



BRIEFING PAPER

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Fly-tipping - the illegal dumping of waste

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Summary

What is fly tipping?

Fly-tipping is the illegal disposal of household, industrial, commercial or other 'controlled' waste. The waste can be liquid or solid. Fly-tipping is not the same as littering. More information on litter can be found in the [Library Briefing Paper on Litter](#).

How big is the problem?

The most recent Government [Fly-tipping statistics for England, 2018/19](#) show that:

- For the 2018/19 year, local authorities in England dealt with over 1 million (1,072,000) fly-tipping incidents, an increase of 8% from the 998,000 reported in 2017/18.
- Nearly two thirds (62%) of fly-tips involved household waste. Total incidents involving household waste increased by 2% from 2017/18.

Responsibility for fly tipping and powers to require clearance

- **Local authorities** are responsible for investigating, clearing and taking appropriate enforcement action in relation to small scale fly-tipping on public land.
- In England the **Environment Agency** is responsible for dealing with larger-scale fly-tipping (more than a lorry load), hazardous waste and fly-tipping by organised gangs.
- On private land, it is normally the responsibility of the **landowner** to remove the waste.

Local authorities and the Environment Agency have legal powers to require landowners to clear fly-tipped waste from their land. They also have powers to enter the land and clear it and may seek reimbursement for costs related to it.

Penalties for fly-tipping

Fly-tipping is a criminal offence punishable by a fine of up to £50,000 or 12 months imprisonment if convicted in a Magistrates' Court. The offence can attract an unlimited fine and up to 5 years imprisonment if convicted in a Crown Court. There are also a number of other possible penalties, including fixed penalty notices and having a vehicle seized. Householders can be fined up to £400 if they pass their waste to an unlicensed waste carrier which is subsequently fly-tipped.

Concern about costs to private landowners

Concern has been raised about the costs involved to private landowners of clearing fly tipped waste from their land and several campaigns have been launched calling for change in this area.

Government plans for reform

The Government's December 2018 [Resources and Waste Strategy](#) committed to publishing a web-based fly-tipping toolkit to help tackle the issue. There are also provisions in the [Environment Bill 2019-20](#) to enable the electronic tracking of waste.

Coronavirus

Some local councils have reported increased incidents of fly-tipping following reductions in refuse services due to Coronavirus-related restrictions. The Government has asked local authorities to maintain action on fly-tipping as a "high" priority.

Scope of this paper

Waste is a devolved issue. While this briefing paper focuses on England, it does provide links to further information in the devolved nations. Information on other UK countries can also be provided to Members and their staff on an enquiry by enquiry basis.

1. The problem of fly-tipping

1.1 What is fly-tipping?

Fly-tipping is the illegal disposal of household, industrial, commercial or other 'controlled' waste. The waste can be liquid or solid; controlled waste includes garden refuse and larger domestic items such as fridges and mattresses.

Fly-tipping is a criminal offence pursuant to [section 33 of the Environmental Protection Act 1990](#):

a person shall not... deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence.

There is also an associated offence relating to the unlawful deposit of waste from a motor vehicle whereby the person who controls or is in a position to control the vehicle shall be treated as knowingly causing the waste to be deposited whether or not he or she gave any instructions for this to be done.¹

Fly-tipping is not the same as littering. More information on litter can be found in the [Library Briefing Paper on Litter: key trends, policy and legislation in England](#).

Fly-tipping is the illegal disposal of waste without a waste management licence. It is a criminal offence.

1.2 What are the impacts of fly-tipping?

The Department for Environment, Food and Rural Affairs (Defra) stresses the range of impacts of fly-tipping:

Fly tipping is a significant blight on local environments; a source of pollution; a potential danger to public health and hazard to wildlife. It also undermines legitimate waste businesses where unscrupulous operators undercut those operating within the law.²

In 2016, the Parliamentary Under-Secretary of State Communities and Local Government (Mr Marcus Jones) described both litter and fly-tipping as:

antisocial environmental crimes that pose risks to human health and animal welfare, spoil relationships between neighbours and their wider community, and affect the way people feel about the place that they call home.³

The Government currently only measures the cost of clearing larger scale fly tipping incidents, described as "tipper lorry load size or larger". In 2018/19, 36,000 or 3% of total incidents were of 'tipper lorry load' size or larger, which is similar to 2017/18. For these large fly-tipping incidents, the cost of clearance to local authorities in England in 2018/19 was £12.9 million, compared with £12.2 million in 2017/18.⁴

¹ Section 33(5), [Environmental Protection Act 1990 \(as amended\)](#).

² Defra, [Fly-tipping statistics for England, 2013 to 2014](#), last updated 4 February 2015 [accessed 14 September 2015]

³ HC Deb 15 February 2016: [Column 187WH](#)

⁴ HM Government, [Fly-tipping statistics for England, 2018/19](#), 7 Nov 2019, p1

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The National Fly-Tipping Prevention Group (to which Defra provides the secretariat), estimates fly-tipping costs between £86m-£186 million every year to investigate and clear up. This cost falls on taxpayers and private landowners.⁵

A November 2018 Government-commissioned *Independent review into serious and organised crime in the waste sector* set out how organised fly-tipping can accumulate into serious crime with significant clean-up costs:

Organised fly-tipping can accumulate into serious crime. Criminals advertise 'waste clearing services' to local households and businesses, but the waste they are paid to remove is dumped at illegal sites, which are usually situated on public or private land and accessed using force, threats, intimidation and violence. It can cost anywhere from £10,000 to £500,000 to clear a single site, and criminals often return once a site has been cleared, repeating the cycle.⁶

1.3 Why is there a problem?

The [National Fly-Tipping Prevention Group \(NFTPG\)](#) notes that the causes of fly-tipping are many and varied, including:

- financial gain or saving by the perpetrator;
- a lack of waste disposal facilities or access to them; and
- laziness and an attitude that someone else will clear up the waste.⁷

In its Litter Strategy for England (April 2017) the Government pointed to a number of reasons why fly-tipping occurs:

... including wanting to avoid the cost of proper waste disposal and the perceived limited availability of legal sites to dispose of material. Unlike littering, fly-tipping often also entails the deliberate transport of the waste to the place where it is dumped. Businesses caught fly-tipping have cited the reason for doing so as including lack of funds to pay legitimate waste disposal charges.⁸

The House of Commons Communities and Local Government Committee highlighted some of the evidence it had received to explain an increase in fly-tipping cases in its March 2015 Report on [Litter and Fly-tipping in England](#). The Government considered that the increase could have, in part, been because of more incidents being reported by local authorities due to a new online reporting facilities; whereas witnesses representing local councils and landowners pointed to the introduction of charges for collection of household items and garden waste by waste collection authorities.⁹

⁵ NFTPG website, [About fly-tipping](#) [accessed 18 June 2019]

⁶ [Independent review into serious and organised crime in the waste sector](#), November 2018, p18

⁷ NFTPG website, [About fly-tipping](#) [accessed 18 June 2019]

⁸ HM Government, [Litter Strategy for England](#), April 2017

⁹ House of Commons Communities and Local Government Committee, [Litter and fly-tipping in England](#), Seventh Report of Session 2014-15, HC 607, 14 March 2015, para 20

A Westminster Hall debate in February 2016 on the Communities and Local Government Committee's Report on Litter and Fly-tipping in England further discussed the problems and causes of fly-tipping. Conservative MP Bob Blackman focused on educating people in how to dispose of rubbish and highlighted the requirement to pay for some waste removal as a possible cause of fly-tipping:

It could be one sheet that goes out when someone registers to vote, saying, "Here's advice on how you dispose of your rubbish." At a stroke, we would remove quite a few of the problems that occur with fly-tipping. From what I can see, a lot of fly-tipping is a consequence of people not getting their domestic waste collected.

...

One problem with the charge is that those people will say, "Actually, I'm not prepared to pay for a service that I think should be provided by the local authority free of charge"—and has been, by the way, for a number of years—"so I'll find another way of disposing of it." Fly-tipping will become more prevalent as a result.¹⁰

Labour MP Liz McInnes highlighted cuts to local government funding as an influencing factor:

Unfortunately, cuts to local government funding are forcing many councils to make savings by closing municipal tips, which could increase fly-tipping. The closure of the local tip in Heywood in my constituency led to great concern among residents, many of whom contacted me to share their worries that such action would exacerbate the growing problem of fly-tipping.¹¹

The then Parliamentary Under-Secretary of State Communities and Local Government (Mr Marcus Jones) noted in his response that:

The Government are committed to localism and the transfer of power to local communities to deal with litter and fly-tipping problems, which require a local approach tailored to the characteristics of the area and the community in which the problems occur. Like the rest of the public sector, local authorities have worked hard over the last five years, but they still need to be thinking innovatively about how they can make litter and fly-tipping-related savings while protecting existing street cleansing services and standards.¹²

1.4 What has the Government done to tackle fly-tipping?

The Government's April 2017 [Litter Strategy for England](#) set out some of the measures taken in recent years to help tackle fly tipping and other waste crime:

1. Introducing fixed penalty notices for small-scale fly-tipping offences
2. Introducing the power to seize vehicles used for fly-tipping

¹⁰ HC Deb 25 Feb 2016, [Col 179WH](#)

¹¹ HC Deb 25 Feb 2016, [Col 185WH](#)

¹² HC Deb 15 February 2016: [Column 187WH](#)

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3. Enhancing the Environment Agency's powers to deal with illegal activity at waste sites
4. Planning a further consultation to strengthen the waste permitting regime and to reform the waste exemptions regime which can be used to hide waste crime
5. Giving extra funding to the Environment Agency (around £30m over 6 years) to tackle waste crime and the causes of waste crime
6. Developing new sentencing guidelines to provide tougher sentences for environmental crimes, including fly-tipping and other waste crimes
7. Producing guidance for local authorities on their responsibilities where fly-tipping is concerned
8. Guidance from WRAP on managing bring sites properly to reduce the incidences of flytipping
9. Chairing and supporting the National Fly-Tipping Prevention Group (NFTPG).¹³

In response to a PQ in May 2018 the Government set out some further actions to tackle fly-tipping:

Illegal dumping of waste is a serious crime which damages the environment and causes misery to local communities. The government is committed to bearing down on the perpetrators and tackling all forms of waste crime is a government priority. We ensure that the Environment Agency (EA) and local authorities (LAs) have the necessary powers to tackle crime effectively across the waste sector. We brought in regulations earlier in the year to give the EA two additional powers to tackle problem waste sites. This enables the EA to restrict access to a waste site by locking the gates or barring access, and requiring all the waste to be removed from a site, not just the illegally deposited waste.

We have also recently given LAs the power to issue £400 fixed penalty notices for fly-tipping offences and have enhanced the powers available to LAs and the EA, such as the ability to search and seize the vehicles of suspected waste criminals.

Earlier this year we published our consultation on proposals to introduce a new fixed penalty for householders who pass their waste to a fly-tipper. We also intend to provide updated guidance for householders about how to ensure their waste is disposed of correctly. We are currently analysing consultation responses. Subject to the outcome of the consultation, we will seek to implement the changes later this year. As two thirds of fly-tipping is household waste, these additional measures will help tackle fly-tipping.

We have also committed £30million in additional funding to the EA for waste crime enforcement until March 2022. This means that since 2014, an additional £60million in funding has been committed to the EA.

With effect from April this year HMRC have introduced two changes to the Landfill Tax regime. These changes will further help tackle illegal dumping by making the disposal of waste less profitable.¹⁴

¹³ HM Government, [Litter Strategy for England](#), April 2017, p52

¹⁴ [Fly-tipping: Written question - HL7746](#), answered 22 May 2018

A further update was provided in March 2020, in response to a PQ:

In 2018, Defra commissioned a review into serious and organised criminality in the waste sector. This considered the operation of organised criminal gangs in the waste industry, including in relation to illegal dumping and fly-tipping. The recommendations of this review were included within our Resources and Waste Strategy (RWS), published in December 2018, which set out an ambitious package of commitments to modernise the way waste is regulated, in order to prevent, detect, and deter waste crime, including fly-tipping. In recent years, we have bolstered local authorities' powers to tackle fly-tipping and we committed to further reforms in the RWS.

We are taking forward the commitment in the RWS to develop proposals for the reform of the waste carrier, broker, and dealer regime. We are working with industry and the regulator and we intend to consult later this year. At the same time, we intend to consult on the introduction of mandatory electronic waste tracking. This will reduce the ability of waste criminals to hide evidence of the systematic mishandling of waste and make it easier for enforcement authorities to identify material dropping out of the system, and therefore make it easier to protect against fly-tipping.

The Environment Bill provides a significant step forward in delivering a number of the commitments set out in the RWS. The provisions in the Environment Bill will work to ensure waste criminals, such as illegitimate waste operators reliant on fly-tipping for income, are held accountable for their actions.

Defra has previously worked with the Sentencing Council to amend sentencing guidance for fly-tipping offences and will continue this work to help to secure tougher penalties in line with the Government's manifesto commitment.

As well as legislative changes, Defra is developing a fly-tipping toolkit, following a commitment in the RWS. The toolkit will be a web-based tool to help local authorities and others work in partnership to tackle fly-tipping. It will cover, for example, the use of new technology to report fly-tipping, the presentation of cases to court, the sharing of intelligence within and between partnerships and promoting the duty of care to individuals and businesses.¹⁵

A new Joint Unit for Waste Crime (JUWC) was launched by the Government in January 2020. It brings together the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency, HMRC, the National Crime Agency and the police in a "concerted nationwide effort to tackle an illicit industry which costs the UK economy at least £600 million every year."¹⁶

In the Budget 2020 the Government announced £2 million to improve evidence on where fly-tipping happens and the best ways to deter it.¹⁷

¹⁵ [Fly-tipping: Written question - HL1770](#), answered on 6 March 2020

¹⁶ Defra in the Media Blog, [Introduction of Agriculture Bill, the launch of the Joint Unit on Waste Crime and calls for greater protection for our ocean](#), 16 January 2020

¹⁷ HM Treasury, [Budget 2020](#), 11 March 2020, p64

2. What is the scale of the problem?

2.1 Fly-tipping data

Fly-tipping is likely to have increased through the 1990s to mid-2000s,¹⁸ although it was not until the creation of the Flycapture database in 2004 that more reliable statistics have been available. Defra, the Welsh Assembly, local authorities and the Environment Agency collaborated on establishing the Flycapture database, which recorded the number, size, waste and location type of fly-tips on public land recorded each month in each local authority area. It aimed to build evidence in order to inform policy making and to help local authorities to tackle the problem.

The Flycapture database has now closed and fly-tipping incidents are recorded on [WasteDataFlow](#), which is a web-based system for municipal waste data reporting by UK local authorities to government.

National statistics are published by each government website for England, Wales, Scotland and Northern Ireland. Information on a local authority level can be downloaded by the general public once it has been validated by the WasteDataFlow team. This requires [registration via the website](#) to access the data.

The data does not reflect fly-tipping on private land (see Section 4.5 below).

2.2 Fly-tipping trends

Overview and scale of fly tipping

The most recent Department for Environment, Food and Rural Affairs (Defra) statistics, [Fly-tipping statistics for England, 2018/19](#), dated 7 November 2019, show that:

- For the 2018/19 year, local authorities **in England** dealt with over **1 million (1,072,000) fly-tipping incidents, an increase of 8%** from the 998,000 reported in 2017/18.
- **Nearly two thirds** (62%) of fly-tips involved **household waste**. Total incidents involving household waste **increased by 2%** from 2017/18.
- Consistent with previous years, the **most common place** for fly-tipping to occur was on **highways (pavements and roads)**, which accounted for **almost half (46%)** of total incidents in 2018/19. The number of highway incidents has **increased by 6%** from 2017/18.
- As in the last few years, the **most common size category** for fly-tipping incidents in 2018/19 was equivalent to a **'small van load'** (33% of total incidents), followed by the equivalent of a **'car boot or less'** (30%).
- In 2018/19, 36,000 or 3% of total incidents were of 'tipper lorry load' size or larger, which is similar to 2017/18. For

¹⁸ Defra, [Fly-tipping Strategy](#), February 2004

these **large fly-tipping incidents**, the cost of clearance to local authorities in England in 2018/19 was **£12.9 million**, compared with £12.2 million in 2017/18.

- Local authorities carried out **499,000 enforcement actions** in 2018/19, an **increase of 5,000 actions (1%)** from 2017/18.
- The number of **fixed penalty notices** issued has continued to increase, **up 11% to 76,000** in 2018/19. This is the second most common action (after investigations), and accounted for **15%** of all actions in 2018/19.
- For 2018/19, **12,000 (16%)** of fixed penalty notices were issued specifically for small scale fly-tipping, **37,000 (48%)** in relation to littering and **26,000 (35%)** in relation to other offences.
- The number of fines issued **increased by 6% to 2,052** in 2018/19, with the value of total fines **increasing to £1,090,000 (an increase of 29%** on the £843,000 total value of fines in 2017/18).¹⁹

Defra cautions that these statistics are based on fly-tipping incidents reported by local authorities in England and exclude the majority of private-land incidents. Local authorities gather their data from a number of different sources, and data can often be collected and reported by separate teams, which may lead to discrepancies and some uncertainty.²⁰

Figure 1.1 from the Defra statistics (reproduced below), shows the trends in the number of overall fly-tipping incidents dealt with by local authorities in England since 2007/08. Incidents of fly-tipping had showed steady decline from 2007/08 until 2013/14, when there was an increase to 858,000 incidents. Since then, the number of fly-tipping incidents has increased year-on-year. In 2018/19 there were 1,072,000 incidents reported, which was an increase of 8% from the previous year.²¹ The statistical release cautions that:

Many local authorities have changed the way they capture and report fly-tips over the past few years, so the changes over time should be interpreted with some care. Defra is also aware that the definitions used to describe fly-tips in the guidance are interpreted broadly by local authorities. Incidents involving the Environment Agency or cleared by private landowners are not included in this Notice.²²

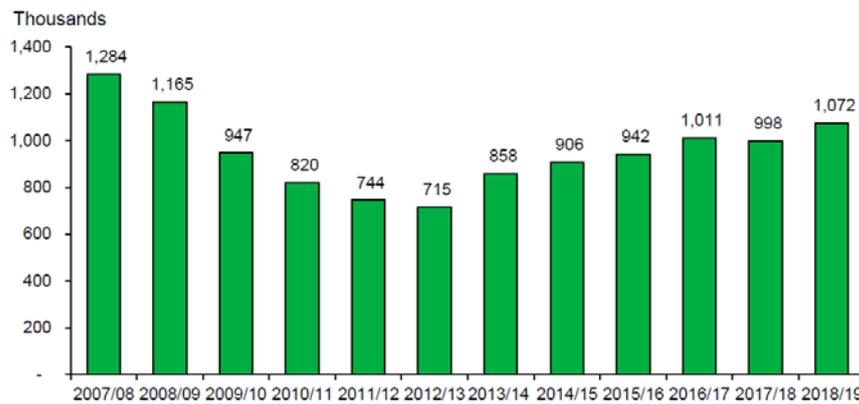
¹⁹ HM Government, [Fly-tipping statistics for England, 2018/19](#), 7 Nov 2019, p1-2

²⁰ HM Government, [Fly-tipping statistics for England, 2018/19](#), 7 Nov 2019, p2

²¹ HM Government, [Fly-tipping statistics for England, 2018/19](#), 7 Nov 2019, p3

²² HM Government, [Fly-tipping statistics for England, 2018/19](#), 7 Nov 2019, p3

Figure 1.1. Trends in the total number of fly-tipping incidents in England, 2007/08 to 2018/19



Source: Defra, [Fly-tipping statistics for England, 2018/19](#), 7 November 2019, figure 1.1

Enforcement actions

There were 499,000 enforcement actions carried out in England in 2018/19, a 1% increase (of 5,000 actions) since 2017/18,²³ (note that multiple actions can sometimes be carried out on one single incident). Enforcement actions include investigations, warning letters, inspections, fixed penalty notices and statutory notices.

The number of prosecution actions also increased from 2,243 in 2017/18 to 2,397 in 2018/19. Costs of prosecution actions also increased, by 18% from £847,000 in 2017/18 to £1,002,000 in 2018/19. Over 96% of prosecutions resulted in conviction in 2018/19, just slightly lower than the average rate of around 98% in the previous five years.²⁴

Devolved Administrations

For fly-tipping statistics in the devolved administrations see:

- **Wales:** StatsWales, [Fly-tipping](#);
- **Scotland:** There is no standalone specific fly-tipping statistical publication. Several [information request and responses](#) under the *Environmental Information (Scotland) Regulations 2004* have provided statistics for Scotland. See in particular:
 - [FOI/19/00885](#), 12 April 2019;
 - [FOI/18/00784](#), 28 March 2018; and
 - [FOI/18/00357](#), 6 March 2018.
- **Northern Ireland:** Statistics can be found in the Department of Agriculture, Environment and Rural Affairs press release, [NIEA \[Northern Ireland Environment Agency\] reveals illegal fly-tipping costs](#), 31 May 2018.

²³ HM Government, [Fly-tipping statistics for England, 2018/19](#), 7 Nov 2019, p8

²⁴ HM Government, [Fly-tipping statistics for England, 2018/19](#), 7 Nov 2019, p8

3. What are the penalties for fly-tipping?

3.1 Current penalties

The penalties for fly-tipping set out in the *Environmental Protection Act 1990* were increased through amendments made by the *Clean Neighbourhoods and Environment Act 2005*. It is now a criminal offence and is punishable by a fine of up to £50,000 or 12 months imprisonment if convicted in a Magistrates' Court. The offence can attract an unlimited fine and up to 5 years imprisonment if convicted in a Crown Court. In addition to fines, those found guilty of fly-tipping may also have to pay legal costs and compensation, which can greatly increase the financial implications of illegal dumping.

From July 2014, new [sentencing guidelines](#) produced by the Sentencing Council for England and Wales have also increased potential fines for serious environmental offences, including fly-tipping.²⁵

In addition, under the [Proceeds of Crime Act 2002](#), offenders can have assets frozen and confiscated.

There are also a range of other possible penalties including:

- **Fixed penalty notices:** From 9 May 2016, local authorities in England can issue fixed penalty notices of between £150 to £400 for small-scale fly-tipping offences pursuant to the [Unauthorised Deposit of Waste \(Fixed Penalties\) Regulations 2016](#). This may be served as a criminal penalty in lieu of prosecution for a criminal offence. It is not a civil penalty.
- In Wales, from 25 October 2017 the [Unauthorised Deposit of Waste \(Fixed Penalties\) \(Wales\) Regulations 2017](#) (SI 2017/1024) introduced powers for local authorities to issue fixed penalty notices of between £150 to £400 for fly-tipping waste offences in breach of section 33(1)(a) of the [Environmental Protection Act 1990](#), as amended.
- In Scotland, fixed penalty notices can be used for any fly-tipping incidents under section 33A of the [Environmental Protection Act 1990 \(as amended\)](#).
- **Seizing property:** the [Control of Waste \(Dealing with Seized Property\) \(England and Wales\) Regulations 2015](#) came into force on 6 April 2015 and apply in England and Wales. These regulations establish the procedures which a waste collection authority (most local authorities), the Environment Agency and Natural Resources Wales must follow once they have seized a vehicle and/or its contents because of suspected involvement concerning the transport or disposal of waste (such as fly-

²⁵ Sentencing Council, [New sentencing guideline for environmental crimes brings higher sentences for serious offenders](#), 26 February 2014 [accessed 15 September 2015]

tipping).²⁶ The power to actually seize a vehicle and its contents stems from section 5 of the *Control of Pollution (Amendment) Act 1989*, as amended.

Householder waste duty of care fixed penalty notices

Box 1: Waste duty of care

Section 34 of the Environmental Protection Act 1990 imposes a duty of care on anyone who imports, produces, carries, keeps, treats, disposes of, (or is a dealer or broker that has control of), “controlled waste”. The term “controlled waste” covers household, industrial and commercial waste. Waste is any substance or object that the holder discards, intends to discard or is required to discard. This statutory provision is accompanied by a [Waste Duty of Care Code of Practice](#), published jointly by the UK and Welsh Governments, November 2018. Further information about the householder waste duty of care responsibilities is set out section 4.1 of this paper.

Two-thirds of fly-tipped waste originates from household waste.²⁷ In this context, the Government had concerns about the situation where householders allow an unauthorised person to take their waste away, and where the waste in question is then illegally fly-tipped. The Government consulted in January 2018 on reform in this area.²⁸ It sought views on introducing a Fixed Penalty Notice (FPN) for household Waste Duty of Care offences for fly-tipping, where a householder had not checked that they were disposing of their waste with an authorised waste carrier.

Following this consultation process regulations were made in England and Wales. This now means that householders have a duty of care to check that anyone they use to take away and dispose of their domestic waste is registered. The regulations introduced new provision into the *Environmental Protection Act 1990* for England and Wales as follows:

In **England** the [Environmental Protection \(Miscellaneous Amendments\) \(England and Wales\) Regulations 2018](#) (SI 1227), provided that from 7 January 2019 the Environment Agency or local authorities can impose an FPN for a breach of the household waste duty of care in England. The fixed penalty is as follows:

- (7) The fixed penalty payable to an enforcement authority under this section is—
 - (a) the amount specified by the authority in respect of the offence; or
 - (b) if no amount is specified by the authority, £200.
- (8) The amount specified by an authority in respect of the offence under subsection (7)(a) must not be less than £150 or more than £400.²⁹

²⁶ The powers for seizure arise under either section 5 of the Control of Pollution (Amendment) Act 1989 or section 34B of the Environmental Protection Act 1990.

²⁷ HM Government, [proposals to tackle crime and poor performance in the waste sector & introduce a new fixed penalty for the waste duty of care](#), January 2018, p69

²⁸ HM Government, [proposals to tackle crime and poor performance in the waste sector & introduce a new fixed penalty for the waste duty of care](#), January 2018

²⁹ Section 34ZA(7) and (8) *Environmental Protection Act 1990*, as amended

In **Wales** the [Household Waste Duty of Care \(Fixed Penalties\) \(Wales\) Regulations 2019](#) (SI 331) provided that, from 21 February 2019, enforcement authorities can impose an FPN for breach of the household waste duty of care in Wales. The fixed penalty is as follows:

- (7) The fixed penalty payable to an enforcement authority under this section is £300.³⁰

³⁰ Section 34ZB(7) *Environmental Protection Act 1990*, as amended

4. Responsibilities and powers

4.1 Government and Devolved Administrations

In England, policy lead for fly-tipping sits with Defra. Defra's online guidance on [Local environmental quality](#) set out the various roles and responsibilities of local authorities and the Environment Agency in dealing with fly-tipping. A local council's responsibilities to keep land clear (including from fly-tipping) are also set out in Defra's guidance on [Litter and refuse: council responsibilities to keep land clear](#), updated July 2018 and in [Fly-tipping: council responsibilities](#), updated July 2019.

In Wales, the Welsh Government has published [A fly-tipping free Wales – Our strategy for tackling fly-tipping](#). This provides more information about fly-tipping statistics in Wales as well as how fly-tipping is being tackled in Wales.

In Scotland, the [Scottish Environment Protection Agency website](#) provides more information on how fly-tipping is controlled in Scotland and how to report fly-tipping. The Zero Waste Scotland [Dumb Dumpers website](#) has information about how to report fly-tipping.

In Northern Ireland, the [NI Direct website](#) provides more information on fly-tipping, including what to do and how to report fly-tipping.

Defra set up the National Fly-Tipping Prevention Group (NFTPG) to bring private landowners together with central Government, local authorities, agencies in the devolved nations and the police. It shares information, practice and solutions across the UK. The [NFTPG website](#) provides guidance for landowners, businesses and individuals and includes the [Fly-tipping Partnership Framework](#) which sets out a range of principles and best practice covering the prevention, reporting and investigation of fly-tipping and the clearance of fly-tipped waste.

4.2 Waste duty of care

As set out in Box 1 of this paper, section 34 of the *Environmental Protection Act 1990* imposes a duty of care on anyone who imports, produces, carries, keeps, treats, disposes of, (or is a dealer or broker that has control of), "controlled waste". This statutory provision is accompanied by a [Waste Duty of Care Code of Practice](#), published jointly by the UK and Welsh Governments, November 2018.

In respect of householder waste, the Code of Practice states:

As an occupier of a domestic property, you have a duty to take all reasonable measures available to you to ensure you only transfer household waste produced on your property to an authorised person.

(...)

5.4 What reasonable measures should you take when a private business takes your waste?

If you engage a private business (e.g. skip hire, house clearance) to take away your waste rather than the local authority, in order to meet your duty of care you should check that they are an authorised carrier with up to date and valid upper tier registration. This includes a business which approaches you and offers to take your waste. Each carrier should have a registration number starting CBDU, followed by a set of numbers.

In England you can check whether a waste carrier is registered on the [Environment Agency's online public register](#) of waste carriers, brokers and dealers using their registration number, business name, or postcode or call 03708 506 506. The site can also be used to find registered carriers near you.

In Wales you can check on the [Natural Resources Wales public register](#) of carriers, brokers and dealers or call 0300 065 3000.³¹

A householder will need to demonstrate that they have met the waste duty of care if their waste is subsequently fly-tipped and investigated by the local authority. The guidance summarises the penalties for failure to meet the duty of care:

5.7 What happens if you do not meet your duty of care?

It is a criminal offence if you do not take all reasonable measures available to you to meet your duty of care. You could face prosecution and, on conviction, a fine and criminal record.

You may be given a fixed penalty notice for breaching the duty of care. While there is no obligation to pay this, if you choose to do so within the specified period, you cannot be prosecuted for the offence.

You may also provide evidence to the authority at any time that prosecution is not appropriate, either by demonstrating you met your duty of care, or that prosecution is not proportionate. It is at the authority's discretion whether to proceed to prosecute.³²

The Government has issued guidance for local authorities on issuing waste duty of care fixed penalty notices: [Guidance for local authorities on household waste duty of care fixed penalty notices](#), 11 December 2018.

4.3 Local authority responsibility

Local authorities are responsible for dealing with investigating, clearing and taking appropriate enforcement action in relation to smaller scale fly-tipping on public land (including public roads and highways within their responsibility).

For further information see GOV.UK guidance, [Fly-tipping: council responsibilities](#), updated July 2019 and the NFTP guide, [Fly-tipping responsibilities: Guide for local authorities and land managers](#).

4.4 The Environment Agency's responsibility

The Environment Agency is responsible for dealing with larger scale fly-tips on public land involving more than a lorry load of waste, hazardous

Local authorities are responsible for small scale fly-tipped waste on public land.

The Environment Agency is responsible for larger scale fly-tipped waste on public land.

³¹ HM Government, [Waste Duty of Care Code of Practice](#), November 2018, p14-15

³² HM Government, [Waste Duty of Care Code of Practice](#), November 2018, p16

waste and fly-tipping by organised gangs. GOV.UK guidance sets out when someone should contact the Environment Agency:

... you need to contact the Environment Agency if the illegally dumped waste is:

- more than 20 tonnes (about 20 cubic metres)
- more than 5 cubic metres of fibrous asbestos or 75 litres of potentially hazardous waste in drums or containers
- possibly linked to criminal business activity or organised crime.³³

4.5 Private landowner responsibility

Fly-tipping on private land is thought to be a major problem, although there is very little data available.

On private land it is the responsibility of the landowner to remove fly-tipped waste and dispose of it legally. Landowners should ensure that they use an [authorised waste carrier](#) to remove the fly-tipped waste. For further information see GOV.UK guidance, [Fly-tipping on private land: landowner responsibilities](#), updated July 2019. This guidance sets out the limited circumstances in which the Environment Agency will remove the waste:

It is the responsibility of the landowner to remove fly-tipped waste from private land and dispose of it legally.

When the Environment Agency may clear waste

The Environment Agency has no duty to clear waste. It will only consider clearing waste in limited circumstances, for example if there's an immediate and significant risk of harm to the environment or human health.³⁴

The NFTP Group has published a guide for landowners: [Tackling Fly-tipping: A guide for landowners and land managers](#). If the fly-tipper is caught and prosecuted, it may be possible for a landowner to reclaim the costs involved.³⁵

In October 2009, Defra explained why it is the responsibility of landowners to deal with fly-tipped waste on their land:

Neither the local authority nor the Environment Agency is under any legal obligation to remove the waste. Placing a duty on the authorities to remove all waste from private land would simply encourage illegal dumping rather than tackle the problem. People would not pay the costs of legitimate disposal if they knew they could fly-tip it in the nearest field and the local tax payer would foot the clearance bill.³⁶

While private landowners are responsible for dealing with waste dumped on their land, in certain cases the authorities may help landowners deal with a fly-tipping incident, although they are not required to do so.³⁷ In relation to the interaction between private

³³ GOV.UK guidance, [Fly-tipping: council responsibilities](#), July 2019

³⁴ GOV.UK guidance, [Fly-tipping on private land: landowner responsibilities](#), July 2019

³⁵ National Fly-tipping Prevention Group, [Tackling Fly-tipping: A guide for landowners and land managers](#), April 2006 [accessed 15 September 2015]

³⁶ Defra, [Flycapture fly-tipping national database background](#), 1 October 2009

³⁷ National Fly-tipping Prevention Group, [Tackling Fly-tipping: A guide for landowners and land managers](#), April 2006 [accessed 15 September 2015]

landowners and local authorities, the [Fly-tipping Partnership Framework](#) highlights that:

...some local authorities are very helpful in their dealings with private landowners (providing advice and investigation incidents); some remove fly-tipped material for a reasonable charge; other local authorities are less engaged.³⁸

Calls for change

Concern has been raised about the costs involved to private landowners of clearing fly tipped waste from their land. For example, the NFU (National Farmers' Union) has called for a change in the law so that private land owners are not solely responsible for the cost of clearing it.³⁹ The NFU is also collating data on the extent of the fly-tipping problem on members' land.⁴⁰

The CLA (Country Land & Business Association) has published a "5 point plan" on [tackling the blight on fly tipping](#). This stated that "almost two thirds of farmers and landowners are affected each year, with some targeted multiple times each month."⁴¹ The CLA's briefing made several proposals for reform, including, a removal of the landowner liability to clear up waste on private land and introducing a new scheme to allow any private landowner who did not cause or knowingly permit the fly-tipping to dispose of it at a waste disposal site free of charge.⁴²

In April 2017 Farmers Weekly launched a campaign to tackle the illegal dumping of rubbish on farms with the strapline "Stop the Blot: Fly-tipping is ruining our countryside". For further information see Farmers Weekly article, [Farmers Weekly launches Stop the Blot fly-tipping campaign](#), 7 April 2017.

A later article from Farmers Weekly in December 2017 reported a letter received from Government in response to the campaign which indicated that there would not be a change in the law in relation to responsibilities of private landowners:

But responding to the CLA in a letter, Ms Coffey said she saw no reason to change the legislation.

"Landowners are currently responsible for dealing with waste that is dumped on their land and enabling fly-tipped waste to be disposed of free of charge would not provide the right incentive to secure land against fly-tipping," she wrote.

Defra believes that placing an obligation on local authorities to remove illegal waste from private land would encourage illegal dumping rather than tackle the problem.

Cost recovery

³⁸ National Fly-Tipping Prevention Group, [Fly-tipping Partnership Framework](#), April 2014, p5

³⁹ National Farmers' Union, [Fly-tipping scourge of the countryside](#), 2 March 2017

⁴⁰ For further information see NFU website, [Fly-tipping on your land?](#) [Downloaded on 27 March 2018]

⁴¹ CLA, ["5 point plan" on tackling the blight on fly tipping](#) [downloaded on 27 March 2018]

⁴² CLA, ["5 point plan" on tackling the blight on fly tipping](#) [downloaded on 27 March 2018]

19 Fly-tipping - the illegal dumping of waste

Ms Coffey said Defra expected all local authorities to investigate fly-tipping incidents on private land. Councils should work with landowners to prosecute the fly-tipper and recover costs, she added.

Mr Breitmeyer told Farmers Weekly the CLA was encouraged that Ms Coffey had acknowledged the CLA's action plan and had stated Defra intends to take forward most of the points raised.

But he added: "We are disappointed that no effort has been made to look at how landowner liability could be reduced.

"There are alternatives the government and local authorities could explore to ease the burden of disposal costs for landowners. It is a cop-out not to look more closely at how to change the unfairness of this rule."⁴³

Government's view

In response to a PQ on the issue of private landowners being charged for dealing with fly tipped waste, the then Government set out, (in October 2017), that:

All private landowners are responsible for dealing with waste that is dumped on their land. We expect all local authorities to investigate fly-tipping incidents on private land and prosecute the fly-tippers when there is sufficient evidence. On conviction, a cost order can be made by the court so that a landowner's costs can be recovered from the perpetrator. Through the National Fly-tipping Prevention Group we provide advice and guidance to landowners and businesses on measures they can take to prevent fly-tipping on their land. I will raise charging at local authority waste sites in my next meeting with the Local Government Association.⁴⁴

In reply to a Westminster Hall debate on fly-tipping in April 2018, the then Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Dr Thérèse Coffey), set out the Government's aim to better quantify the scale of fly tipping on private land:

My hon. Friend will be aware that much of the approach to tackling crime is to do with prevention. I understand what he said about the unsightly effects if we get landowners to try to reduce the opportunity for fly-tipping, but many people put extra locks and burglar alarms in their homes to deter people from targeting a particular home. That is an example of how people take an active interest in making their home robust against entry and crime. I understand my hon. Friend's point and do not blame landowners. I am trying to be helpful.

I recognise that more can be done. The Government are hosting a roundtable on fly-tipping on private land next week. We will consider further what we can do. A key point is knowing the scale of the issue. Currently we cannot quantify the extent of fly-tipping on private land, as there is no established easy way for people to report it. However, we are changing that. We are learning from Natural Resources Wales, which has created a mobile app to record incidents. We will shortly be rolling out a similar app for England, with many benefits. The app will link through to the local council so that its enforcement team will instantly know

⁴³ "Defra snubs landowners' plea to change fly-tipping laws", [Farmers Weekly](#), 14 December 2017

⁴⁴ [Fly-tipping: Written question – 108972](#), answered on 26 October 2017

when an incident has been recorded. It will also automatically plot the incidents on a map so that hotspots can be targeted. Such sharing of information will help the police, in particular, to identify issues quickly.⁴⁵

4.6 Powers available to require the clearance of fly-tipped waste

Local authorities and the Environment Agency have powers to require landowners to clear waste from their land. The local authority and Environment Agency also have powers to enter land and clear it, and may seek reimbursement for costs related to this.

Relevant legislation includes:

- **Section 59 of the [Environmental Protection Act 1990](#)** (as amended): a local authority or the Environment Agency can issue a notice on an occupier or landowner to clear controlled waste that has been illegally deposited within a time period of not less than 21 days. It is an offence not to comply with a notice, if no appeal is made. The authorities can also enter land and clear it, and recover reasonable costs.
- **Section 215 of the [Town and Country Planning Act 1990](#)** (as amended): this enables local authorities to issue a notice to landowners requiring land or buildings to be cleaned up if its “condition adversely affects the amenity of the area”.⁴⁶ The authorities can also enter land and clear it, and recover costs from the owner.
- **Section 79 and 80 of the [Environmental Protection Act 1990](#)** (as amended): this legislation deals with statutory nuisance. Nuisance can include odours, accumulations or deposits that “must be or be likely to become, prejudicial to people’s health or interfere with a person’s legitimate use and enjoyment of land”. Local authorities have a duty to investigate complaints about statutory nuisance, and can serve an abatement notice on an occupier requiring them to stop causing a nuisance. Failure to comply with a notice can result in a fine of up to £5,000, with a further fine of up to £500 for each day on which the offence continues after conviction.⁴⁷

Waste collection authorities and the Environment Agency also have powers under section 108 of the [Environment Act 1995](#) (as amended) to request information to assist with fly-tipping investigations. Failure to supply the information is an offence.

⁴⁵ HC Deb 17 April 2018, [c54WH](#)

⁴⁶ Office of the Deputy Prime Minister, [Town and Country Planning Act 1990 Section 215 Best Practice Guidance](#), January 2005

⁴⁷ Defra, [Statutory Nuisance](#), 7 April 2015 [accessed 15 September 2015]

5. Reporting fly-tipping

Regardless of whether land is public or private, if anyone has witnessed or found fly-tipping, they can report it to the relevant authority (which can be found on Defra's [online service for England and Wales](#)).

In Scotland, reports should be made to [Dumb Dumpers](#) and in [Northern Ireland](#), reports can be made to Crimestoppers or to the Northern Ireland Environment Agency's Environmental Crime Unit.

Reports should include as many details about the incident and type/amount of waste as possible.

The NFTPFG offers the following advice about reporting fly-tipping on its [website](#):

What should I do if I see someone fly-tipping?

Witnesses are vitally important in enabling action to be taken against people who fly-tip waste, so please do not hesitate to report any incident that you witness as soon as possible.

Do not put yourself in danger by approaching anyone you see dumping waste; they are criminals, who may be involved in other criminal activities, and as such are unlikely to respond well to being challenged. If it is possible to observe them safely, the more information you are able to provide, the better the chances of an investigation.

Information that is useful includes the following:

1. Time and date of incident;
2. Description of person(s) dumping waste;
3. Description of vehicle(s) involved, including registration numbers;
4. Description of the waste dumped;
5. Photographs can also be very useful, but only if it is possible to obtain them safely.

Please be reassured that any information supplied in connection to any such incident is treated in strictest confidence in accordance with the Data Protection Act 1998. If you make notes please keep them, even if they are scribbled notes on the back of an envelope. Actual notes taken at the time can be very valuable as evidence.

Do not try to rummage through the waste yourself to look for evidence, as there may be hazardous or sharp items hidden among the waste. Council staff will carry out a thorough examination of the waste as part of their investigation.

6. Government proposals for change

The Government's December 2018 Resources and Waste Strategy committed to publishing a web-based fly-tipping toolkit as follows:

Evidence suggests that a lack of knowledge and experience sharing is contributing to the problem. We will therefore create a 'fly-tipping toolkit', a web-based tool hosted by the National Fly-tipping Prevention Group to help tackle the issue. It will cover:

- How local authorities can set up and run an effective fly-tipping partnership;
- How to use new technology to report fly-tipping;
- Examples of existing good practice to prevent fly-tipping;
- How to deal with fly-tipping associated with unauthorised encampments;
- How to best share intelligence within a partnership and with other partnerships;
- How to present robust cases to the courts to ensure tougher penalties;
- How to best promote the duty of care for individuals and businesses.⁴⁸

The Resources and Waste Strategy also said that Government would work with the Sentencing Council to ensure the Environmental Offences Definitive Guideline is kept up-to-date. "This will help secure higher fly-tipping fines, especially at magistrates' courts."⁴⁹

The [Environment Bill 2019-20](#), creates provision to allow for the introduction of electronic (digital) waste tracking in Great Britain, and to create associated criminal offences (punishable by a fine) and civil penalties.⁵⁰ For further information see section 4 of Library briefing paper, [Commons Library analysis of the Environment Bill 2019-20](#), 6 March 2020.

⁴⁸ HM Government, [Our Waste, Our Resources: A Strategy for England](#), December 2018, p91

⁴⁹ HM Government, [Our Waste, Our Resources: A Strategy for England](#), December 2018, p96

⁵⁰ Department for Environment, Food and Rural Affairs, *Environment Bill: Explanatory Notes*, p70

7. Fly-tipping and Coronavirus

From March 2020 many local authorities have closed their household waste recycling centres (HWRCs) due to issues with maintaining Coronavirus-related social distancing restrictions.⁵¹ Some local authorities have also had to scale back on household doorstep recycling collections.⁵²

During this time there have been reports of an increase in fly-tipping activity. The specialist publication ENDS reported that 51% of councils surveyed had experienced increased levels of fly-tipping in their areas.⁵³

The Government has published [Guidance on prioritising waste collection services during coronavirus \(COVID-19\) pandemic](#), 7 April 2020, which applies to English local authorities only. It acknowledges that, "There is a potential for increased fly-tipping especially if other collections fail."

Fly tipping is also categorised as a "high" priority for local authorities under this guidance.⁵⁴ The definition of "high priority" reads as follows:

High priority – These services are the most important and should continue as normal. These services are a legal requirement and/or otherwise there are likely to be severe impacts on environmental and human health if they are suspended completely. Local authority residents are most likely to rely on these high priority services.⁵⁵

There is also a specific section of this guidance on fly-tipping:

10. Fly-tipping

Priority: High

Action: Maintain - but prioritise what is cleared.

Risks if service reduced or stopped

Build-up of household waste flytipping may cause public health concerns.

Local authorities must keep land and highways they are responsible for clear, as far as is practicable, of litter and refuse.

Mitigation

Provide clear messaging to householders on duty of care and penalties for fly-tipping.

Communicate clear messaging on using registered carriers to avoid waste crime and risk of flytipping.

⁵¹ Chartered Institution of Wastes Management, [CIWM welcomes WISH advice and highlights key areas for further work](#), 1 April 2020

⁵² ENDS Report, "[Coronavirus: DEFRA urged to intervene as councils stop recycling services](#)" 27 March 2020 [subscription required]

⁵³ ENDS Report, "Coronavirus: Fly-tipping doubles as councils shut recycling centres against DEFRA advice" 15 April 2020 [subscription required]

⁵⁴ GOV.UK, [Guidance on prioritising waste collection services during coronavirus \(COVID-19\) pandemic](#), 7 April 2020

⁵⁵ GOV.UK, [Guidance on prioritising waste collection services during coronavirus \(COVID-19\) pandemic](#), 7 April 2020

Focus available resources on known hotspots and prioritise collection of fly-tipped putrescible waste.

Rationale

Flytipping may increase where households feel they need to remove waste from homes because of reduced services or closure of HWRCs.⁵⁶

⁵⁶ GOV.UK, [Guidance on prioritising waste collection services during coronavirus \(COVID-19\) pandemic](#), 7 April 2020

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