

**EXPLANATORY MEMORANDUM TO**  
**THE WASTE (HOUSEHOLD WASTE DUTY OF CARE) (ENGLAND AND WALES)**  
**REGULATIONS 2005**

**2005 No. 2900**

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

**2. Description**

The Regulations impose a duty on the occupier of any domestic property in England to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is to an authorised person or to a person for authorised transport purposes.

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

None

**4. Legislative Background**

4.1 The Regulations are made under section 2(2) of the European Communities Act 1972 (1972 c.68).

4.2 The Regulations implement, in relation to England, the first limb of Article 8 of Council Directive 75/442/EEC on waste<sup>1</sup> (the “Waste Framework Directive”) as respects an occupier of domestic property in relation to the household waste produced on the property.

4.3 The Waste Framework Directive controls the recovery and disposal of waste. The first limb of Article 8 of that Directive requires Member States to take the necessary measures to ensure that any holder of waste has it handled by a private or public waste collector or by an undertaking which carries out the waste disposal or waste recovery operations listed in the Directive.

4.4 The Regulations have been agreed by the Ministerial Committee on Energy and the Environment (EE), chaired by the Prime Minister.

4.5 A Transposition Note has been prepared for the Regulations and is included at Annex 1.

4.6 Section 34(1) of the Environmental Protection Act 1990 (the “1990 Act”) imposes a duty of care on any person or broker who imports, produces, carries, treats or disposes of controlled waste or, as a broker, has control of such waste. (Controlled waste is defined in section 75(4) of the 1990 Act as household, industrial and commercial waste or any such waste.) One element of the duty of care is to require

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<sup>1</sup> O.J. No. L194, 25.7.1975, p. 39 (as amended by Council Directives 91/156/EEC (O.J. No. L78, 26.3.1991, p. 32), 91/692/EEC (O.J. No. L377, 31.12.1991, p. 48 (as corrected by Corrigendum, O.J. No. L146, 13.6.2003, p. 52)), Commission Decision 96/350/EC (O.J. No. L135, 6.6.1996, p. 32) and Regulation (EC) No. 1882/2003 (O.J. No. L284, 31.10.2003 p. 1)).

the persons who are subject to it to secure, on the transfer of the waste, that the transfer is only to an authorised person or to a person for authorised transport purposes. “Authorised person” and “authorised transport purposes” are defined in sections 34(3) and 34(4) of the 1990 Act respectively. In short, they are private or public waste collectors or undertakings.

4.7 Regulation 2(2) of the Regulations inserts a new section 34(2A) into the 1990 Act. Section 34(2A) will impose a duty on an occupier of any domestic property in England to take all such measures available to him as are as reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.

4.8 Breach of the duty in section 34(2A) will be a criminal offence carrying a fine of up to the statutory maximum on summary conviction (£5000 at the date of the Regulations), or an unlimited fine on conviction on indictment.

4.9 The amendments in regulations 2(3) to (6) are consequential on the amendment in regulation 2(2). The amendments in regulations 3, 4 and 5 are also consequential on the amendment in regulation 2(2).

## **5. Extent**

This instrument extends to England and Wales. However, the practical effect of the new duty in section 34(2A) of the 1990 Act is confined to any domestic property in England.

## **6. European Convention on Human Rights**

Ben Bradshaw, Minister for Local Environment, Marine and Animal Welfare, has made the following statement regarding Human Rights:

*In my view the provisions of the Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 are compatible with the Convention rights.*

## **7. Policy background**

7.1 The Regulations are needed to ensure the Government complies with obligations arising under the Waste Framework Directive. On 16 December 2004, in Case C-62/03, the European Court of Justice found, inter alia, that the UK had not fully implemented Article 8 of the Waste Framework Directive in relation to occupiers of domestic property. If the relevant changes are not implemented in England, it could result in a further adverse judgment from the European Court of Justice, which in turn could result in significant penalties being imposed. Scotland has already made regulations to address this aspect of the Court’s judgment, and Wales and Northern Ireland will also be making legislative changes to address this aspect of the Court’s judgement.

7.2 These Regulations will help to ensure all waste is passed on to authorised persons. This should lead to better waste management and help to reduce illegal waste activity, such as fly-tipping. Early evidence from Flycapture, the new national database of reported fly-tipping incidents, indicates that approximately 55% of the incidents recorded, excluding white goods, are household waste.

7.3 The Regulations will also help uphold the “polluter pays” principle by making sure that the waste producer ensures their waste is passed on to authorised persons. Ensuring waste is dealt with by legitimate businesses could help reduce illegal waste management and fly-tipping, which has social benefits as it adds to the amenity value and liveability of an area.

## **8. Consultation and impact**

8.1 The Government has already consulted on changes to the duty of care including whether it should be applied to householders as part of the document, “Living Places: Powers, Rights and Responsibilities” in 2002. Consultation on the duty of care regime was also included in the Fly-Tipping Strategy in 2004 and the Clean Neighbourhoods consultation in 2004. Many local authorities and the Local Government Association were in favour of applying the duty of care to householders, since a large amount of illegally deposited waste is household waste and they believed that placing some sort of obligation or responsibility on householders would help to reduce levels of fly tipping.

8.2 The Regulatory Impact Assessment for this instrument is included at Annex 2.

## **9. Contact**

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## TRANSPOSITION NOTE

### Transposition of Council Directive 75/442/EEC by the Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005

1. This note concerns the transposition of Council Directive 75/442/EEC on waste<sup>1</sup> (the "Directive"). Specifically, this note is concerned with the transposition of the first limb of Article 8 of the Directive as respects an occupier of any domestic property in England in relation to the household waste produced on the property.
2. The first limb of Article 8 of the Directive requires Member States to take the necessary measures to ensure that any holder of waste has it handled by a private or public waste collector or by an undertaking which carries out the waste disposal or waste recovery operations listed in the Directive.
3. The first limb of Article 8 of the Directive is transposed in England and Wales by section 34(1) of the Environmental Protection Act 1990 (the "1990 Act"). Section 34(1) imposes a duty of care on any person who imports, produces, carries, treats or disposes of controlled waste or, as a broker, has control of such waste. (Controlled waste is defined in section 75(4) of the 1990 Act as household, industrial and commercial waste or any such waste.) One element of the duty of care is to require the persons who are subject to it to secure, on the transfer of the waste, that the transfer is only to an authorised person or to a person for authorised transport purposes. "Authorised person" and "authorised transport purposes" are defined in sections 34(3) and 34(4) of the 1990 Act respectively. In short, these constitute the private or public waste collectors or undertakings which carry out the waste disposal or waste recovery operations listed in the Directive, as referred to in the first limb of Article 8 of the Directive.
4. There is an exemption in section 34(2) of the 1990 Act which provides that the duty of care does not apply to an occupier of domestic property as respects the household waste produced on the property.
5. Regulation 2(2) of the Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005 inserts a new section 34(2A) into the 1990 Act. Section 34(2A) will impose a duty on the occupier of any domestic property in England to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes. Breach of this duty will be a criminal offence. The effect of this section will be to transpose the first limb of Article 8 so that it applies to an occupier of domestic property in England in relation to the household waste produced on the property.

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<sup>1</sup> O.J. No. L194, 25.7.1975, p. 39 (as amended by Council Directives 91/156/EEC (O.J. No. L78, 26.3.1991, p. 32), 91/692/EEC (O.J. No. L377, 31.12.1991, p. 48 (as corrected by Corrigendum, O.J. No. L146, 13.6.2003, p. 52)), Commission Decision 96/350/EC (O.J. No. L135, 6.6.1996, p. 32) and Regulation (EC) No. 1882/2003 (O.J. No. L284, 31.10.2003 p. 1))

# **INCLUDING HOUSEHOLDERS IN THE WASTE DUTY OF CARE**

## **Final Regulatory Impact Assessment**

### **1. Title of proposal**

Placing a duty of care on householders in England to ensure that any transfer by a householder of household waste produced on a domestic property is to the waste collection authority or to a legitimate private waste collector.

### **2. Purpose and intended effect**

- **Objective**

The objective of this proposal is to ensure that an occupier of a domestic property in England (i.e. a householder) takes all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.

The objective will be achieved by an amending statutory instrument, using the powers in section 2(2) of the European Communities Act 1972. Guidance is to be issued to the Environment Agency and local authorities on their respective responsibilities.

The aim of the amending statutory instrument which is the subject of this regulatory impact assessment is to impose obligations on householders which should lead to better management of waste and contribute to a reduction in levels of fly-tipping.

- **Background**

Article 8 of Council Directive 75/442/EEC on waste (the “Waste Framework Directive”) states that Member States shall take the necessary measures to ensure that any holder of waste:

- has it handled by a private or public waste collector or by an undertaking which carries out the waste disposal or waste recovery operations listed in the Directive, or
- recovers or disposes of it himself in accordance with the provisions of the Directive.

Section 34(1) of the Environmental Protection Act 1990 (EPA 1990) imposes a duty of care on any person who imports, produces, carries, treats or disposes of controlled waste or, as a broker, has control of such waste. The full duty of care requires persons dealing with controlled waste to ensure that the waste is managed properly and recovered or disposed of safely. In particular, it imposes a requirement to secure that, on the transfer of the waste, the transfer is only to someone who is authorised to receive it. However, by virtue of section 34(2) of the EPA 1990, no aspect of the duty of care currently applies to an occupier of domestic property as respects the household waste produced on the property.

Breach of the duty of care is an offence, with a penalty of up to the statutory maximum (£5000) on summary conviction or an unlimited fine on conviction on indictment.

## **Authorised Persons**

Under the Control of Pollution (Amendment) Act 1989, persons who carry waste as part of their business are required to be registered with the Environment Agency. The duty of care specifically identifies such registered waste carriers as one of the groups of persons to whom waste can lawfully be passed by a producer or other holder of waste.

Persons authorised to carry waste for the purposes of the duty of care also include:

- a waste collection authority;
- any person who is the holder of a waste management licence;
- any person that section 33(1) EPA 1990 doesn't apply to by virtue of the Waste Management Licensing Regulations 1994 issued under section 33(3);
- any person who is not required to be registered as a waste carrier;
- a waste disposal authority in Scotland.

Under the Environmental Protection (Duty of Care) Regulations 1991 (S.I. 1991/2839), parties transferring waste are required to complete and retain a "transfer note", containing a written description of that waste. Those who are subject to that requirement must keep the transfer notes for two years. However, these requirements will not apply to householders under the new duty described below.

The duty of care also requires waste to be transferred only for "authorised transport purposes", which are defined in sections 34(4) of the 1990 Act. In short, these constitute: the transfer of controlled waste between different places within the same premises; the transport of controlled waste into Great Britain from outside Great Britain; and the transport by air or sea of controlled waste from a place in Great Britain to a place outside Great Britain.

## **Duty on Occupiers of Domestic Property**

The new duty on the occupier of domestic property in England is to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste is only to an authorised person or to a person for authorised transport purposes. The new duty is to be imposed by inserting a new section 34(2A) into the EPA 1990.

A European Court of Justice ruling on 16 December 2004 (Case C-62/03) determined, inter alia, that the domestic legislation relating to household waste improperly excluded an occupier of a domestic property from obligations arising under Article 8 of the Waste Framework Directive. This RIA therefore compares the options for addressing this ruling.

- **Rationale for government intervention**

This amendment is needed to ensure the Government continues to comply with the obligations arising under Article 8 of the Waste Framework Directive. If the relevant changes are not implemented, it could result in a further adverse judgment from the European Court of Justice, which in turn could result in significant penalties being imposed by the Court.

The introduction of a new duty on householders will also help to tackle illegal waste activity, such as fly-tipping. Early evidence from Flycapture, the new national database of reported fly-tipping incidents, indicates that approximately 55% of the incidents recorded, excluding white goods, are household waste. 511,431 incidents of fly-tipping that involved household waste were dealt with by local authorities from April 2004 to March 2005. Anecdotal evidence suggests that levels of fly-tipping have increased in recent years and there are concerns that these may rise further in part due to a lack of accountability for household waste.

There are a variety of reasons why householders may be a significant group of fly-tippers:

- some householders miss the kerbside rubbish collection service or have a poor kerbside rubbish collection service, leading them to dump waste rather than keeping it stored until the next collection.
- some householders do not have any personal transport, and are unable to take their waste to the civic amenity site, and thus dump it.
- when the waste transfer or landfill sites are closed and householders can't get in, they may dump their waste at the front gate. This could be out of frustration at arriving too late, or because they believe (falsely) that the waste will be taken into the site the following day.

None of these are economic drivers, but these do exist for householders when it comes to disposing of large items. Local authorities vary in their policies, but in some areas householders may have to pay for bulky waste such as furniture to be collected. White goods are often charged separately as these items may contain hazardous gases, such as those in refrigerators and freezers. This can create the temptation for some people to fly-tip these items and avoid the charges.

Fly-tipping by householders could increase as a result of the charges imposed by councils for the collection of bulky household goods, or those that do not provide such a service. Problems with access to civic amenity sites for dumping waste could also contribute to increased levels of fly-tipping.

Defra has commissioned a comprehensive research project that will explore the incentives, causes and solutions for fly-tipping. The project will result in a good practice guide for practitioners in 2006.

In the absence of a specific duty of care provision for householders, the only legislation preventing householders from illegally depositing the household waste produced on their properties is section 33 of the EPA 1990.

### **3. Consultation**

- **Within government**

Collective Ministerial agreement was obtained to publish a proposal to extend the waste duty of care to include householders in the Defra consultation 'Living Places: Powers, Right and Responsibilities, 2002'.

An Interdepartmental Group on Fly-Tipping set up by the Cabinet Office in 2003 also looked at Defra's work to tackle fly-tipping, including the Fly-Tipping Strategy. The Group agreed that the large-scale criminal component of fly-tipping should be tackled

but outlined the need to address the local nuisance component (e.g. householders dumping furniture). Inter-departmental views were also sought on measures to tackle fly-tipping proposed through the Clean Neighbourhoods consultation in 2004.

- **Public consultation**

Defra's 'Living Places' consultation received overall support for putting householders under some duty of care to help prevent fly-tipping. It was felt that the option to put householders under the full duty of care was unworkable, expensive and would be too bureaucratic due to the requirements to retain documentation. Therefore this proposal has been amended so householders are not subject to the requirements to keep waste transfer notes.

Government also consulted on a range of specific measures to deal with illegal waste activity and fly-tipping in the Fly-Tipping Strategy consultation, which was published in February 2004. This included a question about improving the flexibility and enforcement of the waste duty of care. Of the 81 respondents to this question, 74 agreed that the duty of care should be more flexible. Of the 74 in agreement, some wanted the proposal further strengthened, and suggestions included extending the enforcement scope to cover householders.

Defra also consulted publicly on a further range of measures to deal with fly-tipping through the Clean Neighbourhoods consultation, which was a precursor to the Clean Neighbourhoods and Environment Act 2005. Responses to this consultation also supported more effort to improve the effectiveness of the waste duty of care regime.

#### **4. Options**

Three options have been considered:

**Option 1** – No change. Maintain the current drafting of section 34(2) of the EPA 1990, i.e. that the duty of care imposed by section 34(1) does not apply to an occupier of domestic property as respects the household waste produced on the property.

**Option 2** – Impose one aspect of the existing duty of care on householders by amending section 34 of the EPA 1990, so as to require an occupier of any domestic property to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste is only to an authorised person or to a person for authorised transport purposes. Failure to comply with the duty as set out in this option could attract a fine of up to the statutory maximum (£5,000) on summary conviction, and an unlimited fine on conviction on indictment.

**Option 3** – Amend section 34 of the EPA 1990 so that the full duty of care applied to an occupier of a domestic property, as respects household waste produced on the property. This would require householders to complete waste transfer notes for waste transactions, to make the notes available for inspection within seven days and to keep such notes for two years. Failure to comply with the duty as set out in this option could attract a fine of up to the statutory maximum (£5,000) on summary conviction, and an unlimited fine on conviction on indictment.

#### **Discussion**

**Option 1** would ignore the ruling of the European Court of Justice of 16 December 2004, and could result in a further adverse judgment from the European Court of Justice, which in turn could result in significant penalties being imposed by the Court. This is not an acceptable position given that Government policy is to respond to infraction proceedings by making necessary amendments to domestic legislation.

**Option 2** would require householders to ensure waste is passed on to authorised persons. This is in contrast to a more onerous system that would involve regular inspections and duties for the enforcement authorities. This measure should encourage householders to ensure that their household waste is responsibly managed. It would not be too onerous in that no formal retention of waste transfer notes would be required, and could be policed by the Environment Agency or local authorities acting on evidence that waste had been transferred to an unauthorised person.

**Option 3** would impose a significant burden on householders given that they would be required to complete waste transfer documentation for the transfer of all household waste produced on their properties. It could also result in significant additional costs on the Environment Agency or local authorities to monitor any breaches of such a wide duty, which could in turn lead to increased costs for the courts in hearing a larger number of prosecutions. Given that these requirements are more suited to businesses with comparably larger volumes of waste, the additional burdens of applying this option to households makes it undesirable.

Considering the cost-benefit analysis of the options, the most appropriate solution is considered to be option 2.

### **Definition of waste arisings**

The proposed measure would apply to all household waste which is produced by an occupier of domestic property on the property. Most of this waste is collected by the waste collection authority in the normal manner. Other household waste could include more bulky items or small amounts of waste which is hazardous. Examples of bulky and other waste arisings are given below:

- Garden waste – biodegradable vegetation, e.g. hedge trimmings, grass
- Garden waste – wood/timber, e.g. fencing, sheds, shrubs, felled trees
- Garden waste – hard landscaping, e.g. paving, tarmac, hardcore
- Hazardous waste – e.g. asbestos in older outbuildings/shelters
- Decorating waste – wall/floor coverings e.g. tiles, plaster, carpets, laminate
- Decorating waste – furniture e.g. cupboards, sofas, beds
- Decorating waste – sinks, basins, baths, boilers, cookers, washing machines
- Miscellaneous – bicycles, lawnmowers, vacuum cleaners

### **Definition of reasonable measures**

The new duty will require the householder to take all such measures as are available to him as are reasonable in the circumstances (referred to here as “reasonable measures”). Ultimate responsibility for determining whether “reasonable measures” have been taken by the householder to comply with his duty would be left to the courts to decide in any prosecution case.

For the purpose of defining a local enforcement policy, authorities should consider the approach to “reasonable measures” they will follow.

“Reasonable measures” could mean passing the waste on to the waste collection authority in the correct manner, or making sure that a delivery agent removed an old item when delivering a new one. The only requirement will be to take “reasonable measures” to secure that the household waste produced on the property was transferred to an authorised person, so there will not be a legal requirement on a householder to maintain the same records as under the full duty of care. Local authorities and the Environment Agency will be able to gather evidence to demonstrate whether reasonable measures have been taken and would base prosecution decisions on the availability of such evidence.

Government will publish guidance to the enforcing authorities on their responsibilities on dealing with the duty. This will be included in the wider review of the duty of care and waste carrier regimes.

## **5. Costs and benefits**

- **Sectors and groups affected**

This provision will affect occupiers of domestic properties. The proposed option should not lead to a significant increase in collection rates for waste collection authorities. It could also bring benefits for legitimate waste management businesses as householders will be required to make sure waste is passed on to authorised persons.

- **Benefits**

The proposed measure would help uphold the “polluter pays” principle by making sure that the waste producer ensures their waste passed on to authorised persons. It could also benefit the waste management industry and encourage waste carriers to offer services to householders. The measure would ensure that the UK complies with the requirements of the Waste Framework Directive and ensures that all householders have their waste handled by a private or public waste collector as required by the first limb of Article 8 of the Directive.

By requiring householders to take reasonable measures to make sure waste is passed on to authorised persons this measure should ensure waste is dealt with legitimately. This could help to protect the environment and human health. An effective duty of care system should ensure waste is not passed on to unauthorised waste collectors who are more likely to illegally dump waste to avoid waste disposal costs. This, coupled with an effective waste carrier registration regime monitored by the Environment Agency and local authorities, could help reduce the problem of fly-tipping.

Tackling illegal waste management and fly-tipping through an effective duty of care has social benefits as it would add to the amenity value and liveability of an area. The so-called ‘broken windows’ theory suggests that a small visible piece of damage to property, be it public or private, which is not quickly rectified, attracts more damage and other more serious crime<sup>1</sup>. This happens because not rectifying the original damage indicates to offenders that no-one cares about the area. This will then spread through the community until the whole area slips into decline. In the case of

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<sup>1</sup> Wilson, J. Q., & Kelling, G. (1982). Broken windows: The police and neighbourhood safety. *Atlantic Monthly, March*, 29-38.

fly-tipping, one black bag of waste that is not removed quickly will signal to others that such tipping in that location is tolerated, and thus more potential offenders will seize the opportunity to commit similar crime at or near that location.

Where a householder breaches his duty of care obligations, the Environment Agency and local authorities could take action against that householder, assuming that there was sufficient evidence against the householder. It should benefit local authorities in terms of reduced costs for clearing fly-tipping as quantities of illegally collected and dumped household waste should fall. The impact on society of dealing with fly-tipping has been highlighted as a significant burden, which is often passed back to householders through pressures on council tax. This measure could help to reduce some of the higher cost of clearance of fly-tipping and lead to more efficient waste services.

- **Costs**

The proposed measure is primarily aimed at ensuring the UK complies with the requirements of Article 8 of the Waste Framework Directive. However, it will also promote responsible household waste management so as to reduce levels of fly-tipping, to protect the environment and human health.

Economically, illegal waste activity and fly-tipping can also be very expensive for a community. For example:

- There is the direct cost of clearing away the tips. If on public land, the local authority is responsible, which means taxpayers' money is diverted away from other local public services to cover these costs, or local taxes are raised. If in private land, landowners may have to pay directly for the clear up
- the sight of a significant amount of fly-tipping in an area may discourage financial investment in the area,
- residential property values in a fly-tipped area are likely to decrease.

Fly-tipping also affects commercially-based waste disposal businesses, undermining their financial viability and weakening the waste disposal infrastructure.

The amended legislation would extend the scope of an existing duty to a new group in new circumstances i.e. to occupiers of domestic properties as regards the household waste produced on the property. However, it is difficult to provide details of the costs involved with such a measure, since investigation, enforcement and prosecution costs would depend on local authority and Environment Agency resources and the ability of the prosecuting authority to show that waste was not transferred in accordance with the duty. The duty of care was intended to be self-policing as waste producers would ensure waste carriers were registered and carriers would ensure the relevant documents were completed. There are no duties for local authorities or the Environment Agency to carry out regular inspections or take enforcement action. Government is keen to encourage the enforcement authorities to tighten the regulatory regimes in order to minimise the chance of waste being dealt with illegally.

This amendment should also be the incentive for local authorities or the Environment Agency to carry out successful prosecutions as a deterrent to other non-compliant households. Once a link has been established then court costs would also arise, which would vary according to whether the case was contested or not.

## **Local Authority Costs**

Any additional costs to local authorities must be weighed against the benefits of reduced fly-tipping recovery activity. Fly-tipping is a growing problem with Flycapture indicating that local authorities deal with around 85,000 incidents each month. These result in costs for local authorities estimated in the region of £44 million per annum for clearance alone. These data are likely to still be an underestimate as they are based on national averages and authorities are still improving their data collection for Flycapture returns. Early indications from Flycapture show that over 50% of reported fly-tipping is household waste. Clear up for household fly-tipping alone could therefore be as much as £25m per annum.

Waste collection authorities in England also submit data to Flycapture on the action taken to deal with fly-tipping. Although all authorities have not submitted data over the first year there has been an average of £2.5m spent on investigation of reported fly-tipping incidents. This will increase dramatically as authorities submit more complete data. An effective duty of care can help to lessen the impact of enforcement action by making all waste producers more aware of the most suitable methods of waste disposal.

## **Court Costs**

It is expected that this measure will have a minimal impact on the courts as few local authorities are likely to take householders to court. The limited number of businesses taken to court for duty of care offences and the cost of building a case against a householder will limit such actions.

Based on the number of business duty of care offences brought to court in 2002, it is estimated that there will be 100 court prosecutions of householders per year. Of these 80 might be contested cases and 20 uncontested. However, this will depend on the take up from local authorities and may fluctuate according to local priorities. Previously the duty of care has been a purely self-regulating regime as there have not been many prosecutions and there is no requirement for pro-active investigation or inspection.

However, based on typical court costs for duty of care offences, 100 cases at £328 per case equates to £32,800. However 25% may not pay the court-imposed fine and there would be legal aid costs of £344 per case incurred during non-payment cases. The total court costs per year are estimated to be £33,660.

## **6. Small Firms Impact Test**

No consultation with small businesses has been instigated as this measure is aimed specifically at dealing with waste produced by householders.

## **7. Competition assessment**

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The proposed measure would not have a significant impact on competition since it would apply to all householders, and not businesses located in domestic premises. There will be some variation between local authority areas in terms of whether the waste collection authority accepts oversize household waste by kerbside collection or at a civic amenity site and whether a charge is levied for the service.

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The measure should promote a general increase in legitimate waste disposal business as householders organise for bulky household waste to be collected by the waste collection authority or alternatively choose companies with the appropriate waste carrier registration. However, by requiring householders to take reasonable measures to ensure authorised waste treatment, higher costs might be incurred by householders as waste disposal businesses recover the cost of waste carrier registration and legitimate waste disposal costs from customers.

We do not anticipate that these impacts will have adverse consequences for competition in the waste management markets since costs would be proportionate to the volume of waste handled and would be applicable to all householders.

## **8. Enforcement, sanctions and monitoring**

The Environment Agency and waste collection authorities have powers to investigate the illegal disposal of waste and enforce the duty of care regime. It is envisaged that the Environment Agency and waste collection authorities will monitor the effectiveness of the legislation.

The Environment Agency has an Enforcement and Prosecution policy that sets out how it fulfils its aim to provide a better environment both for the present and for the future. The policy ensures that preventative or remedial action is taken to protect the environment or to secure compliance with a regulatory system. The Environment Agency believes in firm but fair regulation with the underlying principles of: proportionality; consistency; transparency and targeting of enforcement action.

Local authorities are also encouraged to take a strategic approach to dealing with illegal waste activity. It is important to make sure that enforcement is coupled with effective service provision and suitable awareness campaigns via education and publicity.

## **9. Implementation and delivery plan**

The measure will be implemented as soon as possible to ensure that the relevant controls are in place but further improvements including the possibility of fixed penalty notice powers will be included in Defra's delivery and implementation plans for the Clean Neighbourhoods and Environment Act 2005 and the Cleaner, Safer, Greener campaign. A further regulatory impact assessment will be completed for any proposed fixed penalty notice attached to this offence.

Defra is currently undergoing a comprehensive review of the duty of care and waste carrier regimes. This will include an exploration of measures to raise awareness of and compliance with the duty of care.

## **10. Post-implementation review**

This measure will be kept under review by careful analysis of the data collated through the Flycapture database. Flycapture can help local and central Government assess the impact of various policies on levels of fly-tipping throughout the UK. It also gathers information on the enforcement action taken by local authorities and the Environment Agency to deal with illegal waste issues.

## 11. Summary and recommendation

In summary, and after consideration of the cost-benefit analysis above, Government recommends the most appropriate solution is to impose one aspect of the duty of care on householders by amending section 34 of the EPA 1990 (Option 2) i.e. to impose a duty on an occupier of any domestic property in England to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.

The Environment Agency and waste collection authorities will be able to prosecute householders where there is clear evidence that they failed to comply with this duty.

Although there will be an additional cost to courts and local authorities, the measure should reduce fly-tipping and therefore produce cost savings from a reduction of clearance costs. These proposals will lead to an increase in general amenity and environmental quality for everyone. Some of the costs that the Environment Agency and local authorities currently spend on cleaning up fly-tipping incidents will be able to be saved as a result of the new duty.

### Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Short term impacts could mean that costs for disposing of waste legally would remain the same, although in time these costs could increase due to the burden of clearing fly-tipped waste.	If we decide to do nothing the UK could be fined by the European Court of Justice. France was recently ordered to pay a significant lump sum fine and recurring penalty payment
2	Collecting fly-tipping of household waste currently costs local authorities in England £25m p.a. An effective duty of care regime could lessen this burden of dealing with household waste fly-tipping significantly. Cost benefits could be achieved by focusing on prevention and enforcement rather than clearance.	There would be no duty on the authorities to enforce the extended duty of care. However, if action were to be taken there would be costs implications for the courts. Estimates suggest that they could be around £336,600 p.a. Costs for the courts could be lessened by the option of a fixed penalty notice option that is being considered. Local authorities may be able to retain the receipts for any penalties issued to cover administration costs.
3	Similar cost savings to those highlighted in Option 2 could be achieved by tackling fly-tipping and focusing on prevention and enforcement rather than clearance.	The impact on the public sector and members of the public will be significant if the full duty of care system is applied to householders. This would require documents to be retained for two years incurring

		a huge administrative burden. There would also be increased costs for enforcement authorities as they attempted to enforce the legislation.
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## 12. Declaration and publication

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Signed: Ben Bradshaw**

**Date: 17<sup>th</sup> October 2005**

Ben Bradshaw  
Minister for Local Environment, Marine and Animal Welfare,  
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