoned vehicles, stray dogs and nuisance were of great interest and generated a high level of discussion.

5. Proposals that were litter-related were well particularly well supported, in

particular the extension of the litter offence, and updating the Code of Practice on Litter & Refuse. Whilst increased powers to deal with fly-tipping generated positive support, it was generally agreed that unless the sentences given by Magistrates were commensurate with the seriousness of the offences these powers would have little effect in reducing fly-tipping. The role of Magistrates in affecting change in the level of enviro-crime was generally emphasised across the range of measures.

6. The extension of the local authority stray dogs duty to include out-of-office hours was viewed as being acceptable only if appropriate resources were made available. Many local authorities maintained that there would be a shortfall in resources for them, as current police funding for this duty would fall some way short of the cost to local authorities.

7. More than half of all respondents commented on the proposal to give local authorities powers to deal with nuisance alleyways. A significant number of responses from individuals focused on this option, which received a huge response from concerned residents in Liverpool.

8. Businesses were concerned that options relating to street furniture would result in them having to bear undue costs for cleansing their furniture of graffiti or fly-posting when they were in fact victims themselves. They stressed that a partnership approach would be mutually beneficial for both owners of street furniture and local authorities. Safety issues were identified, as was the potential for damaging expensive equipment in electrical boxes and such like, particularly where local authority officers were untrained.

9. Of those who submitted comments to the consultation:
- o 35% were local authorities;
 - o 28.5% were members of the public;
 - o 15% were parish councils;
 - o 7.6% were associations/societies or other organisations;
 - o 6% were non-departmental public bodies;
 - o 4% were businesses; and
 - o 3.9% were from others.

10. The following pages summarise the comments received on each proposal and give an indication of how the Government will be taking it forward in the Clean Neighbourhoods and Environment Bill.

Summary of proposed measures

11. Below is a summary of the measures set out in the Clean Neighbourhoods consultation document.

Option	Amendment of existing power/working practice	New power	New duty	Measure contained in Bill
Section 1 – Crime & Disorder				
1.1 Extend the objectives of Crime and Disorder Reduction Partnerships to include reference to local environmental crime	x			x
Section 2 – Litter, Graffiti and Fly-posting				

2.1 Extend the litter offence to dropping litter on all types of land, including “aquatic environments”	x			x
2.2 Extend local authority powers in respect of litter to cover graffiti and flyposting	x			
2.3 Extend the scope of the Code of Practice on Litter and Refuse to include wider local environmental quality	x			
2.4 Extend Graffiti Removal Notices to cover Fly-posting	x			x
2.5 Remove restriction on designation of land under litter control areas	x			X*
2.6 Extend the ‘Cleansing Notice’ powers to local authorities outside London		x		X*
2.7 Extend Free Literature Distribution Controls to local authorities outside London		x		x

2.8 Specifically define discarded chewing gum (including bubble gum) and smoking related materials as ‘litter’		x		x
2.9 Make special event licenses include street clean-up provisions		x		x
2.10 Extend powers for dealing with abandoned shopping and luggage trolleys	x			x
2.11 Revise the statutory defence relating to the display of advertisements in contravention of Regulations	x			x
2.12 Extend powers to remove advertisements displayed in contravention of Regulations and recover costs to local authorities outside London, and introduce a compensation mechanism where damage occurs through such removal	x	x		x

Section 3 – Waste and Contaminated Land

3.1 Give local authorities and the Environment Agency the power to issue fixed penalty notices to businesses that fail to produce waste transfer notes and to keep the receipts from such penalties	x			X*
3.2 Give local authorities and the Environment Agency the power to issue fixed penalty notices to waste carriers that fail to produce their registration details or evidence they do not need to be registered, and to keep the receipts from such penalties	x			X*
3.3 Introduce a new offence and clear-up provisions for dealing with the illegal disposal of waste		x		x
3.4 Introduce Fixed Penalty Notices for waste		x		x

left out on the streets				
3.5 Introduce a new requirement for Site Waste Management Plans		x		x
3.6 Introduce a more effective system for stop, search and seizure of vehicles	x			x
3.7 Introduce a new provision covering duty of care and registration of waste carriers		x		
3.8 Revise the scheme for payments to third parties for the re-use and recycling of waste	x			x
3.9 Revise the recycling credit system to allow for the introduction of a tonnage-based levy as a default charging system for Joint Waste Disposal Authorities	x			x
3.10 Repeal of the divestment provisions for waste disposal functions	x			x
3.11 Improve the process for Contaminated Land Appeals	x			x
Section 4 – Nuisance Vehicles				
4.1 Create new offences and powers in relation to nuisance vehicles		x		X*
Section 5 - Dogs				
5.1 Streamline the dog byelaw system	x			X*
5.2 Give local authorities full responsibility for receiving stray dogs			x	x
Section 6 – Fixed Penalty Notices				
6.1 Empower local authorities and other enforcing bodies to set the level of fixed penalties		x		x
6.2 Give authorised officers the power to request names and addresses		x		x
6.3 Extend fixed penalty issuing powers to other bodies	x			x
Section 7 - Nuisance				
7.1 Extend statutory nuisances to include artificial light and nuisance from insects			x	x
7.2 Extend the power to issue statutory Codes of Practice to nuisances other than noise		x		
7.3 Introduce new measures to reduce noise nuisance		x		x
Section 8 – General Public Space				
8.1 Establish the Commission for Architecture and the Built Environment (CABE) on a statutory basis		x		x
8.2 Create new powers to deal with nuisance alleyways		x		x

* In moderated form: see Government response to this proposal

Consultation responses

12. The following sections summarise the responses to each individual measure proposed in the consultation document and set out the Government response.

Section 1 – Crime & Disorder

1.1 Extend the objectives of Crime and Disorder Reduction Partnerships to include reference to local environmental crime

Issue

Sections 5 to 7 of the Crime and Disorder Act 1998 set out the requirements for local authorities and chief police officers to formulate and implement crime and disorder reduction strategies. Partnerships formed for this purpose are under no obligation to consider low-level anti-social behaviour and environmental crime (such as littering, graffiti, fly-posting, nuisance vehicles and fly-tipping) in their strategies.

This measure would amend section 6 of the Crime and Disorder Act 1998 to make it clear that Crime and Disorder Reduction Partnerships would have to take the quality of the local environment into account when developing their strategies.

Summary of responses

This proposal received widespread support amongst respondents. Some were of the view that enviro-crime and low-level anti-social behaviour should be specifically mentioned within the Crime and Disorder Reduction Partnerships (CDRPs) framework so that the quality of the local environment is provided for when strategies are being developed.

However, it was also pointed out that in specifying particular types of crimes there may be implications in the longer term. By specifying in legislation particular crimes it could lead to calls for other types of crimes to be provided by statute. This could result in a situation where local crime audits could cease to be required because strategies would no longer be driven by local issues. Respondents emphasised the need for the requirements on CDRPs not to be overly prescriptive and urged that priorities need to continue to be driven by local crime audits. Furthermore, a cautious approach should be taken in widening the scope of CDRPs so as not to strain existing resources and dilute the effectiveness of the relevant agencies ability to tackle localised problems efficiently.

It was suggested that enviro-crime be defined and for statutory undertakers and the Environment Agency to play a part in CDRP's.

Government Response: Clause 1 of the Clean Neighbourhoods and Environment Bill implements this measure.

Section 2 – Litter, Graffiti and Fly-posting

2.1 Extend the litter offence to dropping litter on all types of land, including "aquatic environments"

Issue

Under Section 87 of EPA 1990 it is only an offence to drop or leave litter on highways and land to which the public has access; dropping litter on private land is not an offence. As a result, someone who drops litter on a footpath commits an offence, while someone who throws it into a garden adjoining a footpath does not. This measure would change this state of affairs by extending the offence of littering to *any* land, regardless of ownership, and also to land covered by water (whether fresh, brackish or saline). Specifically, this would include rivers, streams, flood plains (when flooded), water

meadows etc., canals, lakes, ponds, reservoirs, estuaries, lagoons, deltas, harbours, ports, marinas and the sea (where litter is dropped from the land or a pier, but not from a boat or other vessel).

This measure would apply to the offence alone – it would not extend the current duties as set out in section 89. The exceptions to the offence that are set out in section 87 would continue to apply, so that no offence would be committed if the littering was authorised by law or done with the consent of the owner, occupier or person having control of the area.

The current option of discharging liability to conviction for the offence by payment of a fixed penalty (section 88) would continue to apply.

Summary of responses

This measure received universal support amongst respondents. In principle, there was full agreement that the litter offence should be extended to include all types of land, including aquatic environments. But some discussion surrounded the extent to which the offence should be extended; some local authorities were of the view that the dropping of litter from boats *should be included*. Many respondents wanted clarification on littering on private land, including where the landowner has thrown litter on his/her land. Some commented that the defence of 'littering with the consent of the owner, occupier or person having control' be restricted, or removed. The need for permission to be on private land and the potential for local authority officers trespassing on private land was raised.

It was suggested that there could be resource implications in enforcing the extended types of land.

Government Response: Clause 18 of the Clean Neighbourhoods and Environment Bill implements this measure.

2.2 Extend local authority powers in respect of litter to cover graffiti and flyposting

Issue

Local authorities currently have a number of powers relating to litter within part IV of EPA 1990, some of which would now be extended to include graffiti and fly-posting. In particular, the powers in section 90 of EPA1990 (Litter Control Areas) would be extended to cover graffiti and fly-posting; these would be enforceable through use of Litter Abatement Notices¹. Similarly, the power to issue cleansing notices (see 2.6 below) would apply to graffiti and fly-posting as well as to litter. In relation to graffiti and fly-posting these powers would parallel powers to issue Graffiti Removal Notices (see 2.4 below) and would only come into force if these were implemented on a national basis following an evaluation of their impact and effectiveness. These changes would provide local authorities with comprehensive powers to deal with areas and streets degraded by litter, graffiti and fly-posting, rather than addressing each of these problems in isolation.

Summary of responses

The proposal to extend Litter Control Area provisions to include graffiti and flyposting was supported by the majority of local authorities. Several suggested that additional funding should be provided and others called for enforcement measures to be strengthened significantly. Local authorities were generally of the view that they should have power to charge costs of cleaning street furniture to the owner.

Powers to deal with owners of street furniture are already available to

authorities in London under the London Local Authorities Act (s.11 LLA 95?). Those street furniture-owning companies that responded had several concerns. Costs were their main concern. The issue of safety was raised with one company pointing out that there were real dangers for local authorities when cleansing electricity boxes or suchlike.

Government Response: It has been decided that this would not be the best way to achieve the desired outcome, after further consideration in the light of the consultation and taking into account other proposed and existing powers available to local authorities to deal with graffiti and fly posting.

1 Environmental Protection Act 1990 s.92

2.3 Extend the scope of the Code of Practice on Litter and Refuse to include wider local environmental quality issues

Issue

A Code of Practice on Litter and Refuse is issued under section 89 of EPA 1990, providing practical guidance on the discharge of duties imposed by that section to keep land clear of litter and refuse. The Code was most recently revised in 1999. There are currently no standards set out for local environmental quality issues other than litter and refuse.

This measure would revise and extend the current Code of Practice on Litter and Refuse, to bring the guidance up to date and into line with new monitoring methodologies such as that used for the Best Value Performance Indicator on Cleanliness, BV199. It would also be extended to include standards for issues such as fly-posting, graffiti, fly-tipping, detritus and nuisance vehicles. A full public consultation including a Regulatory Impact Assessment would take place on the revised and extended Code in order to ensure that the guidance takes account of the views and costs of all relevant stakeholders.

Summary of responses

The majority of respondents supported this proposal, viewing an updated Code, which would regard the local environment holistically, as being of real benefit in discharging local environmental functions. Several commented that the revised Code must be more reflective of the requirements of BVPI199 and its methodology.

Much concern was expressed as to whether chewing gum should be included and, if so, whether it is given recommended cleansing times. It was noted that many local authorities viewed this as being burdensome and impractical, as well as being cost-prohibitive.

Concern was also expressed in regard to the impact of the revised Code on existing resources. The general consensus amongst local authorities asserted that by bringing in standardised cleansing times for the range of local environmental crimes, expectations would be driven up and that this would strain existing budgetary resources and, in terms of public perception, place an unrealistic burden on authorities.

Government Response: A draft of a revised and updated Code Of Practice, which will take account of changes introduced by the Clean Neighbourhoods and Environment Bill, will be issued for comment in the summer of 2005.

2.4 Extend Graffiti Removal Notices to cover Fly-posting

Issue

Sections 48 to 52 of the Anti-Social Behaviour Act 2003 set out powers for issuing Graffiti Removal Notices. These sections would be amended to include fly-posting as an additional defacement for which removal notices could be issued. This measure would be subject to the extension of graffiti removal notices beyond the current 12 authorities with which the powers are being piloted.

Summary of responses

Most respondents were in support of this measure. There were calls for the 28-day period for remedial action to be shortened to 7 days. It was suggested that these powers could also be devolved to parish and town councils who in many cases are first to notice incidences of graffiti and fly-posting.

Authorities were of the view that the power must allow them to serve notices on any people identified as being the beneficiaries of fly-posting.

Additional suggestions included local authorities having the power to serve notices ordering preventative action and be able to recover costs should if the local authority carries out preventative action.

Government Response: Clause 31 of the Clean Neighbourhoods and Environment Bill implements this measure. Defacement removal notices will replace graffiti removal notices and will cover both graffiti and fly posting.

2.5 Remove restriction on designation of land under litter control areas

Issue

Local authorities can currently designate areas of land as litter control areas under section 90 of EPA 1990, provided that the land is of a type prescribed by order by the Secretary of State. This measure would remove the requirement for the Secretary of State to prescribe descriptions of land by order. This would allow local authorities to designate any land in their area that was degraded by litter, refuse, graffiti or fly-posting as a Litter Control Area.

Summary of responses

This option was very popular amongst local authorities and received significant support. The removal of the need for types of land to be prescribed was seen as a step in the right direction for increased use of litter control areas. It was noted that current use of litter control areas and litter abatement notices is low because the current process is overly bureaucratic.

Suggestions were made for more effective use of these powers, which included:

- local authorities engaging in consultation with local residents, statutory undertakers and other relevant stakeholders to determine opinion as to the use of litter control areas
- certain types of land, such as rail land, would need to be exempted
- occupiers or operators must have right to challenge the imposition of litter control areas

The definition of land would need to be reconsidered and, if appropriate, redefined due to the inclusion of graffiti and fly-posting within the extended litter control area regime.

Government Response: It has been decided, in the light of the consultation and after further consideration, to abolish litter control areas and introduce an alternative system of litter clearing notices. This is described in the next section.

2.6 Extend the 'Cleansing Notice' powers to local authorities outside London

Issue

Local authorities in London are currently able to issue a Cleansing Notice to owners of relevant land or owners or occupiers of relevant premises under section 19 of the London Local Authorities Act 2000. This notice can specify the standards and frequency at which relevant land should be swept and cleansed so as to keep it reasonably clear of litter and refuse. A 42-day notice period is given, after which time the local authority may take steps to clear the land itself and recover costs.

This measure would extend these Cleansing Notice powers to all local authorities in England, replacing sections 93 and 94 of EPA 1990 (Street Litter Control Notices). The 42-day notice period would be reduced to 28 days (as for Graffiti Removal Notices), and the powers would also be extended to include graffiti and fly-posting within the remit of the cleansing notice (subject to 2.2 above).

Summary of responses

There was conflicting argument regarding this option, but it was mostly supported. Suggestion was made to extend the range of premises to which litter control provisions can be applied, or that types of premises should not be specified at all, and also extend the current range of 10 and 100 metres extended.

Many local authorities wished to see the proposed 28-day remediation period shortened, as defacement can occur quickly and the powers need to be reflected in days instead of weeks. However, several local authorities noted that the current 42-day period is necessary to enable owners to take legal advice and to assess the effects of clearing.

It was suggested that a comprehensive approach aided by additional powers to cover all of the 'street scene', including issues such as defacement of buildings through graffiti and fly-posting, would be useful to practitioners.

Government Response: A revised proposal, for litter clearing notices, is contained in clause 20 of the Clean Neighbourhoods and Environment Bill. A litter clearing notice may be served on the owner or occupier of any land in the open air except for land covered by an existing statutory duty in relation to litter and refuse. Notices may require the land to be cleared of litter and refuse within a certain time, and may specify steps to be taken to prevent future defacement. It will be an offence to fail without reasonable excuse to comply with a litter clearing notice; a fixed penalty notice may be offered as an alternative to prosecution. Where a person fails to meet the requirements of a notice, a principal litter authority may itself enter the land to remove the litter and refuse. An authority may then impose a reasonable charge for this on the person who failed to comply with the notice. The new measure will not apply to graffiti or to fly posting, which will be covered by defacement removal notices.

2.7 Extend Free Literature Distribution Controls to local authorities outside London

Issue

Local authorities in London (and the Council of the City of Newcastle upon Tyne) currently have powers to designate areas where the distribution of free literature can only occur with the consent of the authority, under section 4 of the London Local Authorities Act 1994 (and section 22 of the City of Newcastle upon Tyne Act 2000). Distribution in these areas without consent is an offence punishable by fine and the local authority may also seize any such literature.

These powers would now be extended to all local authorities in England. The offence would also cover anyone that commissioned or paid for the distribution of free literature in designated areas without consent, thus providing a means to deal with the beneficiaries of such activity. The fine for the offence would be up to a maximum level 4 (£2,500).

For those distributing the literature, the local authority could offer the option of discharging liability by payment of a fixed penalty of £50, although this amount could be varied by the local authority (subject to 6.1 below) or altered by subsequent order. The penalty notice would be payable to the local authority, which could retain the receipts for its qualifying functions under this measure, or for other functions as specified by subsequent Regulation(s). Exceptions would apply to ensure that the powers do not infringe on legitimate political and democratic activities or an individual's human rights, particularly as set out under Article 10 of the European Convention on Human Rights.

Summary of responses

Whilst this measure received widespread support, much of the debate was concerned with the perception that this measure, although helpful in making those responsible for free literature more responsible, may be viewed as a device for restricting free speech.

It would, several respondents noted, be useful to be able to serve fixed penalties on the beneficiary of promotional material. A fixed penalty of £50 would not be a sufficient deterrent, particularly in the case of high street businesses or distribution companies. Similarly, significantly higher fines than proposed should be available to be served on beneficiaries. Several were of the view that it would be useful to have a tool similar to the Fly Capture database, which records incidents and information on serial offenders.

Several commented that enforcement of this measure would be difficult, especially where leaflets are being distributed from private land.

Government Response: Clause 23 of the Clean Neighbourhoods and Environment Bill implements this measure. Material distributed for charitable, religious and political purposes will be exempt. The standard rate of a fixed penalty under this provision is set at £75, but local authorities will be able to set different rates, within limits set by regulations.

2.8 Specifically define discarded chewing gum (including bubble gum) and smoking related materials as 'litter'

Issue

There is currently a lack of clarity as to whether chewing gum and smoking related materials are considered to be litter. Whilst such items may legally fall within the scope of the offence of littering under section 87 of EPA 1990, there has been some reluctance from practitioners to include them in practice. This measure would address this problem by making specific reference to

chewing gum (including bubble gum) and smoking related materials as 'litter' under section 87 of EPA 1990. By making it explicit in law, this would clearly establish that local authorities could prosecute and issue fixed penalty notices for the dropping of these materials.

This measure would apply to chewing gum in the state it is discarded, not to chewing gum residues or staining. Thus, the duty under section 89 of EPA 1990 to keep land free of litter would not be extended to include chewing gum residues or stains. The extent of the duty to keep land clear of discarded gum would be clarified in the revised Code of Practice on Litter and Refuse (see 2.3 above).

Summary of responses

The majority of respondents felt that this proposal would be beneficial and welcomed the clarification in legislation that irresponsible disposal of chewing gum and smoking-related materials should be treated as littering offences. However, several commented that they already enforce irresponsible disposal of these materials, as section 87 of the EPA 90 already provides the scope for enforcement where these materials are carelessly dropped. Because of this they were of the view that amending the littering offence to specify particular materials is superfluous.

The majority of discussion centred on chewing gum and the implications that the proposal would have on the (section 89 EPA) litter duty. Many authorities were concerned that inclusion of recommended cleansing times for gum in the Code of Practice on Litter and Refuse would place an unrealistic expectation on them and would be beyond their capability due to high cleansing costs.

Many authorities also suggested that gum manufacturers should have more of a part to play in the cleansing of gum, as producer responsibility has become an accepted mainstay of environmental legislation. Suggestions as to how this could take place included a levy on gum; restrict sales of gum in certain areas, a campaign on gum awareness, and production of biodegradable gum.

Government Response: Clause 27 of the Clean Neighbourhoods and Environment Bill implements this measure.

2.9 Make special event licenses include street clean-up provisions

Issue

Where local authorities grant licences for special events taking place in their area, they would be able to include conditions requiring subsequent clean-up provisions. These would specify reasonable measures that should be taken in order to restore the standards of cleanliness after the event and the area to which the conditions apply. If the required standards were not achieved an authority could clean the area itself and recover the costs. Alternatively, an authority could charge an additional fee for grant of the licence in order to cover the cost to itself of cleaning-up. Where an authority considered that inadequate provisions had been made, it would have grounds for refusing to grant a licence.

Summary of responses

It was clear that although there was strong support for this option, it would need to be handled carefully. The general consensus amongst respondents was that careful consideration would need to be given to the Licensing Act 2003 provisions and any legislation should be worded accordingly. Several responses pointed out that many events - which can have local environmental quality implications - are not licensed and this would also need to be considered within

the proposal.

Respondents requested that 'special events' should be clearly defined. This would have the effect of making clear what type of events are included under the 'special events' umbrella and would help negate the potential for abuse by authorities.

Authorities preferred that a deposit equal to the cost of post event clean up should be held by them prior to the event. This would ensure that no costs are lost by authorities and that no further resources should be spend on chasing payment from organiser.

Discussion also opened up around the recycling of waste generated by special events. Several authorities were of the view that any powers afforded to them should include provision for recycling of waste.

Government Response: It has been decided that this proposal is no longer appropriate, given the provisions of the Licensing Act 2003.

2.10 Extend powers for dealing with abandoned shopping and luggage trolleys

Issue

The adoptive powers under section 99 of EPA 1990 allow local authorities to charge for the costs of recovery, storage and disposal of abandoned trolleys, where an owner accepts the return of the trolley(s). Where trolleys are left unclaimed, local authorities may dispose of them, but are unable to recover any costs.

This measure would allow local authorities to recover from owners the costs of recovering, storing and disposing of abandoned trolleys, regardless of whether the owner wished for their return.

It would remain for local authorities to adopt these amended powers by applying Schedule 4 of EPA 1990.

Summary of responses

Amongst public service providers and practitioners this option was virtually universally supported. Furthermore, it was suggested that the proposed powers be extended to the Environment Agency and other 'drainage authorities', so that they may recover costs where trolleys are blocking waterways. Authorities also wanted trolleys to be clearly identifiable.

There were calls for these powers to be extended to incorporate bread trays and delivery trolleys for mail and newspapers.

Commercial operators had concerns that these powers could result in local authorities failing to work in partnership with them. Because of this a voluntary approach was preferred.

Government Response: Clause 99 of the Clean Neighbourhoods and Environment Bill implements this measure.

2.11 Revise the statutory defence relating to the display of advertisements in contravention of Regulations

Issue

For the offence of displaying advertisements in contravention of Regulations (section 224 of the Town and Country Planning Act 1990), including 'flyposting',

a statutory defence exists where the beneficiary of the advertisement can show it was displayed without his knowledge or consent. In order to counter this defence, the local planning authority must currently demonstrate both knowledge *and* consent, which in the latter case can be problematic given the contractual relationships in place between beneficiaries and those directly undertaking the fly-posting activity.

Section 25 of the London Local Authorities Act 2004 changes this defence to one where the beneficiary must demonstrate either a lack of knowledge of the display of the advertisements or that he took all reasonable steps and exercised all due diligence to prevent or discontinue their display.

This measure would revise the statutory defence relating to the display of advertisements in contravention of Regulations by changing the 'knowledge or consent' defence in section 224 of the Town and Country Planning Act 1990 to that used in section 25 of the London Local Authorities Act 2004.

Summary of responses

There was strong support for this proposal, although some comments said that it would be unacceptable for the onus of proof to be on the defendant. The current statutory defence has dissuaded many authorities from utilising these powers. There were calls for fixed penalties to be served on beneficiaries for each individual poster and for power to seize any vehicle(s) involved in flyposting. Similarly, there was support for significantly increasing the maximum fine amount to act as a more effective deterrent.

Government Response: Clause 33 of the Clean Neighbourhoods and Environment Bill implements this measure.

2.12 Extend powers to remove advertisements displayed in contravention of Regulations and recover costs to local authorities outside London, and introduce a compensation mechanism where damage occurs through such removal

Issue

London local authorities are currently able to remove advertisements displayed in contravention of Regulations (including 'fly-posting') through a more straightforward mechanism than other local authorities, and are also able to recover the costs of this removal from the person responsible for the advertisement under section 10 of the London Local Authorities Act 1995.

This measure would amend section 225 of the Town and Country Planning Act 1990 in line with the modifications of that section made by section 10 of the London Local Authorities Act 1995. This would give all local planning authorities in England and Wales the power to remove posters at their discretion, recover costs of removal, where a second poster is displayed within 28 days of removing the first and (with the consent of the occupier) exhibit a notice in the vicinity stating that the unlawful display of advertisements is a criminal offence.

A mechanism would also be introduced whereby property owners would be able to claim compensation from the local planning authority should any damage to property occur in the course of removing posters.

Summary of responses

Local authorities, although mostly supportive, were concerned that the compensation clause would have implications for them. Because of that a few authorities commented that the ability of property owners to claim compensation

would result in these powers not being used. It was suggested that the compensation mechanism should be restricted so as to exclude any frivolous claims, or, some argued, removed.

Equally, there were calls for larger fines to be made available which could be served on the beneficiaries of any contravention of the regulations. The ability to begin enforcement proceedings against the beneficiary was generally felt to be the key to tackling these offences. That several authorities had already made successful use of Anti-social Behaviour Orders in dealing with fly-posting in their areas had proved this to be the case.

'Advertisements' would need to be clearly defined, and clear guidelines would be needed setting out the cost recovery process.

Government Response: Clause 34 of the Clean Neighbourhoods and Environment Bill implements this measure. This includes a provision on compensation, which the Government considers necessary on human rights grounds.

Section 3 – Waste and Contaminated Land

3.1 Give local authorities and the Environment Agency the power to issue fixed penalty notices to businesses that fail to produce waste transfer notes and to keep the receipts from such penalties

Issue

The Environment Agency and local authorities already have the power to inspect businesses' waste transfer notes to check that they have passed their waste to an 'authorised person' (e.g. a waste carrier or another lawful source of waste disposal). This measure would give the enforcing bodies the additional power to issue fixed penalty notices to those businesses that breach their duty of care (as set out in section 34 of EPA 1990 and subsequent regulations), by failing to produce valid waste transfer notes. The amount of the fixed penalty would be £300 in respect of each incident, although this could be altered by subsequent order. The penalty notice would be payable to the enforcing body, which could retain the receipts for its qualifying functions under section 34 (or Regulations made under it) in dealing with duty of care, or for other functions as specified by subsequent Regulation(s).

Summary of responses

This proposal was popular and discussion centred on enforcement penalties and the need for education and raising awareness of the Duty of Care. This option should also be considered in conjunction with the Fly-tipping Strategy. A blanket fixed penalty amount would not be appropriate. Instead the fixed penalty amount should be commensurate with the size of the business and should also account for the financial benefit gained by the company or operator in avoiding their duty of care. A national database could be useful in keeping track of offences.

The Duty of Care should be actively promoted within the business community. One response said that a study by the Environment Agency found that 24% of businesses were aware of the Duty of Care. Revenue raised from fixed penalties could be used to promote Duty of Care and ensure buy-in from the wider business community. Waste transfer notes should be standardised so as to prevent forging and waste carriers should be required to display the waste transfer notice.

Also, if local authorities were to be considered as Waste Disposal Authorities then it would integrate waste management and encourage partnership between neighbouring authorities.

Government Response: Clause 45 of the Clean Neighbourhoods and Environment Bill implements this measure.

Defra is also currently reviewing the waste carrier and duty of care regimes. This will result in a further more detailed consultation in 2005.

3.2 Give local authorities and the Environment Agency the power to issue fixed penalty notices to waste carriers that fail to produce their registration details or evidence they do not need to be registered, and to keep the receipts from such penalties

Issue

Under section 6 of the Control of Pollution (Amendment) Act 1989, the Environment Agency and local authorities have the power to stop and search vehicles suspected of being used for fly-tipping (a police officer must be present to stop a vehicle on the road). These powers will remain under the changes to this system proposed below (see 3.6 below).

This measure would give the enforcing bodies the additional power to issue fixed penalty notices to those waste carriers that fail to comply with the requirements (as set out in the Control of Pollution (Amendment) Act 1989 and subsequent regulations) to produce registration details or evidence that they do not need to be registered (for example, charities or voluntary organisations).

The amount of the fixed penalty would be £300 in respect of each incident, although this could be altered by subsequent order. The penalty notice would be payable to the enforcing body, which could retain the receipts for its qualifying functions under the Control of Pollution (Amendment) Act 1989 (or Regulations made under it) in dealing with waste carrier registration, or for other functions as specified by subsequent Regulations.

Summary of responses

This option was widely supported. Debate generally focussed on enforcement, the provision of guidance and the requirements for investigatory work. The fixed penalty amount should be higher than £300; it should be commensurate with the size of business and seriousness of the crime and should also take into account serial offenders. Stiffer penalties should be made available to deal with repeat offenders. Authorities should have powers to take control of vehicles until fines are paid.

As commented in option 3.1, there is a need for more education to raise awareness of the Duty of Care amongst the business community. Similarly, guidance should be produced to set out the procedures for authorities.

In the context of the Regulation of Investigatory Powers Act requirements, calls were made for a relaxation of the covert surveillance powers for monitoring vehicles suspected of being involved in fly-tipping, as this would assist in greater success in prosecution of more serious offences. Partnership was also mentioned as being a key issue. Not only would there need to be greater working between police and authorities, but communication between authorities and the Environment Agency to avoid duplication of effort. It may be useful for a protocol to be developed which accounts for all three agencies.

Government Response: Clause 38 of the Clean Neighbourhoods and

Environment Bill implements this measure.

Defra is also currently reviewing the waste carrier and duty of care regimes. This will result in a further more detailed consultation in 2005.

3.3 Introduce a new offence and clear-up provisions for dealing with the illegal disposal of waste

Issue

Section 33 of EPA 1990 is the current offence provision covering the illegal disposal of waste. Section 59 sets out powers for removing such waste and recovering costs, subject to certain conditions. In Defra's Fly-tipping Strategy that was published for consultation in February 2004, several proposals were made with the aim of making the offence provision a greater deterrent against committing an offence and to bring irresponsible landowners within the remit of the legislation². These proposals included:

Ensuring the main fly tipping offence provides a greater deterrent – proposal to raise the maximum fine available for repeat s33 offences in the Magistrates Court from £20,000 to £50,000; and

More robust powers for clearing waste from land – proposal to 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.

Proposals will also shortly be made for a new waste permitting regime that will, in time, replace the current waste management licensing system. Any changes made as a result of this would require further amendments to sections 33 and 59 (along with other sections within Part II of EPA 1990).

Given the extent of the changes now envisaged, we propose to provide a new offence and clear-up provisions to replace sections 33 and 59 of EPA 1990. These would incorporate the proposals that have already been set out in the consultation noted above and comments made in response to it, and they will be made flexible enough to accommodate any future changes that may occur to the way that waste recovery and disposal operations are permitted.

In extending responsibilities to Landowners for dealing with waste illegally deposited on their land, it will be made clear to waste authorities that they must look to landowners only as a last resort and after making a serious effort to identify the occupier. We would also issue guidance, drawn up in consultation with occupiers and landowners, setting out protocols covering access to land and proportionate enforcement.

Summary of responses

These proposals were well supported. Most importantly magistrates will need much greater awareness of fly-tipping offences than they presently have so that fines will be commensurate with the seriousness of the offence. The fine should always be greater than the combined cost of legally disposing the waste and the cost of clean up.

Notice periods should be prescribed at the local level, taking into account different types of land and waste.

Much discussion was generated in relation to the statutory 'did not permit' defence available to landowners. Many respondents felt that this is a loophole which needs closing; it could be replaced with a duty for landowners to take all reasonable steps to ensure no further fly-tipping takes place or landowners should be required to take steps to secure land of theirs which has been repeatedly fly-tipped for a period of two years. Others argued that it is essential

that this defence remains in statute.

Government Response: This measure has been further developed and taken forward through the Clean Neighbourhoods and Environment Bill. It was decided following consultation to maintain the existing legislation with amendments to the offences.

Clause 41 of the Clean Neighbourhoods and Environment Bill raises the penalties on conviction for fly-tipping offences under section 33 of the Environmental Protection Act 1990. Clause 50 of the Bill deals with amendments to the powers of clearance under section 59 of the 1990 Act.

² Defra's Fly-Tipping Strategy can be accessed online:

<http://www.defra.gov.uk/corporate/consult/flytipping-strategy/index.htm>

Work on the waste permitting review was halted in early August. This was due to concerns that it would not be possible to deliver transposition of the Waste Electrical and Electronic (WEEE) Directive permitting requirements in time to meet the Government timetable. However, a further consideration was that the Environment Agency had doubts that the review would be able to deliver the substantial efficiency gains expected unless it was relaunched and extended to cover a wider range of activities than waste recovery and disposal.

Several other measures have been developed for the Bill which will help ensure appropriate penalties are available, including powers for the courts to order forfeiture of vehicles and payment of enforcement and clean-up costs.

3.4 Introduce Fixed Penalty Notices for waste left out on the streets

Issue

Sections 46 and 47 of EPA 1990 set out powers for waste collection authorities to specify arrangements for the collection of household and commercial or industrial waste, including the time(s) at which these wastes should be put out for collection. This measure would allow waste collection authorities to issue fixed penalty notices as an alternative to prosecution for the offence of failing to comply with such specifications.

The amount of the fixed penalty would be £100 in respect of each incident, although this amount could be varied by the local authority (subject to 6.1 below) or altered by subsequent order. The penalty notice would be payable to the waste collection authority, which could retain the receipts for its qualifying functions under sections 46 and 47 in dealing with waste collection, or for other functions as specified by subsequent Regulation(s).

Summary of responses

The intention to allow waste collection authorities to issue fixed penalties for failure to comply with specified waste collection times is widely supported. Local authorities were of the view that these powers would be useful where informal approach has failed. Potential difficulties were anticipated in respect of identifying offenders in properties of multiple occupancy with communal bin areas. Furthermore waste collection departments would need to communicate with enforcement teams to inform them where there have been unforeseen problems with the collection of waste such as the collection vehicle breaking down.

Equally important would be the exemption of people such as managing agents who could be empowered to conduct activities on the occupiers' behalf. The grounds for avoidance of responsibility of such people must be removed if fixed penalties are to be successful. However, charity shops should not be penalised for donation left outside shops.

The option to prosecute should remain. Authorities would need to publicise before enforcement took place.

Suggestions were made that these fixed penalty powers should be extended to non-use of recycling receptacles, bins left out after collection, and defacing of waste collection receptacles.

Government Response: Clause 48 of the Clean Neighbourhoods and Environment Bill implements this measure.

Government will provide guidance to accompany the Bill, which will make clear to local authorities the reasonable circumstances in which this power can be used. This will ensure that householders are not unfairly penalised.

3.5 Introduce a new requirement for Site Waste Management Plans

Issue

This would give the Secretary of State the power to issue a statutory code of practice to require developers and contractors to produce a written Site Waste Management Plan for all construction projects above the value of £200,000. The plan would need to identify the volume and type of material to be demolished and/or excavated and would need to demonstrate how off-site disposal of wastes will be minimised and managed. Production of these plans would improve regulatory compliance, encourage re-use and recycling, and reduce levels of illegal disposal.

The statutory code of practice would be subject to full public consultation. Site Waste Management Plans would also be trialled for one year before issuing the code of practice.

Waste collection authorities and the Environment Agency would have powers to request Site Waste Management Plans and it will be an offence not to have one with fines on the same level as the duty of care regime. The enforcing bodies will also have the option of issuing fixed penalty notices to discharge liability to conviction for the offence. The amount of the fixed penalty notice would be £300, although this amount could be varied by the local authority (subject to 6.1 below) or altered by subsequent order. The penalty notice would be payable to the enforcing body, which could retain the receipts for its qualifying functions under the new code of practice, or for other functions as specified by subsequent Regulations.

Summary of responses

The fine details for this proposal were widely debated, although the principle to require site waste management plans was well supported. It was a generally held opinion amongst respondents that site waste management plans (SWMPs) should be incorporated as a condition of the planning application process. Authorities may have problems in identifying the total cost of a project as it is no longer a requirement of planning applications. Because of implications on existing enforcement budgets it may be better to make it a power rather than a requirement for authorities to inspect SWMPs.

The development of legislation for SWMPs would also need to be considered in conjunction with revisions to the waste permitting regulations and should specifically require recycling and re-use of materials.

Opinion for the £200k threshold was divided. Most of those who commented on the threshold amount were of the view that when the cost of building is considered it was too low and should be increased. Whereas others felt it too high to catch those sites of low value that generate a high level of waste, particularly when several sub-contractors were involved at different stages of the building process. The threshold should be proofed against inflation. It was also suggested that SWMPs could be linked to the size of a site and not the cost.

The suggested level of fixed penalty was thought to be too low. The amount of £300 was not enough to motivate local authorities or the Environment Agency to inspect and enforce. Nor would it act as a sufficient deterrent to unscrupulous builders or developers. The penalty amount could instead be set as a percentage of the total value of the project or a sliding scale which the Secretary of State could set regularly.

Government Response: Clause 54 of the Clean Neighbourhoods and Environment Bill allows the Secretary of State to issue regulations requiring site waste management plans. The policy detail of the regulations will be consulted on further in 2005.

3.6 Introduce a more effective system for stop, search and seizure of vehicles

Issue

Current provisions under the Control of Pollution (Amendment) Act 1989 and the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 would be replaced with a more effective and usable system. Officers of the Environment Agency or a waste collection authority would be given powers to instantly seize a vehicle involved in fly-tipping and impound it for the purposes of taking further evidence, which may involve prosecution action. The officer would be empowered to seize a vehicle and any property without need for assistance from a police constable, but a constable would still be needed to stop a vehicle on a road. The current legislation setting out the procedures for returning or disposing of seized property will also be replaced with more simple and effective arrangements.

Summary of responses

This option was supported but many respondents commented that even with these powers a police officer would need to be present when local authority search and seize vehicles to ensure safety of authority officers. A protocol between local authorities, the Environment Agency and the police would ensure compliance from suspected offenders.

It was suggested that there should be a mechanism for local authorities to

reclaim costs incurred in the search and seizure process. Furthermore, these powers could also be extended to include vehicles involved in other envirocrimes such as fly-posting.

Government Response: Clause 37 of the Clean Neighbourhoods and Environment Bill implements a more effective stop, search and seizure power in relation to offences under the Control of Pollution (Amendment) Act 1989.

Clause 46 of the Bill introduces a similar power to stop, search and seize vehicles involved in fly-tipping and duty of care offences under sections 33 and 34 of the Environmental Protection Act 1990.

As mentioned above, clauses 42 and 43 of the Bill allow enforcement authorities to be awarded associated costs of investigation, enforcement and clearance.

3.7 Introduce a new provision covering duty of care and registration of waste carriers

Issue

Legislation setting out the requirement for waste carriers to be registered is currently contained within the Control of Pollution (Amendment) Act 1989 and subsequent regulations. Legislation on the duty of care etc. with respect to waste is contained in section 34 of EPA 1990 and subsequent regulations. This measure would introduce an enabling power that will enable the Secretary of State to make new regulations covering the registration of waste carriers and the duty of care. The regulations will implement the findings of the current review that is being carried out by Defra in consultation with key stakeholders and will propose new arrangements that should lead to more effective operation and enforcement of these regimes.

Summary of responses

This measure was supported by almost all who responded. Any contravention of the legislation should result in the removal of the waste carriers licence. It was also suggested that a badge system for waste carriers would be helpful to distinguish registered and non-registered waste carriers.

Enforcement agencies should be able to exercise powers that require waste carrying vehicles to of a defined standard in order to deal with vehicles that are not fit to carry waste.

Government Response: Defra is currently reviewing the waste carrier and duty of care regimes. This will result in a further more detailed consultation in 2005 which may lead to amendments to regulations.

3.8 Revise the scheme for payments to third parties for the re-use and recycling of waste

Issue

Under section 52 of EPA 1990 waste disposal authorities (WDAs) are currently required to make payments to waste collection authorities (WCAs) for waste diverted from disposal by recycling. Both WDAs and WCAs are allowed, but not obliged, to make payments to third parties, such as charities, for waste recycled that would otherwise require collection and disposal by those authorities. In accordance with the commitment given in Waste Strategy 2000, the Government is currently reviewing the scheme.

This measure would amend section 52 of EPA 1990 to improve the system of payments to WCAs and third parties for waste recycled in light of the outcome of the current review. Options for change would include introducing flexibility into the system of payments to WCAs to allow better joint working arrangements where desirable, expanding the scheme to include payments to third parties for re-use as well as recycling, and making payments to third parties a duty for WDAs and WCAs. Detailed proposals will be consulted upon separately.

Summary of responses

Please see summary document to the consultation paper on Changes to Recycling Credits Scheme, at:

<http://www.defra.gov.uk/corporate/consult/recycling-credits/index.htm>

3.9 Revise the recycling credit system to allow for the introduction of a tonnage-based levy as a default charging system for Joint Waste Disposal Authorities

Issue

Joint Waste Disposal Authorities (JWDAs) are currently funded by a levy on their constituent authorities that is apportioned by unanimous agreement or, in the absence of this, based on the Council Tax base of each authority. Changing the default to a tonnage basis or introducing similar charge based arrangements has been proposed to replace the current arrangements. The introduction of either of these would effectively create a double benefit for constituent authorities which would, under the present recycling credits system, receive credits in addition to savings made in their levy or charges by reducing the volume of waste delivered to the JWDA for disposal.

This measure would amend section 52 of EPA 1990 to remove this double benefit, thus allowing the subsequent introduction of revisions to the levy system for JWDAs. Detailed proposals will be consulted upon separately.

Summary of responses

Please see summary document to the consultation paper on Changes to Recycling Credits Scheme, at:

<http://www.defra.gov.uk/corporate/consult/recycling-credits/index.htm>

3.10 Repeal of the divestment provisions for waste disposal functions

Issue

Under the duty of Best Value, local authorities are expected to deliver their waste management services by the most effective, economic and efficient means available, taking into account local circumstances and in consultation with local stakeholders. This approach is key to delivering the challenging Statutory Performance Standards for household waste recycling that have been set for local authorities for 2005/06, and the legally binding EU Landfill Directive targets set for 2010, 2013 and 2020.

The Government wishes to remove any obstacles to closer co-operation between local authorities and the waste management industry and the achievement of Best Value in these aims. It is clear that the prescriptive framework imposed by EPA 1990 requiring waste disposal authorities to divest themselves of their waste disposal operations does not sit well with the approach of Best Value.

The Government is therefore committed to repealing the divestment provisions in EPA 1990. The repeal will help to encourage and facilitate partnerships between two or more authorities and between authorities and the

private sector. It will increase the range of procurement options open to local authorities, including making it easier to use the Private Finance Initiative route, and facilitate a more strategic approach by authorities to long-term planning and procurement.

In order to facilitate these improvements, this measure would repeal:

- the provision in section 32 of EPA 1990 covering the transition to Local Authority Waste Disposal Companies (LAWDCs);
- the requirement in various sections of Part II of EPA 1990 that authorities carry out their waste disposal function only through arrangements with waste disposal contractors; and
- Schedule 2 of EPA 1990 which lays down detailed procedures for the transition to LAWDCs and for putting waste disposal contracts out to tender.

Summary of responses

The divestment proposal was broadly welcomed. Many respondents were keen to see details of how this process would be done and what system would replace it. Some felt that this step was too late as many authorities had replaced their waste disposal companies.

Further guidance was sought to clarify the demonstration of Best Value imposed on waste collection authorities.

This measure should be implemented quickly to benefit waste disposal authorities in delivering EU Landfill Directive targets. Therefore the timing of the repeal would be important.

Government Response: Clause 47 of the Clean Neighbourhoods and Environment Bill implements this measure.

3.11 Improve the process for Contaminated Land Appeals

Issue

Under section 78L of EPA 1990 (as amended by the Environment Act 1995), appeals against remediation notices under the contaminated land regime are heard by magistrates, except for 'special sites' where appeals are heard by the Secretary of State. This measure would amend section 78L such that all appeals would be made to the Secretary of State, bringing this regime more into line with other environmental regimes.

Summary of responses

Respondents were mostly supportive of this measure. However, of those respondents who objected most were of the view that appeals are best taken by local magistrates. Centralising the appeals procedure could slow down the process. There were also concerns about moving the decision making away from the local level.

Government Response: Clause 104 of the Clean Neighbourhoods and Environment Bill implements this measure.

Section 4 – Nuisance Vehicles

4.1 Create new offences and powers in relation to nuisance vehicles

Issue

Authorities would be given the power to remove immediately a vehicle which:

- had no registered keeper; or
- was abandoned; or
- was not displaying a current tax disk; or
- was causing a nuisance or was detrimental to the amenity of an area.

It would no longer be necessary to fix a notice to a vehicle which met these conditions before removing it. This would help to reduce the incidence of vandalism and arson that often follows the fixing of notices. These provisions would apply to vehicles on the highway or on land to which the public had access, and to vehicles on other land without the permission of the occupier.

It would be made an offence to be responsible for or have used a vehicle removed as a nuisance vehicle; anyone convicted could be fined up to a maximum level 4 (£2,500). There would be a statutory defence for an owner who could show that his vehicle was stolen and subsequently abandoned. In most circumstances, it would be possible to discharge liability for the offence by paying a fixed penalty; we would expect local authorities to be able to retain the proceeds. For serious or multiple offences, prosecution would remain the appropriate enforcement.

Where the authority removed a vehicle, the keeper or their representative would be able to reclaim it on payment of the fixed penalty, together with the costs of removal and storage. They would also have to show that they were properly insured. A surety would be payable if there were no valid tax or MOT for the vehicle. This would be refunded if valid documents were presented within a prescribed time. Vehicles not released within a given period would be destroyed or otherwise disposed of.

Detailed provisions on the operation of the new measures would be set out in regulations and statutory guidelines. These would, for example, define the circumstances in which a vehicle would be deemed to be causing a nuisance or be detrimental to the amenity of an area. There would be an appeal system for those wishing to appeal against the removal of their vehicles.

Summary of responses

Almost all respondents thought that further legislation and guidance was necessary on the issue of abandoned vehicles. The proposals to remove vehicles immediately were widely supported in order to prevent vehicle arson and associated anti-social behaviour, which often results when a notice is placed on an abandoned vehicle. Many authorities stressed that there would be resource implications for the new measures, particularly in regards to storage capacity. Many practitioners also sought clarification of what constituted private land in relation to the proposed measures and existing legislation.

One point that many respondents raised was the need for clear definitions of both an abandoned and nuisance vehicle. Most agreed with the proposed criteria but sought clarification of the phrase 'detrimental to the amenity of an area', which appears in existing legislation. Some felt that the provisions and phrasing of the Refuse Disposal Amenity Act was outdated and did not take into account the complexity and scale of the problem.

Cars sold on the roadside and parked on the pavement were considered by many to fall within the definition of a nuisance vehicle. A number of responses called for vehicles with foreign number plates to be included within the category. Others felt that cars being renovated or repaired on the roadside, or private

land, could constitute a nuisance. Furthermore many local authorities felt that current procedures for the owners and drivers of abandoned vehicles were not stringent enough and suggested that insurance and vehicle ownership details should be displayed on the vehicle. Many thought this would be a more robust system than the payment of a surety.

The separation of responsibility between local authorities, the police and the DVLA was a common theme in the responses. Some offered examples of where DVLA powers had been devolved resulting in more effective enforcement. Others felt that the development of a partnership with the police had been the single most effective step towards reducing the number of abandoned vehicles on the streets. The consensus of opinion was that the proposed measures would lead to incidents being dealt with quickly and effectively and that this would inspire confidence in the public that the emotive issue of abandoned vehicles was being dealt with by the government.

Government Response: Part 2 of the Clean Neighbourhoods and Environment Bill contains provisions on abandoned and nuisance vehicles that have been developed in the light of the consultation and of further consideration of the issues involved. These differ in a number of respects from the proposals in the consultation document. The Bill will create two nuisance parking offences:

- **exposing or advertising for sale as part of a business two or more vehicles parked on a road;**
- **repairing vehicle parked on the road, either as part of business or in a way that gives reasonable cause for annoyance to people nearby. There will be exemptions for repairs resulting from a breakdown or an accident, provided that they are carried out within 72 hours.**

The current provisions on abandoned vehicles will be amended, removing the requirement to serve a notice on a vehicle that is considered as only fit for destruction, thus enabling it to be removed immediately, and simplifying the rules on the disposal of abandoned vehicles.

Section 5 – Dogs

5.1 Streamline the dog byelaw system

Issue

This new measure would require local authorities applying for specific dog byelaws (dog ban, dogs on lead, etc.) to do so according to prescribed formats introduced (by Order or Regulation) by the Secretary of State. Whilst the Secretary of State would still confirm byelaws, the process would be significantly simpler and quicker through the use of model byelaws and procedures. In exceptional circumstances local authorities would still be able to submit non-standard byelaws, but these would not benefit from the streamlined approval process.

Summary of responses

This measure received almost unanimous support from local authorities. Some authorities felt that the prescribed formats for the orders and regulations should allow for local issues and circumstances. Some authorities commented that increasing the scope of land designation under the Dogs Fouling of Land Act 1996, would be a more effective way of dealing with the issue. A number of

respondents requested a further streamlining of the process so that facilities and public spaces could be added to existing byelaws rather than having to apply for new regulations.

Government Response: In the light of the consultation and of further consideration of the options, it has been decided to take forward slightly different measures. The Clean Neighbourhoods and Environment Bill will therefore replace the current system of dog byelaws with a new system of “dog control orders”. This new system is modelled on the Dogs (Fouling of Land) Act 1996; this sets out an offence in the Act which can then be applied by local authorities by order in relation to designated land in their area.

Likewise, under the proposed new system local authorities and parish councils will be able to provide by order for offences to apply in designated land in their area. The offences will be standard offences which will be prescribed in regulations; the prescribed offences will include fouling by dogs (and therefore the Dogs (Fouling of Land) Act 1996 will be repealed). But the new system will also allow for other types of dog-related offence relating to the keeping of dogs on leads in designated areas, the exclusion of dogs from such areas and the maximum number of dogs that one person may walk in such an area.

It is intended that the regulations will provide “model” offences which may then be applied by a local authority or parish council to specified areas of land accessible to the public; but (where appropriate) local authorities and parish councils will also be given some flexibility in relation to certain details of the offences; for example, the model offence in relation to the number of dogs that may be walked by one person may leave it to the local authority or parish council to specify whatever number of dogs they deem appropriate in relation to the land where the offence is to apply. It is also intended that local authorities and parish councils will be able to specify penalties applicable to offences, within constraints set by regulations.

5.2 Give local authorities full responsibility for receiving stray dogs

Issue

Section 150 of EPA 1990 provides that the nearest Police station is one of the places to which people can take stray dogs, along with the local authority. This measure would amend section 150 to remove reference to the Police, so that the local authority is the sole body responsible for receiving stray dogs.

Summary of responses

Most local authorities supported this measure on the condition that they received sufficient funding to resource a 24-hour service. Concern was expressed that a transfer of funds from the Home Office would still leave a shortfall of resources, as many authorities do not have access to kennels. In addition to the potentially problematic process of arranging kennelling contracts some authorities felt that there would need to be an assessment of health and safety standards in private kennels. The threat of attacks on kennels from the public and organisations to prevent injured strays being put down was also a real fear for some respondents. For many it is not solely a matter of capacity for stray dogs but ensuring that the welfare of the animals is protected.

A minority of responses expressed the view that current arrangements with police, fostered at a local level, was working well and should not be changed. These respondents felt the public had confidence in these local partnership approaches and that this proposed measure would provoke public antagonism.

Respondents from remote towns and parishes thought that the proposed measure may not be practicable due to the distance stray dogs would have to be transported to be housed. For many the nearest suitable facilities would be those at the police station. In addition to the resource and practicality arguments for retaining police responsibility for strays some respondents felt that the Police's expertise in handling dangerous dogs would often be required in situations where distressed and abused dogs were found as strays.

Government Response: Clause 68 of the Clean Neighbourhoods and Environment Bill implements this measure. An appropriate transfer of resources from the police to local authorities will be made before this measure is implemented.

Section 6 – Fixed Penalty Notices

6.1 Empower local authorities and other enforcing bodies to set the level of fixed penalties

Issue

Fixed penalty notices may currently be issued to discharge liability for offences for littering, dog-fouling, night-time noise, graffiti and fly-posting. Subject to measures included here, additional fixed penalty notices would be available for offences relating to free literature distribution, duty of care, placement of waste for collection and nuisance vehicles. In each case, the amount of the penalty is set out in the relevant legislation and can be altered by Order by the Secretary of State or 'appropriate person'.

This measure would allow local authorities and other empowered bodies (see 6.3 below) to set the level of penalty for each offence at the local level. A national framework would be set by Order, specifying maximum and minimum levels of penalty that could apply within an area, together with other conditions regarding the consistency of application. This measure would not apply to the fixed penalty notices for failure to produce waste transfer notes or registration details proposed above (see 3.1 and 3.2).

There would also be an option for authorities to allow a discount up to a specified percentage on the amount payable for those penalties that are paid promptly.

Summary of responses

The intention to allow fixed penalty amounts to be set at the local level was welcomed by many local authorities. Discounts for early payment was identified as an effective tool to ensuring prompt payment. Legislation should protect the maxima and minima within the national framework against inflation. Guidelines on setting fine levels were requested.

Those respondents who opposed this proposal were of the view that allowing authorities to set their fixed penalties would invite comparisons in the press as there would be no consistent approach nationally, which could lead to a negative public perception. As a consequence some felt that fixed penalties should be set nationally. Neighbouring authorities having different levels of fines was identified as another potential problem. Furthermore some respondents expressed concern that Magistrates' may not view a penalty set at the local level as having any authority.

Government Response: The Clean Neighbourhoods and Environment Bill provides for fixed penalties as an alternative to prosecution for a range of offences. With limited exceptions (offences relating to abandoned and nuisance vehicles and some waste offences) it has been decided, on balance, to give local authorities the power to vary fixed penalty rates, together with a power to offer discounts for early payment.

6.2 Give authorised officers the power to request names and addresses

Issue

Refusing to give a name and address to a local authority officer issuing a fixed penalty notice is not currently an offence. This measure would give authorised officers of local authorities and other bodies (see 6.3 below) the power to demand names and addresses when issuing fixed penalty notices for litter, dog-fouling, night-time noise, graffiti and fly-posting (together with the new fixed penalties set out in other measures here). Failure to give this information, or giving inaccurate or misleading information, would be an offence punishable by a fine up to a maximum level 3 (£1,000).

Summary of responses

Whilst this was supported it was widely recognised amongst respondents that these powers would be difficult to enforce without the assistance of the police. The availability of strong penalties would be one element to act as an effective deterrent to offenders giving false details. The ability for wardens to detain people until police arrive, in line with s.41 Police Reform Act 2002 powers, would be another. Local authority officers should be given the same level of protection against assault.

Government Response: This power is included in the various provisions on fixed penalty notices in the Clean neighbourhoods and Environment Bill.

6.3 Extend fixed penalty issuing powers to other bodies

Issue

Local authorities are currently the principal bodies empowered to issue fixed penalty notices for a range of local environmental offences, subject to officers being authorised in writing by the authority. These powers would be extended to include authorised officers working on behalf of a local authority, such as those employed through contracted out services or by town or parish councils managing land on behalf of an authority. The authorisation of officers would continue to be given by the local authority itself, rather than the organisation

working on behalf of the authority.

This measure would also introduce the power for the Secretary of State to further extend these powers by Order to other bodies such as statutory undertakers and other land managers where it would be appropriate to give them the power to issue fixed penalty notices for a specified range of offences.

Summary of responses

Comments on this option were mostly supportive. It was pointed out that this had already been piloted in at least one area, involving the parish councils and officers from the Environment Agency, and was found to be effective. Any of those bodies authorised to issue fixed penalties would either need to be properly qualified or should show that they are capable. It was suggested that receipts from fixed penalties issued by statutory undertakers and other land managers should not be retained by them.

Clarification would be needed to establish at which age can fixed penalties be issued and the financial responsibility of parents in respect to fixed penalties issued to minors.

Concern was expressed that fixed penalties should not become a revenue-making exercise.

Government Response: The Clean Neighbourhoods and Environment Bill will:

- provide for parish and community councils to issue fixed penalty notices for litter, graffiti, fly posting and dog related offences;**
- enable local authorities and parish councils to authorise other bodies or individuals to issue fixed penalty notices on their behalf.**

It has been decided not to proceed with the proposal to enable the Secretary of State to extend the power to issue fixed penalty notices to other agencies.

Section 7 – Nuisance

7.1 Extend statutory nuisances to include artificial light and nuisance from Insects

Issue

Statutory nuisances are currently listed under section 79 of EPA 1990. This list would be extended to include artificial light and nuisance caused by insects. Artificial light that was prejudicial to health or a nuisance would become a statutory nuisance. Nuisance from insects would include unwelcome insects from premises where activities are likely to provide fertile breeding grounds, where this is prejudicial to health or a nuisance.

The Government intends the measure on artificial light to apply to light emitted from residential, commercial and industrial premises. Premises used for activities, for which artificial light is essential or required by legislation for operational, security or health and safety reasons would be exempt, as would street lighting.

Including these as statutory nuisances would allow local authorities to serve

Nuisance Abatement Notices on those responsible for contraventions in respect of nuisance lighting and nuisance from insects, as set out in section 80 of EPA 1990. It would also allow for individuals to institute proceedings through a magistrates' court, as set out in section 82. Guidance on how these powers should be used would be set out in statutory Codes of Practice.

Summary of responses

The majority of respondents were in favour of creating statutory nuisance for light. Some responses raised concern over resource implications of enforcing light nuisance at night while others felt that due to the difficulty of defining nuisance in relation to light that civil penalties would be the best form of regulation. Others considered a code of practice on lighting included in planning regulations would be a more effective way of dealing with light nuisance and pollution.

There was a wide scope of opinion regarding possible exemptions to light nuisance. While some felt that security lighting should be explicitly exempted others argued that badly designed and maintained security lighting was the source of most complaints in their area. Emergency services, construction activities, organised outdoor events, sporting facilities, horticultural premises and transport terminals were all cited as cases for exemption. Another view was that guidelines and regulations were needed to ensure the quality of public lighting to minimise spillage and pollution.

Despite a wide range of opinions and suggestions on which sources of light should be exempted from this proposed category there was a degree of consensus that broad blanket exemptions would be difficult to justify and implement. This led to a unanimous request for comprehensive and clear guidance on these measures. Some felt that rather than exempting certain sources of potential light pollution such controversial sources should be dealt with under a separate Code of Practice that could impose regulations and operating standards for sports stadia, transport terminals and large outdoor events.

It was clear from the responses on this measure that light nuisance is a subjective issue and furthermore that it was difficult both to define and to measure.

The proposals to deal with insect nuisance generated a broad scope of responses. An important point was one of definitions. Some felt that the term insects would need to be clearly defined in order to avoid challenges in the courts. Others felt that only insects that could spread disease should be included and that it would not be reasonable or practicable to include insects that are merely a nuisance. A minority felt dangerous pets should be included in these provisions.

Many practitioners felt that there were already adequate provisions to deal with insect nuisance under the Public Health Acts and the Environmental Protection Act, 1990 as well existing licensing provisions where activities lead to an accumulation of insects. Some respondents expressed their concern that insects are only problem as a result of an activity and that therefore it would be more appropriate for these activities should be regulated in order to prevent the problem of insect nuisance occurring.

It was generally felt that bee-keeping and use of insects for research, farming and horticulture should be exempted from any provisions but that use of insects should continue to be regulated through guidance and licensing provisions.

Government Response: The Government has noted the various points

made, and has decided, on balance, to proceed with these measures, which are contained in clauses 101 and 102 of the Clean Neighbourhoods and Environment Bill. Only insects emanating from industrial, trade or business premises will be capable of constituting a statutory nuisance. Artificial light emitted from airports, harbours, railway premises, tramway premises, bus stations and associated features, public service vehicle operating centres, and prisons will be exempt from this provision.

7.2 Extend the power to issue statutory Codes of Practice to nuisances other than noise

Issue

Section 71 of the Control of Pollution Act 1974 allows the Secretary of State to prepare, approve and issue Codes of Practice for minimising noise. This power would be extended to include Codes of Practice for other statutory nuisances, such as odour, dust or effluvia.

Statutory Codes of Practice could then be introduced to minimise nuisance and provide guidance to all stakeholders. These would be subject to full public consultation in the normal manner.

Summary of responses

The responses to the proposals in this section were overwhelmingly supportive. In particular further guidance and a Code of Practice on odour and smell nuisance was supported. Risk of fire and odours from cigarette smoke were both highlighted as sources of nuisance that should explicitly defined in section 79 of the Environmental Protection Act, 1990. The possibility of issuing fixed penalty notices for the entire statutory nuisance regime, as defined in Section 79 of the Environmental Protection Act, 1990 was also suggested as a positive enforcement tool for local authorities.

The need to maintain the distinction between statutory nuisance and any noise or odour currently regulated under permits regulated by the Environment Agency was raised.

It was suggested that nuisance could be regulated through enacting the provisions of section 3 of the Noise and Statutory Nuisance Act, 1996 and that this would preclude the need to introduce the options outlined in this section.

Government Response: The Government has since received legal advice that this measure should be dropped. This advice is based on the 1987 Guidance on Codes of Practice, which covers the appropriate purpose of statutory codes. Firstly statutory codes commonly make non-compliance a breach of duty. For statutory nuisance, there is no general duty. There is only an underlying liability, determined by a question of definition rather than legal value judgement. In addition, the 1987 Guidance states that statutory codes should not delineate obligations or provide for exceptions or defences. This would encompass “best practicable means”, which is the defence for statutory nuisance.

7.3 Introduce new measures to reduce noise nuisance

Issue

Current powers for dealing with noise nuisance are principally contained in the Control of Pollution Act 1974, EPA 1990, the Noise Act 1996 and the Antisocial Behaviour Act 2003. However, excessive noise is still regarded as a major problem by members of the public, and the Government is considering

strengthening these powers. Possible measures that it has in mind are:

extending to the whole of England the requirement in London (under section 23 of the London Local Authorities Act 1991) for all those with burglar alarms to register key-holders with the police. This would help deal with the problems caused by burglar alarms when the key holder cannot be traced.

extending the power of local authorities (under sections 8 and 9 of the Noise Act 1996, as amended by section 42 of the Anti-social Behaviour Act 2003) to issue Fixed Penalty Notices against private individuals on private premises for noise at night to operators of licensed premises.

giving local authorities greater flexibility in responding to complaints about noise. Currently, once a local authority has concluded that a statutory nuisance exists, it is required to issue an abatement notice (under section 80 of EPA 1990). Local authorities could be given the power to attempt to resolve problems, for example through mediation, before issuing an abatement notice. Such a power would need to be used with care, and within defined timescales, but could help resolve problems in cases where a formal abatement notice would aggravate the situation.

Summary of responses

The vast majority of respondents supported the proposal for all burglar alarm key holders to be registered with the local authority. In addition several local authorities felt that occupiers of a building should be responsible for disarming an alarm before vacating the premises and that all new burglar alarms should be designed with an in built 20-minute cut off. It was suggested that an amendment to Section 3 and 9 of the Noise and Statutory Nuisance Act, 1993, would help to resolve the problem of burglar alarms.

The introduction of fixed penalty notices to compliment Noise Abatement Orders was generally supported. It was felt that the levels should reflect the scale and commercial element of the offence. Some respondents felt that community service orders were an appropriate penalty for noise offences.

The question of mediation proved to be a controversial one. Some authorities felt that this would be an unreasonable strain on resources and could lead to long delays in addressing a problem and answering a complaint. In general respondents felt that abatement orders should be used as soon as a noise nuisance has reached the statutory level.

Other sources of noise nuisance that were raised were noisy vehicles, music from moving vehicles, fireworks and barking dogs. Many authorities stressed that these problems were difficult to regulate against. Some thought that issues of noise nuisance were best dealt with by a community agency partnership approach involving local authorities, the police, planning officers, environmental health departments and community safety groups.

Government Response: The Government has decided to proceed with these three proposals.

Chapter 1 of Part 7 of the Clean Neighbourhoods and Environment Bill implements provisions on audible intruder alarms. These include:

- **a power for a local authority to designate areas in which those with audible intruder alarms will be required to register a nominated key holder with it.**
- **powers for a local authority to enter premises to silence an alarm that has been ringing for more than 20 minutes, or for more than 1**

hour intermittently. A warrant will only be needed if entry has to be made by force. Local authorities will be able to recover the costs of silencing an alarm.

Clause 84 and Schedule 1 extend extends the provisions of the Noise Act 1996 in relation to noise from private premises to licensed premises.

Clause 86 enables local authorities to defer serving an abatement notice for seven days once they have concluded that a noise constitutes a statutory nuisance. The government considers that this short deferral will help local authorities resolve disputed cases without imposing significant delays.

Section 8 – General Public Space

8.1 Establish the Commission for Architecture and the Built Environment (CABE) on a statutory basis

Issue

The Commission for Architecture and the Built Environment (CABE) was established as a Non-Departmental Public Body in 1999 with a remit to promote high standards in the design and management of buildings and the spaces between them. Whilst it was incorporated as a company limited by guarantee, this was not the long-term intention.

This measure would establish CABE on a statutory basis, bringing increased accountability and greater ease in administration and sponsorship arrangements.

Summary of responses

Most respondents were in favour of establishing CABE on a statutory basis. A minority felt that CABE should remain as a charity. Some felt that while CABE had considerable Knowledge of architecture and landscape they would benefit from additional expertise in the relationship between the built environment and anti-social disorder and crime. Others argued that CABR should be given a formal duty in relation to crime reduction and also in protecting biodiversity and historic features of the landscape. It was also argued that the role of CABE needed to be clarified to ensure that there was not a duplication of responsibility with organisations such as English Heritage. It was stressed that in order to be effective CABE would need to take into consideration local issues and circumstances.

Government Response: Part 8 of the Clean Neighbourhoods and Environment Bill implements this measure.

8.2 Create new powers to deal with nuisance alleyways

Issue

Back alleys (or paths, ginnels or snickets) can be magnets for litter, fly-tipping, abandoned vehicles, drug dealing, joy-riding and prostitution. Gating schemes which restrict access to alleyways can have a marked impact in reducing these problems. However, communities can be denied these schemes where the alleyway is recorded, or qualifies for being recorded, on the local highway authority's definitive map and statement as a right of way. Recent changes to rights of way legislation introduced by the Countryside and Rights of Way Act 2000 do not cater for vehicular routes that are not recorded on the definitive map and statement and still leave gating schemes open to lengthy processes of legal challenge.

This measure would introduce a free standing provision which would enable certain alleyways to be gated without removing the status of the highway – in much the same way as traffic regulations orders do at present – where there were serious problems with crime and anti-social behaviour. Local authorities would have the ability to decide whether the gates should be closed permanently to the public, or closed at certain times of the day. And if the local authority were to revoke an order under these powers, the public would enjoy the same rights of access as before.

The powers would be available only if certain conditions were met, namely:

- a. that the premises adjoining or adjacent to the highway were affected by high levels of crime and/or serious anti-social behaviour;
- b. that the existence of the highway was facilitating the persistent commission of criminal offences and/or serious anti-social behaviour;
- c. that the local authority had consulted local residents and had their support;
- d. that the local authority had consulted the local Crime and Disorder Reduction Partnership and any other relevant bodies and had their support;
- e. that the local authority had considered, and where appropriate, tried alternative means of dealing with problems before using these powers; and
- f. that the authority considered the availability of a reasonably convenient alternative route before using these powers.

Summary of responses

There was an overwhelming support for further powers on nuisance alleyways from local authorities, local access forums and members of the public. The consensus of responses was that any measures that would make a significant impact on reducing crime and anti-social behaviour were worth adopting. There was concern raised by those who install and maintain installations in public areas. They stressed that they would need to have clear, unobstructed access to their installations.

The issue of who should be consulted on gating schemes drew a wide range of opinion. Many felt that only affected residents should be consulted while others thought that local access forums, local authorities, the police, rescue services, other members of crime reduction partnerships and service providers should be consulted. Many residents stressed that wide consultation would lead in practice to gating schemes being shelved or voted against. Furthermore some residents felt they should have recourse to appeal for gating if an alleyway that was not gated due to a wide consultation was subsequently the target for crime and anti-social behaviour.

Another question that divided opinion was that of access to an alternative route if an alleyway or path was gated. Members of the Public responded in large numbers to stress that reducing crime was far more important than limiting access within an area. This view was challenged by responses from many local authorities and local access forums who wanted to retain access routes in particular to ensure that elderly and disabled residents did not face long detours to travel to shops and local amenities.

Many respondents thought that existing provisions under the Highway Act, 1980 and the Countryside and Rights of Way Act, 2000 were not flexible or durable enough to deal with problems on a local level.

Some felt that Traffic Regulation Orders could be used in non-unitary authorities to ensure that the Highways Authority retained control of providing and maintaining safe routes to schools and places of work. Many were concerned that many alleyways and local routes could be gated due to fear of crime amongst affected residents rather than incidents of recorded crime. This raised the issue of the threshold of evidence required to gate alleyways due to crime and anti-social behaviour. Furthermore there was the suggestion from some respondents that residents may look to initiate gating procedures to increase the value of their property.

A significant number of respondents argued that gating would also impact on levels of fly-tipping and abandoned vehicles and suggested that these issues needed to be considered alongside access and crime in the decision making process.

Government Response: Clause 2 of the Clean Neighbourhoods and Environment Bill amends the Highways Act 1996 to enable local authorities to restrict public access to any alleyway that is also a public highway by gating it, without removing its underlying highway status. Local authorities will be able to make “gating” orders on grounds of antisocial behaviour as well as crime. Local authorities will have to consult local residents and other stakeholders, but they will have discretion on how to deal with any objections received. In addition local authorities will be able to decide whether the alleys should be closed permanently to the public, or just closed at certain times of the day.

Partial Regulatory Impact Assessment

13. Appendix 2 of the document set out the Partial Regulatory Impact Assessment (RIA) for section 2, which dealt with litter, graffiti and fly-posting, and section 4 which proposed measures to deal with nuisance vehicles.

14. Partial RIAs for the proposed waste (section 3) and nuisance (section 7) measures were circulated separately. The RIA for the section 3 waste measures was published at Appendix 1 of the Changes to Recycling Credits Scheme consultation, a copy of which can be found at: www.defra.gov.uk/corporate/consult/recycling-credits/index.htm. The RIA for section 7 nuisance measures was published online at: <http://www.defra.gov.uk/corporate/consult/clean-neighbourhood/index.htm>

15. Comments on the partial RIAs were taken into account in producing the full RIA on the Clean Neighbourhoods and Environment Bill, which can be found at <http://www.defra.gov.uk/corporate/regulat/ria/2004/cleanneighboureenv-bill.pdf>.