

EXPLANATORY MEMORANDUM TO
THE HIGHWAYS ACT 1980 (GATING ORDERS)
(ENGLAND) REGULATIONS 2006

2006 No. 537

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The purpose of these Regulations is to set out the procedure to be followed by councils who wish to make, vary or revoke gating orders in respect of highways within their area. Sections 129A to 129G of the Highways Act 1980 enable councils to restrict public access to any alleyway that is also a public highway by gating it, without removing its underlying highway status. Local authorities will be able to make “gating” orders on grounds of anti-social behaviour as well as crime.

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

3.1 None.

4. Legislative Background

4.1 Powers to close alleyways were introduced by the Countryside and Rights of Way Act 2000 (CROW Act 2000); this enable alleyways, which are also rights of way, to be closed and gated for crime prevention reasons. But they do not enable alleyways to be gated expressly to prevent anti-social behaviour and they exclude many alleyways that are public highways but not recorded as rights of way. Also, under these provisions the removal of rights of passage is irrevocable.

4.2 The procedure for gating under the CROW Act 2000 is often protracted and resource intensive for local authorities. This is because, the Secretary of State first has to designate an area that can be subject to a gating orders, which can take a long time. In addition, the trigger for gating is confined to ‘crime’ only – the local authority must demonstrate that crime is present which is shown by police evidence of recorded crime and therefore it does not include anti-social behaviour and if one person objects to the proposal (regardless of whether they live in the locality), the proposal must be withdrawn.

4.3 Because of the inherent difficulties in using the existing system, new provisions (sections 129A to 129G of the Highways Act 1980) were introduced by section 2 of the Clean Neighbourhoods and Environment Act 2005.

4.4 The new provisions now enable a council to gate a highway in a similar manner to the existing power but it:

- a) doesn't first require the highway to be designated by the Secretary of State
- b) enables gating to take place if highway suffers from crime and/or anti-social behaviour
- c) enables the local authority to continue with a gating order, even if objections are made (if it is considered in the best interests of the local community to do so).

4.5 In the majority of cases, the public and representative organisations will be in support of the gating restrictions; however before any gating order can be made, the proposal must first be published bringing the desired highway restriction to the attention of the local community. The local community then have an appropriate period of time (being not less than 28 days) to make representations to the council. After consideration of the representations the council have discretion on how to deal with the representations and can continue with the gating order as published even if there are objections to the proposal.

4.6 These are the first Regulations to be made under this provision.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

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

7.2 The new provision under the Clean Neighbourhoods and Environment Act 2005 introduces a free standing provision which enables certain alleyways to be gated without removing the status of the highway – in much the same way as traffic regulations orders do at present – where there were serious problems with crime and anti-social behaviour. Councils have the ability to decide whether the gates should be closed permanently to the public, or closed at certain times of the day. And if the council were to revoke an order under these powers, the public would enjoy the same rights of access as before.

7.3 Councils will have to consult local residents and other stakeholders as necessary, but they will have discretion on how to deal with any objections received. In order to ensure fairness an appeal mechanism has been provided in s.129D of the Highways Act 1980. This enables a person who is aggrieved with the making of a gating order to apply to the High Court questioning the validity of the order. It is therefore recommended in guidance that the council justify their decision to make the gating order.

7.4 Public inquiries will only be required in cases where other councils, a chief police officer, a fire and rescue authority, an NHS Trust object to the proposal. If there is significant polarised opinion within the community, the council can still cause a public inquiry to be held if they so wish.

7.5 Within the Act itself, subsection 129B(4) requires the council to consider the availability and convenience of alternative routes when gating highways – including appropriate routes available to children going to school, while subsection 129B(5) provides that where an alleyway is the only or principle means of access to any premises used for business or recreational purposes, a gating order may not be made so as to restrict the public right of way during periods when these premises are normally used for these purposes.

8. Impact

8.1 The Regulatory Impact Assessment for the Clean Neighbourhoods and Environment Bill which included the provisions on gating orders is attached to this memorandum.

9. Contact

9.1 Andy Kerrigan at the Home Office Tel: 020 7035 0061 or e-mail: andrew.kerrigan@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

**Full Regulatory Impact Assessment
of the
Clean Neighbourhoods and Environment Bill**

December 2004

CLEAN NEIGHBOURHOODS AND ENVIRONMENT BILL

EXECUTIVE SUMMARY

Both central government and local government – including councillors, MPs and ministers – see the quality of the local environment as a central issue for themselves and the communities they serve. They agree that issues like graffiti, fly-posting, litter and fly-tipping form part of a continuum with noise, bad behaviour, vandalism, disorder and levels of crime. Unless all parts of the continuum are tackled, Government’s joint endeavour to make every community “cleaner, safer and greener” cannot be achieved.

Many local authorities are improving their local environment in a variety of ways – Manchester’s 100 days clean-up is one approach that has demonstrated enormous potential for a partnership approach that engages the community. However, two major obstacles stand in the way of success on the part of local authorities. They are:

- Underperformance: the 2002/03 Local Environmental Quality Survey for England (LEQSE)¹ report showed that 60% of sites were unsatisfactory or poor, but that the majority of these are just below the satisfactory level. The report suggests that poor management is to blame and goes on to say “if cleansing was given slightly more management attention in most local authorities this situation could be rectified easily.
- Changing public behaviour: figures from the LEQSE show that in a number of areas behaviour is worsening. This is shown by a national increase in fast food litter of 12% between 2001/02 and 2002/03, while trodden in chewing gum was found on two thirds of all sites surveyed, rising to 94% of all sites surveyed in towns and city centres.
- Legal obstacles or restricted options available to local authorities in tackling the priority issues of the public in their area.

It follows that action is needed on all three fronts, which has led the Government to act in support of local authorities and to help change behaviour for the better. “No action” is not a feasible option but is shown as a comparator against which to judge our proposals.

The package of measures in the Clean Neighbourhoods and Environment Bill will improve the shortcomings in the existing mechanisms that local authorities and other agencies can use to address issues of poor local environmental quality. It is the result of ongoing consultation and evaluation of those existing mechanisms.

¹ The LESQE measures a range of local environmental quality issues over 10,000 sites across 12 different land use categories.

Each measure is examined individually to determine how they improve the status quo. In the majority of cases the measures provide additional powers, rather than duties. It is expected that local authorities will only decide to use these powers where there is a net benefit to doing so in the local context. In many cases there will be financial savings to the local authority in using the measures as they provide more efficient ways of addressing local issues. In those cases where the use of these powers increases financial costs for local authorities, it will be because the authority has decided that incurring that cost provides significant social benefits against a backdrop of competing demands for existing funds. The overall net benefit to be achieved from the introduction of these measures will depend on how much the relevant bodies take advantage of them; how strategic they are in their use of them; and how well they engage in partnerships with local businesses and communities to find joint solutions to issues. It will also depend on the way in which central government communicates the purpose and potential benefits of these new measures, in conjunction with the existing measures which are sometimes not being exploited fully.

But there are also wider benefits of clean neighbourhoods and environments. They underpin healthy local communities and economies, and may be key to reducing crime.

A local authority may, therefore, choose to use a measure that would result in a net financial cost where the issue has been identified as a priority. Three of the measures introduce or extend duties to local authorities and so, where applicable, will lead to some additional costs.

Where an authority's action leads to additional costs to businesses or private parties, these costs are – in some cases – incurred in reducing or eliminating nuisance on property that they are responsible for. In other cases, the measures transfer costs from local authorities to parties that have not caused nuisance directly, but are in a better position to prevent and control the nuisance occurring in the first place. Partnership working will minimise these costs.

As a package, the measures in the Bill will enable local authorities to tackle local environmental quality issues leading to improved quality of life. The cost implications of the measures, where they exist, are justified, and overall there is a significant net benefit to their introduction.

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A. BACKGROUND

In 2002, the Department for Environment, Food and Rural Affairs (Defra) led a review of the legislative framework for providing and maintaining clean and safe public spaces to accompany the cross-Government report *Living Places – Cleaner, Safer, Greener*. This found that the current extensive set of powers, duties and guidance, was not working as effectively as it should be. Some of the reasons for this failure include confusion and misunderstanding within and between service providers, bureaucrats and legal complexities, a lack of awareness of the responsibilities associated with the right to have a clean safe local environment and inadequate and unmanageable powers for tackling irresponsible and anti-social behaviour. Problems in identifying relevant legislation were also evident as this legislation is scattered across the Statute Book.

The Defra review involved discussions with the key service providers (local authorities, the police, key public bodies, and contractors) to find out what other powers and guidance they needed to deliver cleaner and safer public spaces. Those consulted asked for tougher powers for dealing with irresponsible landowners and clearer and more flexible powers for dealing with specific nuisances. There was clearly enormous resonance between these issues and local issues of crime and disorder for which they often act as a precursor. Most importantly, respondents asked for a consistent and straightforward framework by which everybody is clear about their responsibilities, what they can do to meet them and what they have the right to expect in return. The review also recognised that people wanted increased opportunity to hold those responsible to account when they fail to deliver and to have prompt remedies.

The discussions also produced options for delivering these changes. These options were contained in the consultation paper *Living Places – Powers, Rights, Responsibilities* launched at the Urban Summit on 31 October 2002 and which closed on 14 February 2003. This consultation was augmented by a series of regional workshops in the nine English regions conducted by Defra staff and ENCAMS² during the period from March to May 2003.

Some of the options from *Powers, Rights, Responsibilities* were introduced into legislation in Part 6 of the Anti-social Behaviour Act 2003. The majority of options were developed further and included as proposals within the Clean Neighbourhoods consultation launched on 25 July 2004 with the intention of introducing these changes at the next suitable legislative opportunity.

² ENCAMS was created in January 1998 as an umbrella organisation for the Tidy Britain Group (TBG) and Going for Green (GfG). TBG has been long established, and in 1996 the Government formed GfG with a remit to develop activity to communicate environmental messages to the general public. ENCAMS has now wholly subsumed the work of these two former bodies which are dormant. ENCAMS is sponsored by Defra who provide them with an annual grant which ENCAMS match with funding from other sources. Website ' www.encams.org '

We believe the measures will deal comprehensively with many of the problems affecting the quality of the local environment, which form part of a continuum with anti-social behaviour, vandalism, disorder and levels of crime. While the bulk of the measures fall within Defra's remit, they represent policy interests across a number of Government departments, including the Home Office, Office of the Deputy Prime Minister and the Department for Culture, Media and Sport. The introduction of these measures will continue the very successful cross-departmental working which has characterised progress on the Cleaner, Safer, Greener agenda.

B. RISK ASSESSMENT

In 2002/3 local authorities spent approximately £490m³ on street cleansing. Indications for 2003/4 suggest that this figure will be nearer £500m. The trend over the past 6 years shows a steady increase in expenditure in this area of local authorities' responsibilities. In addition, the cost of clearing graffiti in London alone in 2002 was approximately £23m, and the cost of removing, storing and disposing of abandoned vehicles is £26m per annum.

The Environment Agency recorded a 19% increase in the incidents it deals with on fly-tipping in England and Wales between 2001 and 2002. This included a 70% increase in the Thames region alone where fly-tipping is dominated by construction, demolition and excavation wastes. Many local authorities are also noticing and recording more incidents. For example, in 2002, the London Borough of Lewisham counted 13,600 fly-tipping incidents, costing over £500,000 to clean up. The Environment Agency estimates the annual cost of clearing up fly-tipped waste to be between £100m and £150m. Defra has worked with the Agency to set up the Flycapture database in order to obtain the first national picture of the fly-tipping problem. Data is currently being validated.

In 2002/03, the annual Local Environmental Quality Survey of England (LEQSE)⁴, conducted by ENCAMS on Defra's behalf, shows a 12% increase in fast food littering. Numbers of abandoned vehicles are predicted to increase by 65% by 2008. As early as 1993, 80% of authorities were recorded to have received complaints about nuisance light.

Nuisance issues like these and the others addressed in these proposals can not just be considered as a growing problem of concern in themselves. The general deterioration of the local environment which they bring about disrupts the social cohesion in communities, encourages anti-social behaviour directly or indirectly and promotes fear of crime and crime itself.

³ Total Expenditure on Street Cleaning (not chargeable to highways) from the ODPM.

⁴ The LESQE measures a range of local environmental quality issues over 10,000 sites across 12 different land use categories.

Unless central government assists local authorities by improving the mechanisms they have to improve local environmental quality and to work with businesses and communities, local environments in many areas will continue to deteriorate and will reduce government's ability to meet other objectives.

C. OVERALL IMPACT ASSESSMENT

The Clean Neighbourhoods and Environment Bill aims to provide local authorities and agencies with a more effective tool-kit to improve local environmental quality and enhance public spaces, thus contributing to sustainable communities and the reduction of crime.

The ability of this package of measures to enhance public spaces will depend on the effectiveness of the individual measures to improve local environments (and how they improve on the status quo) and on how, and how much, the relevant bodies use the various measures.

While the individual measures can be examined to assess how they change the status quo it is difficult to assess the extent to which bodies will choose to use the new measures at their disposal. This is because in the vast majority of cases, the measures provide authorities with additional powers that they can choose whether or not to use.

There are two important points to note in assessing the measures:

1. Rather than being entirely new proposals, they are generally improvements to existing systems, responding to comprehensive evaluation of those systems. Most of the measures either remedy an inadequacy or inconsistency in existing provisions (including complex legislation) or they correct incentive structures. The aim of the latter is to increase responsibilities and incentives for agents that are able take measures to prevent nuisance, rather than that responsibility lying solely with authorities whose only means of addressing the issues is to remedy them once they have taken place.
2. It is expected that the use of a measure in an individual case will be determined by whether there is a net benefit to using it, taking economic, social and environmental factors at a local level into account. In many cases using a power will additionally provide a financial cost saving for the local authority. In cases where there is a net financial cost to the authority, the authority will only decide to use the power where the authority decides that the issue is a priority and merits the deployment of resources against the backdrop of competing demands for resources.

Given these two points, it follows that both the individual measures and the net effect of the total package of measures must be positive. However, there are some individual cases where the second point may not hold. First; three of the measures place duties on authorities to act. Second, some require measures from businesses that were not required previously. It is therefore necessary to examine the mechanisms of the measures more closely to understand how they work.

What the individual measures do

In order to explain the impact of the individual measures they are organised into a table that demonstrates how each mechanism works and how it relates to existing provisions.

Table 1 demonstrates which of the following characteristics the mechanisms possess:

1. **Power:** This measure provides a power for authorities that they can decide whether or not to use
2. **Duty:** This measure provides a new duty for authorities so will lead to extra cost where applicable
3. **New business activity:** New activity or extension of activity required for lawful business or private individuals
4. **Re-structuring of incentives through transfer of responsibilities:** This measure involves transferring responsibility for nuisance to either 'polluters' or to property occupiers/owners. In doing this there is a cost transfer so that the polluter or occupier/owner pays for the nuisance rather than the taxpayer. This transfer is cost neutral but will often be in line with government policy on polluter pays. However, there is an efficiency saving in transferring responsibility to polluters/occupiers/owners as they are often in a better position to prevent the nuisance in the first place: they face the decision either to take steps to prevent the nuisance in the first place or to tidy it up after it has happened - whichever is cheaper. There should therefore be an implicit net benefit to this measure.
5. **Re-structuring of incentive through penalties:** This measure provides a deterrent for those who might cause nuisance and should therefore prevent nuisance in the first place. Assuming the fine is set at the 'efficient' level and properly enforced then the 'polluter' will only cause nuisance if the relevant activity is worth more to him than the cost to everyone else of the nuisance it causes. There will be a reduction in nuisance that is efficient in terms of cost to society. (Fines might also be set higher if enforcement is less rigorous). There should therefore be an implicit net benefit to the use of this measure.
6. **Re-structuring of incentives to focus on outcome:** This measure involves adjusting incentives so that it is linked to the outcome required
7. **Improvement or simplification to existing regime:** This measure corrects an inadequacy or inconsistency in existing provisions at minimal cost.

Corrections to enforcement inadequacies are not included here if covered by 5 above.

8. **Transfer of authority responsibility:** This measure transfers responsibility from one authority to another that is better able to deal with the issue.
9. **Tool for trouble spots:** Provides local authority with a mechanism to deal with particular trouble spots.

Table 1: Summary of the characteristics of the new measures

Measure	1	2	3	4	5	6	7	8	9
Abandoned trolleys	•			•	•				
Abandoned vehicles					•		•		
Cigarettes and chewing gum					•		•		
Contaminated land appeals								•	
Crime and disorder reduction							•		
Dog bye-laws	•				•		•		
Duty of care for waste carriers				•					
Extension of statutory nuisance		•	•		•				
Fixed Penalty Notices	•				•				
Fly-posting removal notices	•		•	•	•				
Fly-tipping responsibility for owner	•		•	•	•				
Free literature distribution	•			•	•				
Intruder alarms	•		•	•	•				
Litter offence applies everywhere				•	•				•
Litter clearing notices	•			•	•				
Noise from licensed premises					•				
Nuisance alleyways	•								•
Nuisance vehicles	•				•				
Repeal of divestment provisions					•	•			
Sale of aerosols		•					•		
Site Waste Management Plans			•	•					
Stop and search of vehicles	•				•				
Stray dogs at night		•						•	
Street Litter Control Notices	•			•	•				
Tonnage-based waste levy						•			
Unlawful display of advertisements	•			•	•		•		
Waste carrier registration penalty	•				•				
Waste transfer note penalty	•				•				
Waste left on streets penalty	•				•				

Table 1 demonstrates the measures that might have a new cost implication to business, authorities or individuals. Those measures in columns 2 (new duties on

local authorities) and 3 (new activity for private sector) potentially imply new costs. It demonstrates three measures that provide new duties for authorities of which one also provides new requirements on business; and four measures that provide new requirements on business without a duty on authorities.

There are therefore seven measures identified above that do potentially introduce a burden to authorities or private parties. These are examined in more detail below:

Extension of statutory nuisance: This would be an extension of a duty for authorities and a new requirement for businesses. Both lighting and insect nuisance are a major cause for concern in particular areas and lead to many local complaints. Using an existing and well-tested regime to deal with these issues is a cost-effective solution and should encourage more thought about prevention of nuisance. The regime is not punitive where operators have used the best practicable means (it is a statutory defence).

Fly-posting removal notices: This would be a new requirement for statutory undertakers and businesses owning street furniture. It is only a power for authorities so it is expected that they would only use it where there is a net benefit. It should also encourage constructive partnership working. The costs for some operators are potentially significant but there should be efficiencies as this measure already exists for graffiti. The immediate and wider benefits are significant.

Fly-tipping responsibility of owners: This would be a new requirement for landowners but there should be a net benefit as landowners will have an incentive to reduce fly-tipping. It is also a power rather than a duty for authorities and so they should, and would be encouraged, only to use it as a means of last resort and where there is a clear net benefit. Landowners will not be affected if they have not allowed or did not know about fly-tipping on their land.

Intruder Alarms: There will be minimal costs for individuals and businesses where authorities decide to use these powers. However, local authorities are unlikely to make use of them unless they expect them to reduce the costs they would otherwise have in dealing with alarms. The measure encourages the use of best practice which will reduce costs to authorities and, where used, will be highly effective at preventing nuisance from intruder alarms.

Sale of aerosol provisions: This is a duty to consider whether this is an issue in the authorities area and to take enforcement action as appropriate. There would therefore be no cost if the problem does not merit it, and would require an annual programme of enforcement where it is a problem. The Bill provides for programmes to be carried out to the extent that the authority considers appropriate and so it is likely that the benefits of any such programme would have to justify the costs.

Site Waste Management Plans: This is a new requirement which will allow for regulations to be made to require construction projects over £200,000 to prepare Site Waste Management Plans. This cost will not be significant in relation to the

cost of the project, (perhaps around 0.2% of the cost of a smaller scale project). It will lead to cost initially for businesses but will lead to more efficient use of resources and potentially net cost reductions to the businesses.

Stray dogs: Although this is an extension of an existing duty for local authorities it is in fact a transfer of a duty from the police so there should not be a net cost. There are benefits to the transfer, however, detailed in section E.

Of these seven measures, the measures on fly-posting removal notices and the extension of the statutory nuisance regime are the only two where there is any real risk that costs will outweigh benefits. Whether this risk is realised will depend on the extent to which communities engage effectively (in the case of statutory nuisance) and on the approach that authorities take. If used effectively these measures potentially provide solutions to key issues of concern that can severely affect quality of life.

The remaining measures are either powers or improvements of one sort or another to existing provisions, do not introduce new burdens on anyone who operates within the law and should unambiguously improve on the status quo.

This demonstrates that individually the measures should provide net benefits. The costs and benefits of the individual measures are explored further in Section E.

How the measures will be used

The next question is more speculative: how often and how will these measures be used. This is largely down to individual authorities and agencies (noting that any new spending by local authorities will not be funded through additional funding from central government or an increase in council tax). In trying to assess how much these measures will be used, it is worth considering two scenarios that illustrate different approaches to using these new measures.

1. The authority invests resources at a strategic level to determine how best to address environmental quality issues in its jurisdiction. It works out priorities and engages early with the key stakeholders and makes initial investments in setting up appropriate systems to deal with identified priorities. This leads to a net cost saving after three years through reduced costs of cleaning litter and fly-posting, responding to abandoned vehicles and reduced complaints in trouble spots. Efficiencies are also achieved through better partnership and joint working with local businesses. The authority is able to re-allocate resources to respond to an increased workload resulting from responding to an early surge of artificial lighting complaints. The net effect of the measures is a considerable cost saving to the authority after redeployment of resources internally. Improvements in local environmental quality are also observed and there is reduced perception of crime.

2. The authority does not have any clear strategy for addressing environmental quality issues and there is poor communication internally and with stakeholders. The authority does not choose to use any of the new powers. There is a slight increased workload from dealing with stray dogs and through reacting to new statutory nuisance complaints.

This illustrates that the costs and benefits of the measures will depend on the use of them by local authorities.

Fundamental also is how central government communicates the measures, what guidance and support it provides on how to use the measures and how they interrelate with existing measures and on the extent to which provision is made for authorities to learn from one another.

To do this Defra intends to accompany any new legislation with an implementation plan. An important facet of this plan will be detailed guidance to ensure a consistent use of the new powers and the introduction of the regulations where necessary. The guidance will be developed by Defra with input from other government departments, local authorities, statutory undertakers and other stakeholders with a responsibility for maintaining the quality of the public space.

Wider impacts

In addition to the immediate impacts on authorities, businesses and the environment, it is expected that cleaner neighbourhoods and enhanced public spaces will lead to better social cohesion, reduced anti-social behaviour, reduced fear of crime and reduced actual crime.

This continuum, which was an underlying theme in the design of the Crime and Disorder Act 1998, was made famous by James Wilson and George Kelling as 'Broken Windows' theory and is highly influential in crime reduction strategies in the USA. Wilson and Kelling argue that:

“if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken.” When windows remain broken, community controls break down and people who may consider themselves “law-abiding” may participate in behaviours they normally would not. At this point, crime and violence may not flourish, but citizens may think that crime has increased and alter their behaviour accordingly. This community is now “vulnerable to criminal invasion.” Fear of crime is high and people “avoid one another, weakening controls”

The effective strategy for addressing crime in communities where it is pervasive is therefore:

“removing the cues of crime (such as vandalism, petty theft, and loitering), and replacing those cues with alternative cues that signal order and social regulation”

Although the causes of crime and crime reduction are debated it is interesting to note the influence the broken windows theory has had in many major cities during periods of crime reduction. For example:

“In 1989 Kelling worked with New York City transportation authorities and later in 1990 with Transit police chief William Bratton to implement the “broken windows” theory in the New York City subways—and when Bratton became NYPD chief in 1994, he moved to make the theory part of standard NYPD practice.”

The gains of effective management of local environments therefore potentially and arguably expand far beyond the immediate benefits. However, it is problematic apportioning improved local environmental quality's contribution to reduced crime even though in some cases it is thought to underpin it.

D. OPTIONS

Option 1: Do Nothing

This option would be to leave unchanged the existing set of provisions to deal with poor local environmental quality.

This option is the base case against which the new proposals are compared and as such does not introduce any new costs or benefits.

Option 2: Introduce all measures

This option is to introduce the full package of measures which are detailed in Section E.

The overall costs and benefits of introducing this package of measures (both direct and indirect) are considered below and the costs and benefits of the individual measures are detailed in the next section and summarised in Table 2 below.

Costs and benefits of total package

The costs and benefits of introducing the whole package of measures are outlined here.

As discussed in the previous section there is a clear and intrinsic net benefit to introducing all of the measures, with the exception of two measures. These two measures will result in net benefits if used effectively. It is therefore fair to assume that the net effect of having the full range of powers and measures in place will necessarily be positive.

However, it is important to note that the total value of being able to use all the measures should be greater than the sum of the benefits of the individual measures. This is because authorities will be able to use them strategically to address particular issues and improvements secured are expected to lead to wider benefits in line with broken windows theory.

Qualification of Benefits

Environmental

Cleaner public space: Many of the measures are aimed at cleaning public spaces. These include:

- Extension of litter offence to cover all types of land
- Clarification that smoking-related materials and chewing gum are included in litter definition
- Litter clearing notices
- Street Litter Control Notices
- controls for limiting the distribution of free literature
- measures for dealing with fly-posting
- better enforcement of rules for leaving waste out.

Less dumping/fly-tipping, through:

- Greater deterrence for abandoning vehicles
- More effective measures for dealing with nuisance alleyways
- Fewer abandoned trolleys
- Responsibility on landowners who knowingly cause or permit fly-tipping
- Responsibility on construction industry for waste management on site
- Better enforcement of mechanisms in place to prevent fly-tipping.

More recycling through better incentive structures for organisations dealing with waste

Less nuisance from noise, insects and artificial lighting

The resulting effect of these measures used appropriately to deal with local issues should be significantly increased overall increased local amenity and a better foundation for development of a sense of community.

Economic

There are considerable economic benefits to businesses and private individuals associated with cleaner neighbourhoods. During consultation, local authorities identified economic benefits both to the public sector and to the private sector, as follows:

Private sector

These included:

- Attracting more customers and increased consumer spending
- Increased tourism
- Improved businesses image
- Increased investment in local business
- Better retention of staff
- Increased house prices in lagging areas.

Public sector

There are benefits in terms of reduced demand on public services and a resulting redeployment of resources to other priorities. Particular examples of reduced demand include:

- On the fire service: responding to abandoned vehicles
- On the National Health Service: through reduced fear contingent on nuisance and anti-social behaviour brought about by for example by measures on abandoned trolleys, abandoned vehicles and nuisance alleyways
- On the police: as a result of reduced burglaries through measures on nuisance alleyways, and reduced crime associated with abandoned cars.

There are also reduced costs to public authorities in dealing with nuisance and enforcing and administering regimes. Examples of reduced administration are:

- Contaminated Land appeals
- Street Litter Control Notices
- Dog control measures.

Social

There are a number of ways in which these measures lead directly to social benefits. These include:

Reduced anti-behaviour

- More effective mechanism for dealing with nuisance alleys
- Better control on the sale of aerosol spray paint

Reduced crime. Particular examples include:

- Fewer abandoned vehicles which provide opportunity for casual crime
- Fewer burglaries as a result of closing of nuisance alleyways that provide access to burglars.

Increased availability of good quality of public spaces:

- Opportunities for turning alleyways into good quality public spaces.

Improved neighbourhood relations through better mechanisms for dealing with:

- Anti-social intruder alarms
- Nuisance lighting.

The net effect of all of the measures is expected to lead to wider and greater benefits. These include:

- Reduced fear of crime
- Increased confidence in public services
- Increased sense of civic pride
- Increased community interaction
- Better quality of life.

Health

A few measures address health concerns specifically. These include:

- *Abandoned vehicles* which will reduce associated hazards, particularly fires and reduce the risk of noxious substances entering the environment
- *Abandoned trolleys* which will reduce hazards particularly when trolleys are left in roads

- **Insects: *reduced nuisance insects should reduce associated health risks***
- **Artificial light: *anti-social lighting is likely to have a deleterious effect on health***
- **Noise from misfiring intruder alarms and licensed premises: *reduction in noise especially during the night is likely to lead to health benefits***
- **Reduced fly-tipped waste: *which will reduce the risk of injury, bad odour and infestation (e.g. rats).***

More generally, cleaner neighbourhoods and a reduction in fear from anti-social behaviour are also likely to lead to health benefits.

Sustainability

The long-term effect of these measures is likely to be a significant contribution to more sustainable communities.

There will be some initial costs to authorities which should be recouped through cost savings but as the vast majority of the measures are powers they will not involuntarily lead to extra costs to authorities. There will be costs to businesses in a few cases and the measures which have been highlighted as having potential risks to businesses need to be monitored to ensure that they do not have any long-term adverse impact on the relevant businesses.

As all the measures are designed to improve on existing arrangements and correct inadequacies there should not be any adverse sustainability effects associated with them.

Effective use of the measures and the establishment of good partnerships with local businesses will foster responsible businesses – a key factor for sustainable communities.

During September 2004, Defra held five one-day Clean Neighbourhoods Consultation seminars. Local authorities and stakeholders were invited to discuss the consultation proposals with government officials. It was generally considered that the measures proposed would not produce long term costs, because improvements generated by the new powers would enable local authorities to become more efficient.

Qualification of Costs

Economic

Private sector

Some businesses or individuals will incur additional costs as a result of these measures, through being made responsible for responding to nuisance on their land or to their property where this is contributing to the deterioration of local environments. These include:

- Companies that own street furniture (generally the telecommunications industry and statutory undertakers)
- Statutory undertakers who already have an existing duty for litter and refuse
- Businesses and individuals that own or occupy land or property that has become a source of public nuisance
- Mobile traders who are brought under the Street Litter Control Notice regime.

Other businesses will also be affected because they are directly or indirectly responsible for nuisance caused. These include:

- Licensed Premises (premises licensed to sell alcohol for consumption on site, as defined under the Licensing Act 2003)
- Vehicle dealerships and repair establishments that currently use streets and highways for business purposes
- Construction companies managing projects over £200,000 who will have to develop and implement site waste management plans
- Owners of trolleys such as supermarkets
- Businesses or other activities that rely on free literature distribution. This might include events at a local level, but will not include charities where the printed matter relates to or is intended for the benefit of the charity, or those activities distributing free literature for political or religious purposes.

Public sector

With the exception of three measures (extensions to statutory nuisance, sale of spray aerosols and stray dogs) the measures all amend existing powers or provide new powers for local authorities to use as they decide is appropriate. The work associated with the statutory nuisance measure is expected to be undertaken within existing structures, but it is difficult to predict how much extra work this will generate especially in the short term. The costs associated with the spray aerosols measure will be low: estimates suggest it to be between about £3,000 to £10,000 per local authority per year for those that set up programmes. Costs associated with stray dogs are difficult to predict, and currently under discussion between the Home Office, ODPM and stakeholders.

Any new spending by local authorities will not be funded through an increase in government funding or council tax . Therefore where authorities decide to use the additional powers, as discussed above, it is expected to be where there is at least a net social cost saving overall if not a net financial cost saving to them. There will in some cases be an initial cost in setting up the appropriate systems:

for example, for the free literature and intruder alarm measures. Many authorities are also likely to invest resources at a strategic level. These up-front costs will often be retrieved by savings over a period of time.

Environmental

There are no environmental costs perceived.

Social

There are no direct social costs perceived

Quantification of benefits

As discussed before the total benefits will depend on the extent that the measures are used.

There are potentially considerable cost savings to be made through more effective mechanisms to deal with litter, fly-tipping and other forms of nuisance. In 2003/4 the costs of street cleansing in England is predicted to be £500m⁵, the annual costs of fly-tipping in England and Wales is estimated at between £100m and £150m⁶, the costs of addressing graffiti in London alone was approximately £23m⁷ and the cost of abandoned vehicles £26m⁸ per annum. This is a very partial picture of the current costs of cleaning up neighbourhoods in England and Wales. If the measures were to reduce these costs by 10% this would represent a saving of about £70m in respect of the costs outlined above alone, and the measures address a wider range of issues than these.

It is not possible to estimate the positive impacts of these measures on crime, health, anti-social behaviour and so on although it is thought that the improvements they will bring about are needed to underpin wider improvements.

Quantification of total costs

Again these are difficult to predict as they depend on the approach local authorities take to using the measures. The scenarios given on page 11 illustrate potential different approaches by local authorities.

Individual costs and benefits

⁵ Estimated figure based on Total Expenditure on Street Cleaning (not chargeable to highways).

⁶ Environment Agency estimate

⁷ Graffiti in London, Report of the London Assembly Graffiti Investigative Committee

⁸ The ODPM Cleaner, Safer, Greener Communities: Removing Nuisance Vehicles report November 2004

The individual costs and benefits of each of the individual measures are summarised in the table below. Each of the measures, the risks they address and their costs and benefits are examined in more detail in section E.

It is important to note that any figures are highly speculative given that it is not possible to predict the level of use of these measures and the lack of monetarised data on local environmental quality. Use is made of data where it is provided to come up with a best estimate of impacts.

Table 2: Summary of the costs and benefits of the individual measures

Measure	Costs	Benefits
Individual Bill Measures		
Part 1: Crime and Disorder		
1.1 Extend the objectives of the Crime and Disorder Reduction Partnerships	None	Improved decision-making and longer term benefits of improved local environments and reduced crime.
1.2 New powers to deal with nuisance alleyways	Cost to local authority in making orders although there is a potential net financial benefit of £30,000 pa as reduced need for Orders under the Countryside and Rights of Way Act 2000 (CROW).	Reduced burglary and anti-social behaviour. Enhanced local environmental quality Reduced costs to local authorities and police in dealing with nuisance Reduced insurance premiums Reduced levels of anxiety
Part 2: Vehicles		
2.1 Create new offences and powers in relation to nuisance vehicles	Costs of enforcing the new offences on nuisance vehicles	Increased amenity through fewer nuisance vehicles on streets
2.2 Amend provisions on abandoned vehicles		Reduced costs to local authorities (estimate £2.6m per annum) Increased amenity Reduction in anti-social behaviour Reduction in emergency service time Fewer incidents of arson estimated cost saving £11.5m

Measure	Costs	Benefits
Part 3: Litter and Refuse		
3.1 Extend the litter offence to dropping litter on all types of land, including “aquatic environments”	Enforcement and administrative costs should be less than benefits. Transfer of funds from litterers to public purse.	Reduced littering Reduced cleaning costs.
3.2 Replace Litter Control Areas and the use of Litter Abatement Notices in these areas with power to serve Litter clearing Notices	Cost to occupiers of land	Increased removal of litter Reduced litter in the first place Easier for authorities to use
3.3 Make failure to comply with street litter control notices a direct offence, enforceable through fixed penalty notices. Include vehicles, stalls and other moveable structures for these purposes	Transfer from authorities to businesses	Less littering particularly from moving structures. Reduced costs of enforcement
3.4 Extend controls on distribution of free literature to local authorities outside London & Newcastle	Cost to Local Authorities: total set up costs of £450,000 to £750,000 and ongoing admin and enforcement costs of £225,000 pa	Less litter in priority areas Total reduced costs of clearing up litter of £187,500 - £750,000 pa
3.5 Specifically define smoking related materials and discarded chewing gum as litter	Enforcement costs for those authorities who do not already define as litter	Less littering of smoking related materials and chewing gum
Part 4: Graffiti and Other Defacement		
4.1 Extend Graffiti Removal Notices to cover fly-posting	Transfer of costs from local authorities to property owners such as owners of street furniture and statutory undertakers.	Less fly-posting Reduced net cost through efficiency saving.
4.2 Enforcement of the sale of aerosol paints to children	Costs to local authorities of reviewing enforcement and carrying out enforcement programmes if	Fewer incidents of spray painting Reduced costs to business and authorities for removing graffiti

Measure	Costs	Benefits
	appropriate. (est. £3,000- £10,000 per local authority per year for those that set up programmes). Most likely in urban areas and particularly London	
4.3 Revise the statutory defence relating to the display of advertisements in contravention of Regulations	Increased cost to those responsible for unlawful advertising	Reduced fly-posting Easier for planning authorities to respond to fly-posting where it does occur.
4.4 Extend powers to remove and recover costs for unlawful advertisements to outside London and provide for compensation for damage	Increased cost to those responsible for unlawful advertising	Reduced fly-posting. Easier for planning authorities to respond to fly-posting where it does occur. For 4.3 and 4.4 combined, an estimated cost reduction of £760,000 pa
Part 5: Waste on Land		
5.1 Amend provisions for dealing with the illegal disposal of waste by removing the defence of operating under an employer's instructions, increasing penalties, allowing forfeiture of vehicles, requiring offenders to pay costs of investigation and clearance, and extending the clean up provisions for fly-tipping to include the landowner	Cost of clearance to landowners who knowingly caused or permitted fly-tipping	Reduced fly-tipping. Clearance of long-standing trouble spots. Improved liveability of areas. Better cost recovery for Environment Agency, local authorities and land owners
5.2 Powers to issue and keep fixed penalties for failing to produce waste transfer notes	Cost to businesses not complying with waste regulations	Potential reduction in fly-tipping Easier to enforce regulations Revenue for local authorities to offset enforcement costs

Measure	Costs	Benefits
5.3 Introduce a more effective system for stop, search and seizure of vehicles thought to be involved in fly-tipping	Enforcement cost	Reduced fly-tipping Reduced demand for police time
5.4 Repeal of the divestment provisions for waste disposal functions		Encourage partnership working. More strategic approach, and more options open to, authorities. Increased recycling.
5.5 Reform the recycling credits scheme to improve its operation in light of the policy framework which has developed since its introduction.	Financial transfer	Increased local government flexibility Level playing field for third party applications
5.6 Introduce fixed penalties for waste left out on streets	Costs to those not complying with a local authority's requirements	Reduced waste in local environments. Increase amenity
5.7 Amendments to provisions covering the waste duty of care and registration of waste carriers	None	More effective operation and enforcement
5.8 Powers to issue and keep fixed penalties to waste carriers for failing to produce registration details	Cost to businesses that fail to comply with regulations	Potential reduction in fly-tipping Easier to enforce regulations Revenue for local authorities
5.9 Requirement for site waste management plans	Construction industry time spent preparing and implementing plans (approx. 1 day of management time) Cost to local authorities and the Environment Agency of enforcing	Cost savings to business through increased re-use and recycling, resource efficiency and waste minimisation Increased regulatory compliance Reduced fly-tipping
5.10 Amendment to ASB Act 2003 on powers of investigation	None	More effective investigation and prevention of fly-tipping

Measure	Costs	Benefits
		incidents
Part 6: Dogs		
6.1 Deregulating the dog bye-law system	Some authorities may decide to increase resources as it would be more effective	Reduced costs to local government
6.2 Give authorities full responsibility for receiving stray dogs	Cost transfer from police to authorities, compensated for by a departmental budget re-allocation	Police time refocused on priorities, freeing up an estimated 40,000 hours per year Better service than provided by police
Part 7: Noise		
7.1 New measures to reduce noise nuisance from a) intruder alarms b) licensed premises c) Greater flexibility in issuing abatement notices	a) Cost to authority of maintaining database of registered alarms b) Costs funded by revenue from penalties c) Unlikely to entail increased costs	a) and b) Improved quality of life for those suffering from noise especially at night c) Less punitive approach permitting better joint working
Part 8: Architecture and the Built Environment		
8.1(a) Establish CABE on a statutory basis (b) provide a statutory power to Secretary of State to fund those activities conducted by CABE.	Financial transfer through change of auditors	Removes need for Department for Culture, Media and Sport to rely on Appropriation Acts when making grants to CABE. Enables DCMS to fulfil an undertaking that Comptroller & Auditor General should audit CABE.
Part 9: Miscellaneous		
9.1 Extend powers for dealing with abandoned trolleys (cost recovery provision).	Transfer of cost from LAs to trolley owners est. £800,000 pa	Benefits to local environment of fewer abandoned trolleys. Net cost saving through efficient investment reducing disposal and replacement costs.
9.2 Extend statutory nuisance to include a) artificial light and b) nuisance from insects	Cost to local authorities of carrying out new duty Cost to responsible parties of taking appropriate measures (for b: farmers and	a) Reduced light nuisance and promotion of better practice b) Where practicable reduction of nuisance from insects

Measure	Costs	Benefits
	water companies)	
9.3 Improve the process for Contaminated Land Appeals	Cost transfer from Magistrates court to Planning Inspectorate.	Reduced costs to appellants and appellate body. Increased access to expertise
Fixed Penalty Notices		
E2: Empower local authorities, Parish and Town Councils and Environment Agency to issue fixed penalties for new and existing offences	Additional burden on courts where failure to pay FPNs leads to prosecution. Un-recovered costs to authorities of bringing prosecutions.	Increased compliance with relevant measures Reduction in burden on courts where a fixed penalty is issued and paid where cases would otherwise go to court Receipts from FPNs for local authorities

Option 3: Introduce some measures

This option would be to introduce some but not all of the measures

Costs and Benefits:

The costs and benefits of this would depend first on the individual direct costs and benefits of each of the measures introduced but also the indirect and cumulative effect of the measures introduced.

E. COSTS AND BENEFIT OF INDIVIDUAL BILL MEASURES

E1: INDIVIDUAL BILL MEASURES

PART 1 – CRIME AND DISORDER

The important links that exist between the state of the local environment, anti-social behaviour and the fear of crime are now well known and understood. This section recognises the continuum that exists, from litter and graffiti to more serious criminal activity, and the fact that solutions to these problems do not lie in isolation from one another. It seeks to make explicit in legislation the need to include local environmental crime within the remit of existing processes for dealing with crime and disorder.

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

Issue addressed:

Sections 5 to 7 of the Crime and Disorder Act 1998 set out the requirements for local authorities and chief police officers to formulate and implement crime and disorder reduction strategies. Partnerships formed for this purpose are under no obligation to consider low-level anti-social behaviour and environmental crime (such as littering, graffiti, fly-posting, nuisance vehicles and fly-tipping) in their strategies. Forward-thinking authorities already consider these aspects, and there has been widespread support from police and local authorities for a joined up approach which also sits well with the Government's Cleaner, Safer, Greener approach.

Measure proposed

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

Benefits

- Increased consideration of the interrelation between local environmental quality and crime in institutional decision-making leading to improved local environmental quality and reduced crime in the longer term. The size of this effect is not possible to assess in isolation.

Costs

- There would be no policy cost associated with this measure.

1.2 Create new powers to deal with nuisance alleyways

Issue addressed

Alleys giving rear access to properties and providing shortcuts between blocks of properties are a common feature of late 19th century and early 20th century housing developments in our towns and cities. Some may merely be narrow footpaths while others are capable of taking vehicular traffic. Unfortunately some of these alleyways are providing concealment and cover for criminal acts and anti-social behaviour, such as facilitating burglary, enabling fly-tipping, drug-taking, vandalism and graffiti. Restricting access to the alleyways by gating them is a simple solution and has been proven successful in a number of areas in England.

Where an alleyway is a private access, existing legislation allows it to be gated, providing the consent of all users with a right of access is obtained. Problems arise where the alleyways it is desired to gate are public highways. Powers currently available in sections 118B and 119B of the Highways Act 1980 which enable the diversion and closure of rights of way to prevent crime have proven to be problematic. These powers were introduced by Schedule 6 of the Countryside and Rights of Way Act 2000. Since they came into operation in February 2003 various problems have been identified with the scope and operation of the provisions which are preventing local authorities and the police from taking action to protect vulnerable communities. These include:

- The provisions do not expressly cover anti-social behaviour
- The provisions do not apply to alleyways which are unclassified roads
- The procedure is time and resource intensive for local authorities
- The removal of rights of passage is irreversible
- Anyone, anywhere in the country, can object and delay or stop the process
- The closure prevents the local highway authority from considering whether it is only necessary to prevent public access at certain times of the day.

Local authorities and their MPs, particularly those in the North West and North East of England are keen to see a much simpler procedure which enables decisions to be taken at a more local level and in response to the needs of local communities.

Failure to remedy problems with the current legislation will continue to undermine other action currently being taken by local authorities and the police to reduce crime and anti-social behaviour in these areas. Users of rights of way perceive a risk that local highway authorities might, in some cases, abuse their powers and gate an alleyway, not because they are justified on an assessment of the

resulting costs and benefits (of reduced risk of crime and anti-social behaviour), but for other reasons.

Measure proposed

This provision will provide for a new type of order – a “gating” order – which can be made by a local highway authority in relation to certain highways. Before such an order could be made it would first have to be demonstrated that:

- a. the premises adjoining or adjacent to the highway are affected by high levels of crime and/or serious anti-social behaviour
- b. the existence of the highway is facilitating the persistent commission of criminal offences and/or serious anti-social behaviour
- c. the local highway authority has consulted local residents and has their support
- d. the local highway authority has consulted the local crime and disorder reduction partnership and has its support
- e. the local highway authority has considered and, where appropriate, tried alternative means of dealing with problems, such as installation of security lighting and CCTV, before using these powers
- f. the local highway authority has considered the availability of a reasonably convenient alternative route before using these powers.

The procedure for making the order would be provided for in secondary legislation (modelled on the procedure for making Traffic Regulation Orders). The intention to make a gating order would be subject to consultation with affected parties, and publication of the draft order for at least 21 days to allow for objections, which the authority must consider when making their decision. A gating order would not be subject to appeal, but there would be a mechanism for High Court challenge on the grounds that it is ultra vires or that the specified procedures had not been followed. The Court would be empowered to quash an order if it thinks the case for challenge is made.

Benefits

- Reduced burglary and anti-social behaviour. In Liverpool a 5 year project by the Safer Merseyside Partnership had led to the provision of 200 gates at 20 sites protecting 3000 properties leading to a reduction in burglary by 50% and significant reduction in anti social behaviour. In some parts of London, it has been proved that a gate can bring down the number of rear access burglaries by up to 90%
- Enhanced local environmental quality through reductions in fly-tipping, vandalism and graffiti, and increased opportunities for using the space constructively
- Reduced costs to local authorities and police in dealing with fly-tipping, drug dealing and prostitution

- Reduced insurance premiums
- Levels of anxiety caused by fear of burglary and anti-social behaviour are dramatically reduced often leading to health benefits and reduction in burden on National Health Service
- Space within alleyway may provide an area for children to play and reduce road accidents.

Costs

- Cost to local authority in making orders although there is a potential net reduction in cost through reduced orders under the Countryside and Rights of Way Act 2000 (which are estimated to be more expensive).

Quantification of costs

Local authorities will incur costs in making these new orders, which will be based on similar procedures to the existing ones for traffic regulation orders. Traffic regulation orders cost in the region £1,000, however several alleyways could be included in the same order.

Gating orders made currently under the Highways Act 1980 (as amended by the Countryside and Rights of Way Act 2000) are estimated to cost in the region of £1,700. Local authorities were fully funded under the Countryside and Rights of Way Act 2000 on the basis of a need to make 300 such orders over a ten year period. £510,000 has therefore already been funded.

It is likely that this new procedure will increase the number of alleyways being closed, but this has yet to be quantified. If it were to remain the same, and if all 300 orders costed on average the same as Traffic Regulation Orders, then there could be a saving of £30,000 per annum over the next ten years.

PART 2 – VEHICLES

Over the next few years the Government intends to secure a major reduction in the number of nuisance vehicles which blight our roads and public spaces. As part of our strategy, we want every local authority to be able to remove nuisance vehicles immediately to a place of safe keeping and recover the costs of doing so.

Current legislation⁹ focuses on vehicles which have been abandoned, but other vehicles, such as those being repaired on the street, can also cause nuisance to members of the public and lead to the degradation of a locality.

⁹ Sections 3-6 Refuse Disposal (Amenity) Act 1978, sections 99-102 Road Traffic Regulation Act 1984, Removal and Disposal of Vehicles Regulations 1986, Removal and Disposal of Vehicles (England) (Amendment) Regulations 2002

2.1 Create new offences and powers in relation to nuisance vehicles

Issue addressed

Nuisance vehicles may not necessarily be abandoned, but they exhibit a certain type of characteristic. Often vehicles are repaired in the street as part of a commercial business which creates a blight, takes up residents parking spaces and can damage the highway. Residents are also affected in similar ways by vehicles being left on the highway for sale as part of a commercial business.

Measures proposed

In respect of vehicles causing a nuisance, two new offences will be created: making it an offence to leave or causing to be so left two or more motor vehicles parked on a road where they are exposed or advertised for sale and making it an offence to carry out restricted works (repairs and other works) to vehicles on a road. Local authorities would have powers to issue fixed penalty notices for these offences.

In Practice

A business that sells or repairs vehicles on a highway may be causing a nuisance or causing an obstruction to other road users, or residents in the particular area. It can also be a major obstacle for local authorities to clean streets efficiently. A highway is not intended to be used as a place of business.

Under the Bill, the local authority would be able to issue a fixed penalty notice if a car dealership was using the highway as an extension to his car yard, or a local garage using the street to repair cars. Similarly to other fixed penalty notices, the business's manager could discharge any liability to conviction by paying the fixed penalty notice. This measure will not extend to emergency repair services such as the AA and RAC.

Benefits

- Increased amenity through fewer nuisance vehicles on streets
- Less pollution from vehicles being repaired on the streets.

Costs

- Costs of enforcing the new offences on nuisance vehicles.

2.2 Amend provisions on abandoned vehicles

Issue addressed

When a car reaches the end of its useful life (or the owner sees no value in the car) it should be disposed of in a legally responsible manner similar to other types of waste or passed on to a reputable person who can legally dispose of the vehicle.

The most common way to do this is to take it to a scrap dealer or ask the local authority to collect it. In recent years the price of scrap metal has fallen dramatically (although scrap metal prices have now started to recover). Prior to the reduction, an owner wishing to dispose of a vehicle that had reached the end of its life could expect to receive a payment in exchange for the vehicle. With the fall in the scrap metal price, scrap yards have been charging last owners for taking their vehicle off their hands. This has been a significant factor in the rapid increase of abandoned vehicles over the last five years. This is coupled with the increasing cost of keeping a vehicle on the road legally and the complexity of maintaining them.

There are already some measures in place that have the effect of reducing numbers of abandoned vehicles: there are schemes around the country (and in all London boroughs) where local authorities take back vehicles free of charge for disposal; and, from 2007, all vehicle manufacturers will be required under European legislation (the End of Life Vehicles Directive) to take back vehicles at the end of their working lives free of charge. Nevertheless, there are now more than 300,000 vehicles abandoned annually, and this is projected to increase by 65% by 2008.

The majority of these abandoned vehicles have no registered keeper, making it more difficult to trace and prosecute those responsible. Once left on the street they increase the risk of injury and arson.

Local authorities are under a duty to remove abandoned vehicles. Before they can do this in certain circumstances they must affix a notice to the car informing of the intention to remove it. This subsequently leads to instances of anti-social behaviour, vandalism and arson, resulting in a major blight to local communities and major expenses for local authorities and the fire service.

Measures proposed

The measures proposed will reform the powers in relation to abandoned vehicles by removing the need to affix a notice to a vehicle, enabling local authorities to remove a vehicle immediately once they have made a decision as to its abandonment.

In certain cases they would be able to dispose of the vehicle immediately, but would otherwise need to take steps to trace the registered keeper. It is already an offence to abandon a vehicle; in most circumstances, it will now be made possible to discharge liability for the offence by paying a fixed penalty; local authorities would be able to keep the receipts to help offset their costs of enforcement. For serious or multiple offences, prosecution would remain the appropriate form of enforcement.

Where the authority removed a vehicle, the keeper or their representative would be able to reclaim it on payment of the fixed penalty, together with the costs of removal and storage. Vehicles not released within a given period would be destroyed or otherwise disposed of.

Benefits

- Reduced costs to local authorities as they will be able to recover costs without need for prosecution, they would have reduced storage costs through being able to dispose of vehicles immediately and not having to wait for notice periods
- Increased amenity through fewer abandoned vehicles on streets
- Reduction in anti-social behaviour pursuant on abandoned vehicles
- Reduction in emergency service time taken up by responding to incidents with abandoned vehicles.

Costs

- Costs of enforcing the new FPNs on abandoned nuisance vehicles.

Quantification of benefits

The cost in England of investigating, removing and disposing of abandoned vehicles was £26 million in 2002/03. If these measures were to reduce these costs nationwide by 10%, they would represent a cost saving to local authorities of £2.6m.

Deliberate vehicle arson costs the UK £230m per year to clean up, remove and address and it can be assumed that the majority of these fires involve nuisance vehicles. If we assume that these measures reduce vehicle arson by 5% as vehicles remain abandoned for shorter periods of time and fewer vehicles are abandoned, this represents a cost saving of £11.5m per year.

PART 3 – LITTER AND REFUSE

3.1 Extend the litter offence to dropping litter on all types of land, including “aquatic environments”

Issue addressed

Under section 87 of the Environmental Protection Act 1990 (EPA 1990) it is only an offence to drop or leave litter on highways and land to which the public has access; dropping litter on private land is not an offence. As a result, someone who drops litter on a footpath commits an offence, while someone who throws it into a garden adjoining a footpath does not.

Measure proposed

This measure would extend the offence of littering to *any* land, regardless of ownership, and also to land covered by water; including the sea where this falls within the area of a principal litter authority.

This measure would apply to the offence alone – it would not extend the current duties on local authorities as set out in section 89 of EPA 1990. The exceptions to the offence that are set out in section 87 of EPA 1990 would continue to apply, so that no offence would be committed if the littering was authorised by law or done with the consent of the owner, occupier or person having control of the area.

The current option of discharging liability to conviction for the offence by payment of a fixed penalty (section 88 of EPA 1990) would continue to apply.

Benefits

- Reduced littering in areas where there has previously been no sanction to prevent it. This reduced littering will depend on the extent to which this law is enforced.
- There are local environmental gains to reduced littering but there are also cost savings to public bodies in reduced cleaning costs and reduced public complaints to local authorities and other bodies.

Costs

- Transfer of funds from those littering to public purse
- Cost to local authorities of enforcing the law and administering fixed penalties. If enforcement is approached strategically then enforcement resource will only be used where the benefits of enforcement outweigh the costs.

3.2 Replace Litter Control Areas and the use of Litter Abatement Notices in these areas with power to serve Litter Clearing Notices

Issue addressed

Under section 90 of the EPA 1990 local authorities can designate areas of land as litter control areas if they are of the opinion that the presence of litter and refuse is detrimental to the amenity of the area. Before an area can be designated, all affected persons must be notified and given the opportunity to make representations. The types of land that may be designated are currently prescribed by the Secretary of State through the Litter Control Areas Order 1991 and Litter Control Areas (Amendment) Order 1997. These are all land areas to which the public are entitled or permitted to have access including public car parks, shopping centres, business parks, cinemas, theatres, and sports facilities as well as public open air land under the direct control of a number of bodies such as parish councils, urban development corporations, National Park Authorities and health service bodies. The occupier of any such land within a litter control area has a duty to ensure that the land is, so far as is practicable, kept clear of litter and refuse. If the local authority nevertheless concludes that relevant land within a litter control area is defaced by litter and refuse, it may serve a litter abatement notice on the occupier of the land requiring him to clear the land of litter. Failure to comply with a litter abatement notice is a criminal offence.

This system is complicated and has not proved effective, with very few local authorities making use of the power to establish litter control areas. Even if a litter control area is established, it does not enable local authorities to tackle litter problems on private land such as building sites and the gardens of unoccupied houses. Moreover, it is not possible to deal with isolated instances of littered land, except by designating the area as a litter control area.

Measure proposed

This measure would replace the existing system with a much simpler one. If a local authority was satisfied that land in its area was defaced by litter or refuse so as to be detrimental to the amenity of the area, it could serve a litter clearing notice on the occupier, or if the land is not occupied, on the owner. This would require him to clear the land of litter to a specified standard within 28 days; there would be a right of appeal. Failure to comply with a clearing notice would be a criminal offence, with local authorities having the power to issue a fixed penalty notice in lieu of prosecution. In such cases local authorities would have the power to enter the land, clear the litter and refuse and recover their costs.

Litter clearing notices would apply to all types of land, other than land under the direct control of local authorities and the Crown, and land which statutory undertakers and designated educational institutions had a statutory duty to keep clear of litter and refuse. For all of these areas, apart from relevant land of a principal litter authority, the power to serve litter abatement notices would remain.

In Practice

A business, such as a building site, or a private residence may be completely contained on private land with no public access, yet still be clearly visible to the public. If there was a considerable amount of litter and refuse on the site (which may or may not result from the occupier or owners' activities), it would be difficult to address under current legislation should the occupier/owner refuse to clear this rubbish.

The local authority could use the powers available under the s.215 of the Town and Country Planning Act 1990 if it appears that the condition of land is adversely affecting the amenity of the area. This involves serving a notice on the occupier or owner, specifying cleansing times. Unfortunately, some local authorities find this piece of legislation difficult to use for litter and refuse, as there is a common belief that litter and refuse are not severe enough to warrant the use of this power, even though it may be causing a nuisance to the public.

The litter clearing notices proposed in the Bill will address this difficulty. Under the new power, a notice could be served on **any** type of land if it is significantly defaced by litter or refuse (with the exception of land belonging to a local authority, a statutory undertaker or Crown land, which is covered by other legislation). The notice could specify clearing times and standards. Should the owner or occupier not comply with the notice, the local authority would be able to prosecute or issue a fixed penalty notice in lieu of prosecution (see Section E2). Should an owner or occupier not be found the authority can post a notice on the land.

Benefits

- Increased removal of litter because this measure is likely to be used more often than the previous arrangements as it can be applied anywhere and is easier to use
- Reduced burden on authorities when using this measure as no designation is necessary and Fixed Penalty can be used without prosecution
- Reduced litter in the first place as more occupiers will have an incentive to keep land free of litter.

Costs

- There is a potential cost of disposal for occupiers of land (or owners where there is no occupier) who would have otherwise not have disposed of that litter.

3.3 Make failure to comply with street litter control notices a direct offence, enforceable through fixed penalty notices. Include vehicles, stalls and other moveable structures for these purposes

Issue addressed

Street Litter Control Notices are issued to operators by local authorities requiring them to take steps to minimise and clear up litter that originates from their commercial or retail premises. Currently, if a person fails to comply with the requirements specified in an Street Litter Control Notice, the local authority can apply to the magistrates' court for an order requiring the person to comply. If a person then fails to comply with the order, they will be guilty of an offence and fined up to £2,500.

This means it is burdensome to enforce Street Litter Control Notices and encourages non-compliance.

Vehicles, stalls and moveable structures are a major contributing factor to street litter and yet they are not subject to these powers and the problems they cause cannot be addressed.

Measure proposed

This measure would make it directly an offence for an undertaking to fail to comply with the notice, rather than requiring the local authority to obtain an order from the magistrates' court first. The offence would be categorised as level 4 on the standard scale with the ability to serve fixed penalty notices of £100 as a deterrent.

The provision would also enable action to be taken where litter is generated from vehicles, stalls or other moveable structures that are used for street vending.

In Practice

If a commercial or retail business has a frontage onto a public pavement, such as a fast food restaurant, and the local authority are satisfied that there is a

recurrent defacement from litter or refuse, they can issue the business with a street litter control notice. The notice imposes requirements on the business to prevent the continued accumulation of litter around the frontage.

If a business refuses to comply with the notice the local authority must currently apply to a magistrates' court for an order to require the person to comply with the notice.

The Bill would make it an offence not to comply with a street litter control notice and thus enable the local authority to prosecute (or issue a fixed penalty notice in lieu of prosecution - see Section E2) rather than having to apply first for an order through the courts requiring compliance.

The Bill also widens the description of business frontages to include a vehicle or stall or other moveable structure so that a mobile street vendor can be subject to the same requirements as other fixed premises.

Benefits

- Less littering resulting from more efficient enforcement
- Reduced costs to authorities through not having to seek a magistrates' court order
- New mechanism to deal with moving structures.

Costs

- Cost transfer from authorities to businesses. This would affect fast food businesses in particular.

3.4 Extend Free Literature Distribution Controls to local authorities outside London

Issue addressed

Local authorities in London (and the Council of the City of Newcastle upon Tyne) currently have powers to designate certain areas (e.g. car parks or open spaces under the control of the borough and streets where the public has access) where the distribution of free literature can only occur with the consent of the authority¹⁰. Distribution in these areas without consent is an offence punishable by fine and the local authority may also seize any such literature. These powers do not exist

¹⁰ Under section 4 of the London Local Authorities Act 1994 (and section 22 of the City of Newcastle upon Tyne Act 2000)

outside London and Newcastle and so unregulated literature distribution continues to create a significant and growing litter problem.

Measure proposed

Powers existent in London and Newcastle would now be extended to all local authorities in England (and Wales) so that literature distribution would only be allowed on designated areas (or within 7 metres of them) with the permission of the land manager. The offence would also cover anyone that commissioned or paid for the distribution of free literature in designated areas without consent, thus providing a means to deal with the beneficiaries of such activity. The fine for the offence would be up to a maximum level 4 (£2,500).

For those distributing the literature, the local authority could offer the option of discharging liability by payment of a fixed penalty of £75, although this amount could be varied by the local authority (see Section E2 on fixed penalty notices) or altered by subsequent order. The penalty notice would be payable to the local authority, who will be able to keep the receipts for use on its qualifying functions under this measure, or for other functions as specified by subsequent Regulation(s). Local authorities would be able to charge a fee for issuing a consent.

Exceptions would apply to ensure that the powers do not infringe on legitimate political and democratic activities, for religious purposes or an individual's human rights, particularly those set out in Article 10 of the European Convention on Human Rights. It will also not include charities where the literature relates to, or is intended for the benefit of the charity.

In Practice

Anyone wishing to advertise products or services by handing out free literature on public land can currently do so freely – with the exception of people in London or Newcastle upon Tyne. Anyone in these cities can be subject to controls (i.e. licenses) on whether and when they can distribute literature.

The Bill will extend this scheme nationally – with the exception of literature relating to charitable, religious or political purposes. Local authorities will be able to designate land to which this provision applies. Anyone wishing to hand out flyers on this land will have to apply to the local authority for consent. The consent would be subject to certain requirements, such as allowing the distribution during certain times, or only in certain areas. The authority could refuse permission if they considered that the distribution of free literature was likely to lead to the defacement of the land.

If a person is caught distributing literature without the appropriate consent, the local authority could prosecute them in a magistrates' court or issue them with a fixed penalty notice (see Section E2).

Benefits

- Reduced litter in priority areas.
- Reduced costs of clearing up litter

Costs

- Initial cost of setting up designation and consent system.
- Enforcement and administration of system

Quantification of costs and benefits: Free Literature Distribution Controls

Assumptions:

It is assumed that:

- The costs of setting up appropriate systems is somewhere between £3000 and £5000
- 150 local authorities decide to set up systems
- It costs £1500 per year to administer and enforce a system
- The average annual cost of dealing with discarded free literature in the authorities that choose to set up systems is in the range £2500 to £10,000. Local authorities that responded to the consultation provided estimates of £2000 and £3000 but this may not be representative as it would account for only about 0.2% of the average cost incurred by local authorities; it would seem fair to assume that those local authorities that set up designations would both spend more than the average on street cleaning and they would spend more than 0.2% of this on clearing up discarded free literature.
- Controls reduce the costs of clearing up discarded free literature by 50%

Analysis:

On this set of assumptions the total set-up cost to local authorities would be between £450,000 and £750,000; and taking account of the costs of enforcement and the cleaning costs saved, on an annual basis there would be somewhere between a net cost of £37,500 and a net cost saving of £525,000.

This illustrates that it is not certain whether there would be a net financial cost or benefit to this measure. However, it is important to note that this is a power that Local Authorities would choose whether or not to use. They would only do so where there is an overall net benefit to using it and this is likely to be in key areas where free literature litter is a particular problem and it is a priority of the authority to deal with it.

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

Issue addressed

There is currently a lack of clarity as to whether smoking-related materials and chewing gum are considered to be litter. Whilst such items are already considered to legally fall within the scope of the offence of littering under section 87 of Environmental Protection Act 1990, there has been some reluctance from practitioners to include them in practice. This leads to less effective enforcement of offences relating to these materials.

Measure proposed

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

The measure does not widen the scope of the duty under section 89 of EPA 1990 to keep land free of litter and refuse, to include chewing gum staining. The extent of the duty to keep land clear of discarded gum would be clarified in the Code of Practice on Litter and Refuse .

Benefits

- Clear indication to would-be litterers that irresponsible disposal of smoking-related materials and chewing gum can result in an FPN if caught. This will potentially lead to fewer incidents of this particular type of litter.

Costs

- Costs of enforcement for the authorities who are not currently enforcing the legislation in respect of these materials.

PART 4 – GRAFFITI AND OTHER DEFACEMENT

The prevalence of litter and refuse often leads to further problems affecting the public space. Graffiti and fly-posting are common in areas that are blighted with litter and refuse. These measures will improve existing powers for dealing with these problems.

4.1 Extend Graffiti Removal Notices to cover Fly-Posting

Issue addressed

The proliferation of fly-posting is a contributing factor in the decline in environmental quality in some neighbourhoods. This measure combined with those at 4.3 and 4.4 is proposed to deal with the problem.

Measure proposed

Graffiti removal notices issued under sections 48-52 of the Anti-Social Behaviour Act 2003 are currently being piloted in 12 local authority areas. Removal notices may be served where a local authority is satisfied that a relevant surface in an area has been defaced by graffiti and this is detrimental to the amenity of the area. The notices may place conditions on the owners of property and surfaces to remove graffiti within a minimum of 28 days. If these conditions are not met, the authority or any person authorised by the authority may remove, clear or otherwise remedy the defacement and recover any expenditure reasonably incurred. The Department of Trade and Industry reports that initial experience of the pilot scheme is that an extremely effective partnership model has emerged particularly between the telecoms sector and authorities. This is expected to be the best practice model and resort to issuing notices only where the preferred approach is not workable.

The Home Office is currently consulting on the implementation of these notices on a national basis. This measure extends removal notices to cover fly-posting **if graffiti removal notices are rolled-out nationally.**

In Practice

Under existing legislation, a business's property with a "relevant surface"* can be issued with a graffiti removal notice if graffiti is causing a problem. As yet this is only in operation in 12 pilot areas around the UK: the Home Office are currently consulting on the pilot schemes and will roll it out nationally should the evaluation support it.

The proposed measure in the Bill would extend the removal notices to also cover fly-posting. The notices would also be renamed as "defacement notices" which would cover graffiti and/or fly-posting.

** "Relevant surfaces" are surfaces in or on a public street, or owned by a statutory undertaker or educational institution and accessible or visible to the public. Home Office guidance (on the Anti-Social Behaviour Act 2003) specifically excludes building and shop frontages as these are adjacent to the street and not "in or on the street". Therefore the presence of graffiti and fly-posting on these kinds of surfaces will not be included in these provisions.*

Benefits

- This measure transfers responsibility onto property owners to remove advertising
- Less fly-posting as owners would have more of an incentive to take steps to prevent fly-posting in the first place
- Local authorities would be able to tackle graffiti and fly-posting in tandem.

Costs

- Where local authorities decide to use this measure there is a transfer of cost from authorities to owners of property. This transfer should also lead to an overall reduction in costs as owners will take preventive measures where it is cheaper to do so than to bear the costs of removing advertisements
- This measure is likely to affect telecommunication providers, transport shelter providers, Royal Mail and Network Rail in particular. It costs, for example, £20 per time to clean graffiti and fly-posting from cable junction boxes. Costs to these businesses would be reduced through partnership working with local authorities which, from the evidence available to date, has worked well in an initial pilot scheme. In addition, the cost of removing fly-posting will be moderated where the property owner is already taking steps to prevent or remove graffiti
- Telecoms companies report that costs associated with this measure are likely to be passed on to their customers
- Telecoms companies also report that in the pilot there has been some inconsistencies of approach by local authorities with examples of where authorities and companies have worked together very effectively and cases, for example as reported by Telewest Broadband where individual authorities have demanded £15,000 per annum. Costs to business will be minimised by cost effective partnerships between authorities and business and sharing of best practice between authorities.

4.2 Enforcement of the sale of aerosol paints to children section of the Anti-Social Behaviour Act 2003

Issue addressed:

The misuse of spray paints is a growing problem as evidenced by the graffiti that blights communities. In areas with a widespread problem, the removal of graffiti can be very expensive. A pilot study into the removal of graffiti showed that over 60% of reported graffiti incidents were within two London Boroughs leading to a significant cost. Failure to properly address this issue could lead to a

deterioration in the quality of the local environment. Many citizens associate graffiti with anti-social behaviour and crime and disorder (Mori Liveability Survey 2002). This can lead to a lack of investment from companies as they see these issues as a barrier to business development which in turn affects employment.

There is evidence in the London Assembly Report on Graffiti and from local authority surveys that young people are responsible for much of the graffiti through misuse of aerosol spray paints in their possession. It is difficult to give a precise figure on the percentage of graffiti committed by under 16s but it is believed to be well over 60% of all graffiti. It is recognised that aerosol paints have a number of legitimate uses, including creative use by young people but these are comparatively limited.

Section 54 of the Anti-Social Behaviour Act 2003 makes it an offence to sell aerosol spray paints to persons under 16 years old. The objective of this provision is to reduce the incidence of criminal damage caused by acts of graffiti. The maximum penalty for the offence is a fine of £2500. The 2003 Act provides a defence for those who took all reasonable steps to determine the purchaser's age and reasonably believed he or she was 16 or over. The 2003 Act also provides a defence for someone who is charged with an offence but who did not carry out the sale themselves if they took all reasonable steps to avoid the commission of an offence.

However, the 2003 Act did not place a specific duty on local authorities to investigate the extent of the problem and to carry out enforcement action, whatever that might be. So, in effect, the provision does not force local authorities to take proactive action in respect of underage sales of paint. Practitioners have advised that, in practice, the best way to crack down on sales of spray paints to children is for enforcement authorities to use test purchasing in order to gather evidence. Local authorities have only general legal powers to carry out test purchasing under the 2003 Act. At present they are relying on section 111 of the Local Government Act 1972 to make advisory visits to retailers and seek assurances that spray paints are not, and will not be sold to children.

To do nothing would mean that local authorities would only take action in respect of underage sales of spray paints if they had themselves identified it as a problem not because of any legislative requirement to do so.

Measure proposed

This would insert a clause in the Bill to enable the more effective prosecution of spray paint sales to under 16s by local authorities (Trading Standards). The proposal would place a duty on local authorities to consider whether they should be taking enforcement action in their area, and a duty to carry out such a programme if appropriate once every 12 months. Enforcement action would include the investigation of complaints, the bringing of prosecutions, and other

measures which would be intended to reduce the incidence of offences under section 54 of the 2003 Act. The new powers would be accompanied by guidance setting out more clearly what other measures could be used, which would include test purchasing.

Benefits

- Reduced incidents of spray painting
- Reduced costs to businesses and authorities for cleaning up and removing graffiti.

Costs

- Costs to local authorities of considering the issue and carrying out enforcement action as appropriate. Estimates from the Home Office suggest that the costs per local authority with programmes would be between £3,000 and £10,000 per year, most of which would be for the programme of enforcement including activities such as test purchasing and training of retail staff
- Local Authority Controllers of Regulatory Services (LACORS) are not able to estimate how many authorities will establish programmes but believe that they will generally be used in urban areas where graffiti is more prevalent and in London particularly which has a very high concentration of spray paint graffiti. Local political pressure will also be a driver for action
- We would expect any additional costs associated with the new clause to be incorporated into local authorities' three-yearly crime reduction and disorder audits and strategies.

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

Issue addressed

It is an offence under section 224 of the Town and Country Planning Act 1990 and Regulation 27 of the Town and Country Planning (Control of Advertisements) Regulations 1992 to display an advertisement without the prior consent of the owner of the land on which it is displayed. The people whose goods, trade, or business or other concerns are given publicity by the advertisement may be guilty of an offence and may be prosecuted – unless they can prove that it was displayed without their knowledge or consent. In order to counter this statutory defence, the local planning authority must currently demonstrate both knowledge *and* consent, which in the latter case can be problematic given the contractual relationships in place between beneficiaries and those directly undertaking the fly-posting activity. This makes it difficult for local planning authorities to deal effectively with fly-posting.

Measure proposed

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

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

Benefits

- Easier for local authorities to police fly-posting and they would not need to incur costs in proving knowledge and consent
- Beneficiaries of advertising may take steps to ensure that no fly-posting is undertaken as it may be easier to demonstrate having taken measures to prevent fly-posting than to demonstrate lack of knowledge
- Less fly-posting as there would be a disincentive to fly-post as prosecution would become much more likely
- The advertising industry would benefit from more lawful advertisements and less competition from unlawful advertisements.

Costs

- There would be additional costs to those responsible for unlawful advertising.

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

Issue addressed

The current mechanism outside London for removing advertisements is cumbersome and it is not possible to recover costs. This makes it difficult to deal with the problem and is a contributory factor in the proliferation of such illegal advertising.

Measure proposed

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

This measure would amend section 225 of the Town and Country Planning Act 1990 in line with the modifications of that section made by section 10 of the London Local Authorities Act 1995. This would give all local planning authorities in England and Wales the power to remove posters at their discretion and recover costs of removal.

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

Benefits

- More removal of advertisements as easier for local authorities to remove advertisements and they may be more disposed to use these powers as they will be able to recover the costs
- There would be an incentive for authorities to take care in removing advertisements
- There would be a disincentive to fly-post as fly-poster faces costs of removal
- Lawful advertising industry would benefit as above.

Costs

- There would be additional costs to those responsible for unlawful advertising.

Quantification of costs and benefits of 4.3 and 4.4

The average cost of dealing with unlawful advertising to the local authorities that provided estimates in response to the consultation was £20,000. If this is representative of the other non-London boroughs this implies a total cost of £7.6m.

Of those authorities that offered a view, five thought that these costs would reduce and one thought that they would increase because of claims that the authorities had damaged property in removing advertisements.

If we assume that there is an overall net reduction in costs of 10%, this would lead to a saving to local authorities of £760,000.

PART 5 – WASTE

The illegal deposition of waste ('fly-tipping') creates major problems for land managers across the country and contributes significantly to the lowering of quality of life in both urban and rural areas. The large costs involved in cleaning-up land gives a further reason to introduce new powers to stem the growth of this environmental crime.

The measures here would considerably improve the investigation, enforcement and prevention of offences involving the illegal disposal of waste. They involve strengthening some of the penalties for offences and introducing more flexible penalties for other offences. The scope of some existing powers is being extended and some new powers are being introduced to allow for the stop, search and seizure of vehicles used in committing offences and for site waste management plans. In total, the new provisions would be stronger and more effective to use than existing legislation and should provide a more effective deterrent. They would also make use of fixed penalties as a more practical alternative to prosecution for a number of waste related offences and help to strengthen the enforcement of the duty of care for waste. The introduction of Site Waste Management Plans would ensure the more sustainable management of waste from construction and demolition, and changes to the recycling credits system would ensure fairer incentives for minimising household waste. Measures are also included to repeal the divestment requirement for waste disposal functions in the Environmental Protection Act 1990.

5.1 Amend provisions for dealing with the illegal disposal of waste by removing the statutory defence relating to employers instructions, increasing penalties, allowing forfeiture of vehicles, allowing the court to order offender to pay costs of investigation and clearance, and extending s.59 EPA 1990 to include the landowner

Issue addressed

The illegal disposal of waste, or fly-tipping, is an increasing anti-social problem that can adversely affect the environment both in terms of pollution and the effect on wildlife. It can, in some cases, adversely affect people's health. Fly-tipping can also cause risk of injury, bad odour and infestation of, for example, rats. It is also important to note that even fly tipped waste on private land with no public access can still pose a risk to the local environment. The enforcing authorities' tool-kit is currently insufficient to deal with this growing problem.

Measure proposed

This measure makes a series of amendments to section 33 of the EPA 1990 to make the offence of fly-tipping more robust. It also amends section 59 so that the Environment Agency and waste collection authorities can require owners as well as occupiers to clear fly-tipped waste, or pay the costs of the clearance, in cases where they caused or knowingly permitted the deposit of waste.

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

Amendments are also being made to allow the enforcing authorities to recover costs from those found guilty of section 33 offences, to allow land owners to claim for any loss or damage that they have suffered as a result of the offence and to allow the Courts to consider forfeiture of a vehicle that may have been used in the commission of the offence.

Benefits

- Reduce levels of fly-tipping where landowners are aware that it is taking place
- Allow the Environment Agency and waste collection authorities to deal with some long-standing problem areas where there is no occupier
- Reduced harm to health and wildlife
- Add to amenity and liveability of area
- Better cost recovery for the enforcing authorities and land owners
- Stronger deterrents.

Costs

- Cost to culpable landowners of clearing waste. On an individual basis this will depend on size of site, scale of the fly-tipping and the types of waste that have been deposited.

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

Issue addressed

The Environment Agency and local authorities already have the power to inspect businesses' waste transfer notes to check that they have passed their waste to an 'authorised person' (e.g. a waste carrier or another lawful source of waste disposal). However, there is no effective sanction if they fail to produce a valid transfer note; this reduces the effectiveness of the waste transfer note regime.

Measure proposed

This measure would give the enforcing bodies the additional power to issue fixed penalty notices to those businesses that breach their duty of care (as set out in section 34 of EPA 1990 and subsequent regulations), by failing to produce valid waste transfer notes.

The amount of the fixed penalty would be £300 in respect of each incident, although this could be altered by subsequent order. The penalty notice would be payable to the enforcing body, and in the case of local authorities, they would be able to keep the receipts from these fixed penalty notices for its qualifying functions under section 34 (or Regulations made under it) in dealing with duty of care, or for other functions as specified by subsequent Regulation(s).

Benefits

- Potential reduction in fly-tipping as there will be a greater incentive to dispose of waste within existing regulations
- Better enforcement of existing law
- Source of revenue for local authorities to help offset enforcement costs.

Costs

- Cost to businesses that fail to comply with regulations.

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

Issue addressed

Current provisions under the Control of Pollution (Amendment) Act 1989 and the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations

1991 do not allow authorities to seize vehicles or property without the assistance of a police constable or a warrant issued by a Justice of the Peace. This makes it very difficult in practice to address fly-tipping. Additionally, the procedures for returning or disposing of seized property are cumbersome.

Measure proposed

Officers of the Environment Agency or a waste collection authority would be given powers to instantly seize a vehicle involved in fly-tipping and impound it for the purposes of taking further evidence, which may involve prosecution action. The officer would be empowered to seize a vehicle and any property without need for assistance from a police constable, but a constable would still be needed to stop a vehicle on a road. The current legislation setting out the procedures for returning or disposing of seized property would also be replaced with more simple and effective arrangements.

Benefits

- Reduced fly-tipping through more effective enforcement and associated reduction in clean-up costs
- Reduced demand for police time.

Costs

- Cost of enforcement.

5.4 Repeal of the divestment provisions for waste disposal functions

Issue addressed

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

The prescriptive framework imposed by EPA 1990 requiring waste disposal authorities to divest themselves of their waste disposal operations acts as an obstacle to closer co-operation between local authorities and the waste management industry and does not sit well with the approach of Best Value.

Measure proposed

The measure will repeal the divestment provisions in EPA 1990, that is:

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

Benefits

- Encourage and facilitate partnerships between two or more authorities and between authorities and the private sector
- Increase the range of procurement options open to local authorities including making it easier to use the Private Finance Initiative route, and facilitate a more strategic approach by authorities to long-term planning and procurement
- Increased recycling.

Costs:

- There should be no additional costs to local authorities in respect of the repeal of the divestment provisions in the EPA 1990. The repeal will enable local authorities to have greater flexibility and increased options for delivering their waste management services in the most sustainable way.

5.5 Reform the recycling credits scheme to improve its operation in light of the policy framework which has developed since its introduction.

Issue addressed

Currently, there are a number of issues with the current recycling credits scheme.

a) Payments between local authorities

Waste disposal authorities (WDAs) are currently under a duty to make payments to waste collection authorities (WCAs) for waste retained for recycling and hence diverted from disposal. The inflexibility of this duty creates an impediment to partnership working.

b) Payments by Joint Waste Disposal Authorities

Joint Waste Disposal Authorities (JWDAs) are currently funded by a levy on their constituent authorities that is apportioned by unanimous agreement or, in the absence of this, based on the Council Tax base of each authority. This does not provide an efficient incentive for collection authorities to reduce waste sent to JWDAs through increased recycling. Government intends to alter the levy to a tonnage base or to a system of direct charging to give a direct incentive. When this change is introduced recycling credits payments by JWDAs to waste collection authorities will be a double incentive.

c) Calculation of payments

Payments under the current system are linked to the cost of the most expensive form of disposal. The only disposal method used by many waste disposal authorities is landfill. The financial value of payments under the current system is therefore increasing in most areas as Landfill Tax increases, without regard for the relative cost of collecting recyclables and arranging for their reprocessing. In a climate of increasing recycling rates and rising Landfill Tax (an effect strengthened by the new escalator from April 2005) payments are consuming an increasing proportion of waste disposal authority budgets, committing funding to programmes operated by waste collection authorities, which may not be the most cost-effective or sustainable route to achieving waste management targets.

d) Payments to third parties

Both waste collection and disposal authorities are allowed, but not obliged, to make payments to third parties, such as charities, for waste recycled that would otherwise require collection and disposal by those authorities. These powers are used very inconsistently across the country, suggesting that account is not always taken of the benefits that can accrue from such recycling partnerships.

e) Payments for re-use

Re-use is higher up the waste hierarchy than recycling, and so it is anomalous that an incentive such as the recycling credits scheme should not be available for re-use.

Measures proposed

a) Payments between local authorities

This measure would give waste collection and disposal authorities in England the power to disapply the duty placed on waste disposal authorities to make payments to waste collection authorities where the two parties involved agree to alternative arrangements;

b) Payments by Joint Waste Disposal Authorities

This measure would give the Secretary of State powers to disapply the duty on Joint Waste Disposal Authorities to make payments to waste collection authorities;

c) Calculation of payments

This measure would give the Secretary of State powers to introduce regulations to specify the method by which payments are to be calculated by waste collection and disposal authorities in England;

d) Payments to third parties

This measure would give the Secretary of State powers to introduce statutory guidance to assist waste collection and disposal authorities in England in determining whether to make payments to third parties; and

e) Payments for re-use

This measure would clarify that payments should be made in respect of waste recycled, including where it is re-used with or without undergoing any treatment.

Benefits

- Increased local flexibility to agree arrangements to incentivise more sustainable waste management
- Removal of double-benefit in JWDA areas, once the levy basis is altered
- Restriction of the increasing and potentially limitless burden on waste disposal authority budgets through altered calculation
- Level playing field for third party applications for credits/ more assistance for local authorities considering applications – overall a better working relationship between local authorities and third parties, particularly the community sector
- Incentivisation of re-use of waste.

Costs

- Transfer of costs between waste disposal and waste collection authorities – both tiers of local government.

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

Issue addressed

Sections 46 and 47 of EPA 1990 set out powers for waste collection authorities to specify arrangements for the collection of household and commercial or industrial waste, including the time(s) at which these wastes should be put out for

collection. There is no effective sanction, however, for failing to comply with such specifications other than prosecution.

Measure proposed

This measure would allow waste collection authorities to issue fixed penalty notices as an alternative to prosecution for the offence of failing to comply.

The amount of the fixed penalty would be £100 in respect of each incident, although this amount could be varied by the local authority (see Fixed Penalty Notice section) or altered by subsequent order. The penalty notice would be payable to the waste collection authority, who would be able to keep the receipts from these fixed penalty notices for its qualifying functions under sections 46 and 47 in dealing with waste collection, or for other functions as specified by subsequent Regulation(s).

Benefits

- Significant improvements, in the case of those who have not previously complied with specifications, in the manner that waste is left out in streets
- Reduced risk of hazard and of waste being strewn into streets or other local areas
- Increased amenity.

Costs

- Costs to householders or businesses to who fail to comply with the requirements.

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

Issue addressed

Legislation setting out the requirement for waste carriers to be registered is currently contained within the Control of Pollution (Amendment) Act 1989 and subsequent regulations. Legislation on the duty of care etc. with respect to waste is contained in section 34 of EPA 1990 and subsequent regulations. However, problems have been identified with the effectiveness of the duty of care regime.

Measure proposed

This measure would introduce an enabling power that would enable the Secretary of State to make new regulations covering the registration of waste carriers. The regulations would implement the findings of the current review on

the duty of care regime carried out by Defra in consultation with key stakeholders and would propose new arrangements that should lead to a more effective duty of care regime.

Benefits

- More effective operation and enforcement of these regimes.

Costs

- None. A regulatory impact assessment will be carried out when regulations are made.

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

Issue addressed

Under section 6 of the Control of Pollution (Amendment) Act 1989, the Environment Agency and local authorities have the power to stop and search vehicles suspected of being used for fly-tipping (a police officer must be present to stop a vehicle on the road). These powers will remain under the changes to this system proposed (see 5.3 above). The authority can then request production of documentation relating to authorisation to carry waste. The authority can then request production of documentation relating to authorisation to carry waste. However, existing sanctions of pursuing every case through prosecution are inappropriate to enable authorities to enforce this effectively.

Measure proposed

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

The amount of the fixed penalty would be £300 in respect of each incident, although this could be altered by subsequent order. The penalty notice would be payable to the enforcing body, and, in the case of local authorities, they would be able to keep the receipts from these fixed penalty notices for its qualifying functions under the Control of Pollution (Amendment) Act 1989 (or Regulations made under it) in dealing with waste carrier registration, or for other functions as specified by subsequent Regulation(s).

Benefits

- Potential reduction in fly-tipping as there would be more effective deterrence
- Easier and less costly for authorities to enforce existing law
- Source of revenue for local authorities as a contribution to enhanced enforcement.

Costs

- Cost to businesses that fail to comply with regulations.

5.9 Introduce a new requirement for Site Waste Management Plans

Issue addressed

One of the most common types of waste found to be fly-tipped is construction, demolition and excavation waste. Construction and demolition waste accounted for nearly 30% of all the fly-tipping incidents the Environment Agency dealt with in 2003 and is an especially large problem in the South East.

Despite increases in Landfill Tax, good environmental practice and efficient waste management is not widespread in the UK construction sector. Without action to address this issue, inefficient use of resources and mismanagement of the waste process in this sector will continue to proliferate with significant detrimental impact on the environment.

Measure proposed

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

The proposed regulations would be subject to full public consultation and there would be a comprehensive RIA to cover it at that point.

Waste collection authorities and the Environment Agency would have powers to request Site Waste Management Plans and it would be an offence not to have one with fines on the same level as the duty of care regime.

Benefits

- Increased re-use and recycling, resource efficiency and waste minimisation with associated cost saving to business
- Increased regulatory compliance in dealing with waste
- Reduced fly-tipping.

Costs

- Time spent by the construction industry in preparing plans. This could be done within companies and initial discussions suggest that it would take about a day of a middle or senior manager's time to complete for a smaller project. This would therefore represent less than 0.2% of the cost of a small-scale project
- Cost to local authorities and the Agency of enforcing the requirements.

5.10 Amendment to the Anti Social Behaviour Act 2003 to allow for more effective investigation by waste collection authorities of fly-tipping offences.

Issue addressed:

The Anti-social Behaviour Act 2003 extended to waste collection authorities powers under section 108 of the Environment Act 1995 to investigate offences involving the illegal disposal of waste. However, the extension of this power was only in relation to section 59 of the Environmental Protection Act 1990 (EPA 1990). The amendment in the Bill will allow waste collection authorities to use section 108 powers in relation to all their functions under Part 2 of the EPA 1990 and to any new offences listed in this Bill.

Benefits

- More effective enforcement.

Costs

- None.

PART 6 – DOGS

Irresponsible dog ownership is a problem that consistently generates high levels of complaints from the public with dog fouling contributing towards the spread of

harmful infections. In order to promote more responsible behaviour by dog owners, local byelaws can be used as one part of the solution.

However, current regulation of dog byelaws is a cumbersome process for both central and local government. By deregulating the process, local authorities and parish councils would be able to introduce dog control areas without confirmation by the Secretary of State, resulting in significant administrative savings for both central and local government. The position regarding stray dogs would also be made simpler by giving sole responsibility for the receipt of strays to local authorities.

6.1 Deregulating the dog byelaw system

Issue addressed

Local authorities and parish, town and community councils can make byelaws relating to the control of dog fouling, the presence of dogs, whether dogs should be on leads, or a combination of one or more of these on certain types of public land. The Local Government Act 1972 (section 236) sets out the byelaws making process and requires that byelaws be confirmed before they can have effect. Dog byelaws for England are confirmed by the Secretary of State for Defra and in Wales they are confirmed by the National Assembly. Those committing an offence under a dog byelaw risk a fine of up to £500 in court.

Under the current system local authorities frequently fail to correctly follow the current guidance or use model byelaws, thus generating inconsistent dog byelaws that are not fit for purpose. As a result, considerable resources must be devoted by central and local government to examining (in great detail) dog byelaw proposals in order to determine whether or not the Secretary of State should confirm it, or where the process has not been adhered to. The cost of enforcement is also high in having to prepare a legal case for each offence, resulting in many local authorities and local councils not actively enforcing the byelaws they have in place.

Measure proposed

This measure will replace the existing system of dog byelaws with statutory dog control offences. Local authorities and parish councils will be able to make orders to apply controls to dogs.

Local authorities and parish councils can seek prosecution through the courts for dog offences, where a maximum fine of level 3 on the standard scale (currently £1000) can be given. At present local authorities and local councils must prepare a strong legal case before action can be taken. For many this is cost-prohibitive and they cannot afford to enforce their byelaws. Local authorities and parish

councils will therefore be given the power to issue fixed penalty notices in lieu of prosecution for such offences.

The measure repeals the provisions in the Dogs (Fouling of Land) Act 1996 and adds fouling of land by dogs to the list of offences created within the proposed regime, which also includes dog bans, a requirement to keep dogs on a lead and restrictions on multiple dog walking. This approach will ensure that a consistent approach in enforcement will be taken across all dog control offences. The proposed system will allow for local authorities and parish councils to issue fixed penalties, which is similar to the provisions for offences under the 1996 Act . Offenders will have the option to pay a fixed penalty within 14 days and therefore discharge the liability. Failure to do so will risk summary conviction in court.

Benefits

- Costs savings for local government in the designation process, in enforcement and in going to court
- Cost savings for central government and for the courts.

Costs

- Increased costs if authorities decide to invest more resources into tackling dog problems.

6.2 Give local authorities full responsibility for receiving stray dogs

Issue addressed

Local councils are legally responsible for collecting and detaining stray dogs under s.149 of the Environmental Protection Act 1990. They must also provide suitable kennelling for any dogs seized by their officers or brought in by anyone else.

Outside office hours, or if the dog warden at the local council is unavailable, stray dogs can be taken to a police station. Currently, the police are obliged to accept any stray dogs, brought to police stations under section 150(1) of the Environmental Protection Act 1990.

The Police Bureaucracy Taskforce has recommended that responsibility for stray dogs should be passed, in full, from police to local authorities as it ties up valuable police resources and reduces their capacity to deal with crime.

Measure proposed

The measure transfers full responsibility from the police to local authorities. Home Office and ODPM, as sponsors of the police and local government respectively, are responsible for this policy.

The measure amends section 150 of the Environmental Protection Act 1990 to remove the requirement of the police to accept stray dogs. The duty to collect and detain stray dogs will be transferred in full to local authorities.

Benefits

- Police resources will be freed up so that they can deal with crime. The Association of Chief Police Officers estimate the total annual number of hours spent dealing with stray dogs by police constables to be 24,472 hours and by police staff to be 15,771 hours
- Local authorities are more likely to have the appropriate infrastructure to deal with stray dogs commensurate with the duty to receive dogs during working hours and so are better equipped to deal with them than the police.

Costs

- Agreement has been reached in principle to the transfer of responsibility for stray dogs from the police to local authorities. This is subject to agreement on the transfer of resources and is currently under discussion with Home Office, ODPM and stakeholders.

PART 7 – NOISE

The measures in this section seek to address issues relating to noise nuisance. Noise nuisance has a detrimental effect both on the quality of the environment and also on the health and wellbeing of individuals that suffer them.

We are proposing further powers to reduce noise and increase the flexibility of enforcement options to tackle noise nuisance.

7.1 Introduce new measures to reduce noise nuisance

Issue addressed

a) Intruder alarms

Intruder alarms can be a considerable nuisance when the police and local authorities lack sufficient powers to deal with misfiring alarms. By taking no action, misfiring intruder alarms which are a well known cause of annoyance will continue to have a detrimental effect on local environment quality.

b) Noise from licensed premises

From November 2005, the Licensing Act 2003 will allow any responsible authority, such as the police and local authorities, to review a licence to sell alcohol, as the responsibility for issuing licences will fall from licensing justices at local magistrates' courts to local authorities. At the same time, Senior Environmental Health Officers will attain the power to close licensed premises under section 40 of the Anti-social Behaviour Act 2003 for up to 24 hours, with a £20,000 fine on premises that remain open during this period, a three month prison sentence, or both. These powers will enable local authorities to deal with nuisance from licensed premises more effectively as licensing laws are liberalised. However, although these measures will give more powers to local authorities, they may not be effective or appropriate to deal with sporadic noise nuisance from licensed premises. This is at a time when licensed premises have the potential to be an increasing cause for concern as licensing laws are liberalised.

c) Greater flexibility when a statutory nuisance has been determined

Local authorities are currently obliged to issue an abatement notice under section 80 of the Environmental Protection Act 1990 once a statutory nuisance under section 79 of that Act is evident. This approach can antagonise a noise maker where a more mediative approach would be more effective.

Measures proposed

a) Intruder alarms

This measure would give local authorities the power to make it a requirement for those with intruder alarms within a designated area to register key-holder details with them. Local authorities would not charge for this requirement, should they choose to impose it. There will also be provision for:

- An offence of not registering within a designated area or the opportunity to discharge any liability upon payment of a fixed penalty notice
- authorities (not just those in 'designated areas') to enter premises, without force, and to take such steps as are necessary to silence an alarm where it

has been sounding for a continuous period of more than 20 minutes, or intermittently for an hour

- authorities, upon receipt of a warrant, to enter premises by force to take such necessary steps.

b) Noise from licensed premises

This proposal is to extend the power to issue Fixed Penalty Notices under the Noise Act 1996 (as amended by section 42 of the Anti-social Behaviour Act 2003) to deal with noise from licensed premises. At present, the Noise Act 1996 only covers noise from dwellings between 11pm and 7am. This measure will offer a useful intermediate approach to controlling noise from licensed premises before resorting to the power to close down licensed premises for up to 24 hours under the Anti-social Behaviour Act 2003 (to be implemented in November 2005).

c) Greater flexibility when a statutory nuisance has been determined

This measure gives local authorities greater flexibility in responding to complaints about noise. Currently, once a local authority has concluded that a statutory nuisance exists, it is required to issue an abatement notice (under section 80 of the EPA 1990). Under this measure the local authority will have the option of postponing the issue of an abatement notice for seven days. Should they use this power, local authorities must use alternative means to abate the noise, such as mediation, within this seven-day period. If a statutory nuisance is still present after this time, an abatement notice must be served. Such a power would need to be used with care, but could help resolve problems in cases where a formal abatement notice would aggravate the situation.

a) Intruder alarms

Benefits

- Improved quality of life for those suffering from noise, particularly at night.
- New powers to silence intruder alarms that are causing a nuisance.

Costs

- Cost to local authority of maintaining database.

b) Noise from licensed premises

Benefits

- Improved quality of life for those suffering from noise, particularly at night.
- Local authorities are unlikely to require the assistance of the police when using this power, as opposed to the use of the power to close premises for 24 hours under sections 40 and 41 of the Anti-social Behaviour Act 2003.

Costs

- Should local authorities decide to use fixed penalty notices, revenue would fund the associated costs.

c) Greater flexibility when a statutory nuisance has been determined

Benefits

- This measure will reduce the likelihood of aggravating a sensitive situation where an alternative approach is possible.

Costs

- Local authorities will not be required to use this power. It is unlikely that the use of mediation or other alternatives will place an extra cost burden on local authorities.

PART 8 – ARCHITECTURE AND THE BUILT ENVIRONMENT

Good quality design is crucial to maintaining and improving standards in our built environment and public spaces. In promoting excellence in design, management and maintenance, the Commission for Architecture and the Built Environment (CABE) has already played a key part in tackling some of the endemic problems that beset our local environments. This section deals with the formal status of CABE.

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

Issue addressed

CABE is classified as an executive non-departmental public body (NDPB) and was incorporated as a limited company in August 1999. It succeeded the Royal Fine Art Commission, although with a broader remit. Its central aim is to promote high quality design and architecture and to raise the quality of the built environment.

The establishment of CABE as a company was an interim measure and the Department for Culture, Media and Sport (DCMS) gave a commitment that it would seek to give CABE a statutory basis as soon as a legislative opportunity arose. A previous attempt was made through the Culture and Recreation Bill, but this failed to complete its Parliamentary passage in 2001 because of the general election.

CABE is currently funded by ODPM and DCMS. There is statutory authority to fund some of CABE's activities in section 153(1)(rr) of the Environmental

Protection Act 1990 and section 126 of the Housing Grants, Construction and Regeneration Act 1996. However, these provisions do not provide the authority to fund all activities for which grant is paid to CAGE, and to date, DCMS has relied on the Appropriation Acts for such authority.

Should CAGE continue in its present form, the Government would be unable to fulfil its undertaking in its response to the Sharman Report that in future to improve public accountability, all executive non-departmental public bodies (NDPBs) should be audited by the Comptroller and Auditor General.

Measure proposed

The proposal is to:

- (a) alter the status of the CAGE and change it from a private company limited by guarantee into a statutory body, and
- (b) provide a statutory power to Secretary of State to fund those activities conducted by CAGE.

Benefits

- Provide the Secretary of State for DCMS with a statutory basis for making grants to CAGE
- Enable DCMS to fulfil its commitment to place CAGE on a statutory footing
- Enable DCMS to fulfil their undertaking that the Comptroller and Auditor General should audit CAGE.

Costs

- Transfer of cost: CAGE will be audited by the Comptroller and Auditor General rather than as previously by a private auditor at a cost of £15,000 per annum.

PART 9 – MISCELLANEOUS

This section includes measures that will enable local authorities to better deal with abandoned trolleys and contaminated land appeals. It extends the statutory nuisance provisions to include artificial light and insects, and it creates new powers for local authorities to gate off alleyways that are a magnet for anti-social behaviour.

9.1 Extend powers for dealing with abandoned shopping and luggage trolleys

Risk addressed

Abandoned trolleys are increasingly becoming a blight and hazard in both streets and rivers, and in some instances cause harm to wildlife. There is no incentive to local authorities to deal with the issue in an effective way without incurring extra burdens upon themselves.

Measure proposed

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

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

Although the most effective solution to abandoned trolleys would remain partnership working between local authorities and local businesses this measure would give authorities an additional power that could be used when circumstances dictate.

The overall effect of the measure is to transfer more of the responsibility for trolleys to their owners. If owners know that abandoned trolleys are their responsibility and that they will ultimately have to pay for them they will invest more in preventive measures to ensure that trolleys stay within their control. They would only face the cost of recovery where it is cheaper to do so than to prevent the loss of the trolley in the first place.

Benefits

- Reduction in the numbers of abandoned trolleys resulting from business investment in e.g. non-removal schemes and initiatives to retrieve trolleys from nearby streets where it is cheaper to do so than face the local authority's recovery, storage and disposal costs. This will lead to corresponding benefits to the local environment
- Reduction in costs of disposal to local authorities both from reduced numbers of trolleys to deal with and from the ability to recover costs.

Costs

- Transfer of the costs of disposal from Local Authorities to businesses
- Investment in measures to reduce abandoned trolleys.

See the table below for the quantification of costs and benefits.

Quantification of costs and benefits: Abandoned trolleys

Statistics and assumptions:

It is currently estimated that 10,000 new trolleys are stolen every year. Trolleys cost £80 to replace on average, but cost on average £200 per trolley for local authorities to deal with.

The average cost to local authorities of dealing with abandoned trolleys is £5,000. Cost of all local authorities in England is estimated to be £2,000,000
It is assumed:

- That all stolen trolleys end up as abandoned trolleys
- Should these powers be introduced, local authorities will recover costs 50% of the time
- Investment by business in prevention will reduce the numbers of abandoned trolleys by 20% (industry estimates).

Analysis:

Given the above, 2,000 fewer trolleys will be abandoned – i.e. 8,000 abandoned trolleys compared with 10,000. The reduction in trolleys will produce a saving of £400,000 to local authorities on collection costs. Business will also continue to use those 2,000 trolleys avoiding the purchase of new trolleys, resulting in a saving of £160,000.

If 8,000 trolleys are abandoned per year, the cost of dealing with these costs local authorities £1.6m. Following the introduction of the powers it is likely that the local authority will be able to recover 50% of their costs. This results in a transfer of £800,000 to business. Together with cost recovery, this will lead to a net cost saving to Local Authorities of £1.2m (£400,000 + £800,000).

Whenever a business decides to take steps to reduce abandoned trolleys, they will have determined that it is cheaper to do so than bear the costs of the collection and disposal – which they only pay for when local authorities identify them as the owner. Using 2,000 trolleys as an example reduction, the total investment costs in reducing this number of abandoned trolleys are therefore likely to be considerably lower than 50% of the collection and storage costs (£200,000) plus the cost of purchasing new trolleys (£160,000).

There is a further incentive to continue to prevent trolleys becoming abandoned since, the potential costs recoverable from business is estimated to be in the range of £800,000

9.2 Extend statutory nuisances to include a) artificial light and b) nuisance from insects

Issue addressed

a) Artificial light:

15 per cent of respondents to Defra's 2002 consultation *Living Places: Powers, Rights, Responsibilities* commented on nuisance lighting alone, indicating strong support for an extension of the statutory nuisance regime of the Environmental Protection Act 1990 (EPA 1990) to cover such nuisance. The Clean Neighbourhoods consultation of July 2004 consulted on a proposal to extend the statutory nuisance regime to cover artificial lighting, asking specifically what premises should be exempted from the measure.

b) Nuisance from insects:

In December 2002, Defra published its *Consultation on Proposals for the Statutory Control of Odour & Other Nuisance from Sewage Treatment Works*. Consultation responses identified insect nuisance as a further concern for those living in the vicinity of sewage treatment works, although it was not specifically referred to in the consultation document. A High Court ruling on a case brought by the London Borough of Hounslow against Thames Water found that insect nuisance was not covered by the statutory nuisance regime.

Local authorities already receive a number of complaints about both these forms of nuisance. The Chartered Institute of Environmental Health published findings as long ago as 1993 that 80% of authorities received complaints about light nuisance.

Measure proposed

It is proposed to extend the list of statutory nuisances to include artificial light and nuisance caused by insects.

Artificial light that was prejudicial to health or a nuisance would become a statutory nuisance. The measure on artificial light would apply to light emitted from residential, commercial and industrial premises, but with exemptions for premises used for activities for which artificial light is essential or required by legislation for operational, security or health and safety reasons, and street

lighting. This measure would extend existing duties of local authorities under EPA 1990.

Nuisance from insects would include unwelcome insects from premises (other than domestic premises) where activities were likely to provide fertile breeding grounds, where this was prejudicial to health or a nuisance. Including these as statutory nuisances would allow local authorities to serve nuisance abatement notices on those responsible for contraventions in respect of nuisance lighting and nuisance from insects. It would also allow for individuals to institute proceedings through a magistrates' court.

a) Artificial Light:

Benefits

- Reduction of light nuisance
- Promotion of good practice (guidance for the installation of lighting is due in 2005) and improved relationships between neighbours in some cases.

Costs

- Costs to local authorities of investigating complaints (questions were asked of local authorities in public consultation to try to derive potential impact but no estimates of costs were provided), potentially with initial surge of complaints
- Cost to responsible parties of appropriate measures.

b) Nuisance from insects

Benefits

- There would be considerable environmental benefits from more businesses using good practice and 'best practicable means' to abate nuisance with the aim of avoiding action under the statutory nuisance regime.

Costs

- Cost to responsible businesses of abating. Farmers and water companies are the businesses most likely to be affected by this
- Costs to authorities of investigating complaints.

Local authorities would be able to seek extra resources from central government should they decide to include statutory nuisance baselines and performance indicators in proposals for Local Public Service Agreements.

9.3 *Improve the process for Contaminated Land Appeals*

Issue addressed

Under section 78L of EPA 1990 (as amended by the Environment Act 1995), appeals against remediation notices under the contaminated land regime are heard by magistrates, except for 'special sites' where appeals are heard by the Secretary of State. Magistrates do not necessarily have the required expertise in this technical environmental field and provision for magistrates' hearings is inconsistent with other environmental regimes.

Measure proposed

This measure would amend section 78L so that all appeals would be made to the Secretary of State.

Benefits

- Potential reduction in the legal costs to parties of preparing cases given less formal requirements of Planning Inspectorate
- Public sector cost savings through more rapid development of expertise in hearing cases through having a single appellate authority to consider all appeals under the regime
- Better access to expertise where necessary
- Some cases would be dealt with by exchange of written representation rather than formal hearing.

Costs

- Cost transfer from magistrates' courts to relevant department.

E2: FIXED PENALTY NOTICES

This section includes measures that cover the use of fixed penalty notices in general. Further measures that deal with fixed penalty notices for specific offences are included elsewhere in this document. Unless otherwise stated, the measures below would apply to all of the new fixed penalty regimes as well as to existing penalties for litter, dog-fouling, night-time noise, graffiti and fly-posting.

Empower local authorities and Environment Agency to issue fixed penalties for new and existing offences

Issue addressed

Local authorities and Police Community Support Officers already have the ability to issue fixed penalty notices for a range of offences affecting the local environment. These powers have been enhanced by the Local Government Act 2003 and the Anti-social Behaviour Act 2003. Consultation with local authorities and others have indicated that they welcome the availability of fixed penalty notices and recognise their value as an enforcement tool, because they enable them to pursue offenders outside of the Courts.

However, they have also indicated that current legislation is deficient, in their view, in that it does not provide them with sufficient local flexibility. They also consider that their ability to successfully pursue offenders is restricted by their inability to insist on names and addresses. The fixed penalty notice provisions with the Bill are proposed to rectify this.

Measure proposed

This Bill provides for a number of fixed penalty notices (FPNs) to be issued by local authorities and the Environment Agency.

These fixed penalties will apply both to new offences introduced by the Bill and to a range of existing offences.

Local authorities will be able to retain the receipts from the fixed penalty notices they issue, but the Environment Agency will not. The only FPN that the Environment Agency will issue relates to the waste duty of care provisions.

The Bill sets an amount for each type of FPN. Local authorities will have the ability to set different amount for most FPNs, subject to Government making an order or regulations setting out the maximum or minimum amount payable.

For the purposes of this RIA, we estimate that 25% of FPNs issued will not be paid and will be taken through the court system.

New Offences

Free Literature Distribution Controls

Anyone distributing free literature in a designated area without the consent of the local authority would commit an offence, as would anyone who commissioned or paid for the distribution. An FPN could be issued in lieu of prosecution.

It is difficult to estimate the number of FPNs and resultant prosecutions for non-payments that might take place. There have been no prosecutions in Newcastle or Westminster. Based on our estimate of the 50 largest local authorities issuing 20 per year, at a maximum, 1000 FPNs/year would be issued. This would result in between 200 and 250 new cases in the courts.

Site Waste Management Plans

There are no FPNs for offences relating to site waste management plans on the face of the Bill, but they may be included in Regulations to be made at a later date. A full RIA on the impact of these will be completed at that date (although the demands on the courts are not likely to be significant; perhaps only 100 FPNs issued a year).

Nuisance Vehicles

FPNs will be available for both new offences in relation to nuisance vehicles (repairing a vehicle on the street on a commercial basis and offering vehicles kept on the street for sale on a commercial basis).

Again, it is difficult to estimate the number of FPNs that might be issued. Only a minority of local authorities are likely to make use of these powers; assuming 80 metropolitan and larger councils issued 10 FPNs each a year and 20-25% being prosecuted, there would be between 160 and 200 extra cases before magistrates.

Extend FPNs under the Noise Act 1996 to licensed premises

The Noise Act provides for FPNs to be issued to deal with noise at night from domestic premises. We are proposing to extend it to include noise from licensed premises. The existing power is rarely used, and it is unlikely that this new power will be extensively used. We estimate a maximum of 10 FPNs a year, leading to approximately 2 or 3 extra cases in the courts.

FPNs for failure to nominate and register key-holder details for audible intruder alarms

If a local authority designates an alarm notification area, it will be an offence for those with intruder alarms not to nominate and register a key-holder with their

local authority. This power will not be used by all local authorities as it first requires the area to be designated. We estimate that 100 local authorities may adopt the power with each issuing 5 FPNs a year. This could lead to an extra 100 to 125 court cases a year assuming an 80% compliance rate.

Litter Clearing Notices

It is extremely difficult to estimate the number of litter clearing notices that are likely to be issued, and therefore what proportion of these will attract FPNs for non-compliance. We have therefore based our estimates on the estimates for Street Litter Control Notices (see below). We therefore estimate that approximately 5,000 litter clearing notices would be issued in total, with 80% compliance rate. The remaining 20% (1,000) will be issued with a FPN. Based on a 20-25% prosecution rate of the 1000 FPNs issued that were not complied with, 200 to 250 cases would be pursued through the courts following non-payment.

Existing Offences

Street Litter Control Notices

If a business fails to comply with a Street Litter Control Notice under existing law, local authorities can seek an order in a Magistrates Court requiring compliance. Failure to comply with the Order is an offence, and can be prosecuted in a Magistrates Court.

This measure will abolish the need to obtain an Order and to provide for FPNs to be offered in lieu of prosecution. Rather than go to Court twice in the event of persistent non-compliance, a local authority will be able to issue an FPN, with recourse to the Courts only if it is unpaid.

We estimate that approximately 5,000 Street Litter Control Notices would be issued in total, with an estimated 80% compliance rate. The remaining 20% (1,000) will be issued with a FPN. Based on a 20-25% prosecution rate of the 1000 FPNs issued that were not complied with, 200 to 250 cases would be pursued through the courts following non-payment.

Abandoned Vehicles

It is already an offence to abandon a vehicle, although for only around 10% of the 310,000 vehicles abandoned in 2002/03 could the owner be traced. The number of current prosecutions has been very low (120 on average). This is due to the costs involved, the difficulty in tracing owners, difficulty in proving abandonment and the more immediate concern for local authorities of removing and disposing of the vehicles. We estimate that local authorities could issue around 7,500

FPNs. Should local authorities pursue unpaid FPNs for this offence in Court, we therefore estimate between 1,500 and 1,875 new cases.

Waste Duty of Care Offences

We are proposing to introduce the option of fixed penalty notices for duty of care type offences under s34 EPA 1990. The Environment Agency and local authorities already have powers to check that businesses have followed the duty of care and passed their waste on to an 'authorised person'. This measure would give the enforcing authorities more flexible sentencing options.

The proposals include FPNs for failure to produce waste transfer notes when requested; and FPNs for failure to produce waste carrier registration details or evidence they do not need to be registered.

Estimates from local authorities suggest that an urban authority could issue around 100 duty of care type FPNs per year (the figure would more likely be lower in a rural authority where fly-tipping is less prevalent). The power to check duty of care documentation has only recently been extended to local authorities and many authorities are at an early stage of developing their enforcement work in this area. We would therefore expect the number of prosecutions to increase in the absence of FPNs.

Reports show that fly-tipping is a problem for many authorities but historically more focus has been placed on clearing the waste rather than prosecution. Local authorities have experience of issuing fixed penalty notices under litter legislation and there are varying degrees of payment rate. We would encourage authorities to only serve notices where they were prepared to take the case to court. This should ensure that the measures remains as a flexible sentencing option rather than a revenue fund for local authorities.

Initial estimates for the number of fixed penalty notices that could be issued equate to approximately 10,000 FPNs per year in England (100 FPNs per year for 100 authorities that chose to take action). However, this will depend on the take up from local authorities and may fluctuate according to local priorities. We estimate that authorities will issue no more than 10% of the estimated 10,000 FPNs for duty of care offences issued in any one year. We would expect the Agency to be prosecuting duty of care offences in conjunction with illegal waste disposal offences (such as fly-tipping) rather than issuing FPNs when they identify breaches.

On the assumption that 20-25% were prosecuted, 2,000 to 2,500 cases would go through the courts.

Waste Left on the Streets

We propose to enable a FPN to be issued for failure to comply with a notice issued by the local authority specifying receptacles to place waste in and other conditions. This will allow local authorities to better tackle the problem of waste placed outside.

We expect numbers of FPNs to be perhaps 10,000 issued a year and therefore estimate 2,000-2,500 prosecutions. However, it should be noted that we are aware that some local authorities issue litter FPNs for incidents that are in fact duty of care or waste placed out offences. Although the data has not yet been validated, the newly established Flycapture database has indicated that there could be 5,000 litter FPNs issued for these offences per year. This suggests that once these new FPNs are introduced, litter FPNs for which these offences have previously been issued will reduce proportionately. The resulting new numbers of FPNs issued may only be 5,000 for this offence, resulting in 1,000 to 1,250 extra cases in the courts.

Dog Byelaws

The existing dog byelaw system will be replaced with one off statutory offences which would allow local authorities and parish councils to make orders relating to the control of dogs. For example, it would become an offence to introduce a dog into an area designated as dog-free. It will be possible for fixed penalties to be issued in lieu of prosecutions for dog control order offences.

The new offences would replace a myriad of offences created by local dog byelaws, and considerably simplify dog controls. The total number of prosecutions under dog byelaws (excluding those relating to dog fouling) has been very low in recent years – an average of 44 over the 5 years from 1998 to 2002 (the latest figures available to us).

However, the introduction of FPNs is likely to lead to action being taken against more offenders (as has happened with the existing FPN under the Dogs (Fouling of Land) Act 1996). We estimate 2,000 new FPNs would be issued as a result of the Bill's provisions, resulting in 400 to 500 new prosecutions.

Benefits

- Improved enforcement and increased compliance with the measures to which FPNs are applied
- Reduction in burden on courts where a fixed penalty is issued and paid where cases would otherwise go to court
- Receipts from FPNs for local authorities.

Costs

- Additional burden on courts where failure to pay FPNs lead to prosecution
- Cost to local authorities of bringing prosecutions. These costs may be recovered from offenders where the prosecution is successful.

Empower Parish and Town Councils to issue Fixed Penalty Notices

Issue addressed

Currently parish and community councils are not able to issue fixed penalty notices for a range of low level environmental crimes. By extending these powers the Bill will enable authorised officers of parish and community councils to deal with litter, dog bye-laws, graffiti and fly-posting at the most local level through the issuing of fixed penalty notices.

Measure proposed

Authorised officers of parish and community councils will be able to issue fixed penalty notices for the litter, dog control, graffiti and fly-posting offences. There are around 10,000 parish and community councils and their structure is very diverse. The majority are small with little capacity, but some are much larger and able to deal effectively with such issues.

Parish and community councils will be under no obligation to exercise these powers to issue fixed penalty notices and take forward resultant prosecutions, just as they are not obliged to assume a range of powers currently available to them. Some parish councils may have neither the resources nor the inclination to take additional powers. Others have acquired the capacity and expertise to assume greater responsibilities and welcome the opportunity to play a more active role.

It is envisaged that those parish and community councils that do take up these powers will do so within their existing resources. Regulations will be made to deal with issues such as the competence of the officer issuing fixed penalty notices, and the use of the resultant receipts.

Benefits

- Reduction in volumes of litter, dog offences, graffiti and fly-posting achieved by issuing fixed penalty notices at the most local level. However this will depend on the extent to which the law is enforced
- Improved enforcement and increased compliance with the measures to which FPNs are applied

- Reduction in burden on courts where a fixed penalty is issued and paid where cases would otherwise go to court
- Strengthen the role for parish and community councils.

Costs

- Enforcement and administrative costs
- Additional burden on courts where failure to pay FPNs lead to prosecution – these figures are included in the calculations in the section above on fixed penalty notices issued by local authorities and the Environment Agency
- Cost to parish/community council to bring forward prosecutions. These costs may be recovered from offenders where the prosecution is successful.

Quantification of Costs and Benefits: Fixed Penalty Notices (Section E2)

Receipts from FPNs for authorities:

Assumptions:

- Numbers of cases as in text above
- Current levels of payment of FPNs (50%), and increased level through more rigorous enforcement and high profile of new measures (75%)
- Level of FPN as stated in Bill rather than set differently for authorities.

This leads to total receipts of £3.2m at 50% payment and £4.8m at 75% payment. Annex 1 provides details of the calculation.

This does not take account of the costs of administering fines.

Costs of court time:

Assumptions:

- 20-25% prosecution rate leading to 7000 prosecutions
- Cost per case £328
- 25% do not pay the court imposed fine (1700)
- Cost of legal aid during non-payment cases £344 per case.

The total cost of court time per annum £2.0m

F. PRACTICABILITY OF PROPOSALS

These proposals follow an evaluation of measures that are currently in place and intend to improve on them. It is therefore expected that the proposals will provide highly practical solutions to ongoing issues.

The following is an example of how an existing measure is not having the intended effect. In 2002 there was only a single case of prosecution in a magistrates' court for failure to comply with a Street Litter Control Notice (SCLN), with an associated fine of £700. This is demonstrative of the fact that SCLNs are rarely used because of the difficulties in enforcing them. The introduction of the new measure would enable local authorities to use SCLNs more effectively to ensure that businesses and owners of premises do clear up. This would help to improve the quality of the surrounding environment with resulting positive effects on the local community.

Other examples of how measures respond to existing practice are the extension of powers to address nuisance from free literature that already exist and work in the City of Newcastle and London; and the revision of the defence relating to the display of advertisements in contravention of regulations, on the basis of experience in London.

G. EQUITY AND FAIRNESS

These measures are generally fair because where they are used they normally require action from parties who are responsible for nuisance – often where they do not currently comply with existing rules. This is in line with the polluter pays.

A few measures require action from parties that do not directly cause nuisance on the grounds that they are sometimes in a better position to prevent nuisance in the first place as they may play a contributory role in the nuisance (to a greater or lesser extent).

An example of this is the fly-posting removal notices. Those affected by graffiti and fly-posting could face greater costs, at least in the short term, although they were not responsible for the mischief. They would, however, benefit from a cleaner local environment. The main impact of these measures would be on transport and telecom operators who comprise most of the private owners of relevant surfaces. For example, it costs around £20 per time to clean graffiti and fly-posting from cable junction boxes.

Some fairness aspects of other measures include:

6.1 Dog control areas: when designating land local authorities and local councils will have to advertise their intention within the communities affected and this will give dog owners the chance to object should they wish to.

7.1 Noise from Licensed premises: Licensed premises will receive a warning notice before a fixed penalty notice is served. Furthermore, licensed premises will have the opportunity to agree on acceptable sound levels with the local authority as part of their licence. Extra costs can therefore be avoided by managers of licensed premises.

9.2(b) Nuisance from insects: This measure would not apply to domestic premises, since this might give rise to a number of dubious complaints that would create unnecessary work for local authorities. Insects included under Schedule 5 of the Wildlife and Countryside Act 1981 will be exempted from this measure. Businesses whose practice gives rise to insect nuisance will be able to claim 'best practicable means' to avail themselves of action under the Environmental Protection Act 1990. If no further measures can be taken by those causing an insect nuisance to abate the nuisance further, it would be reasonable for a local authority not to declare the presence of a statutory nuisance. Muck spreading on farmland, for example, is a common practice, and a certain amount of insect nuisance might be expected even with the use of best practice.

H. DISTRIBUTIONAL IMPACTS

Generally these measures are more likely to be used in deprived and built-up areas. Examples include:

- The abandoned vehicles measures will generally affect residents of deprived urban areas where the problem is greatest
- Enabling local authorities to require the removal of fly-posting as well as graffiti and litter would enable them to tackle poor local environmental quality more effectively. Poorer areas, where low-level environmental crimes predominate would be likely to see the biggest benefits
- Free literature controls are more likely to be in urban areas as this medium for disseminating information is more common in cities and towns
- The fly-posting provisions are likely to benefit urban areas.

I. RACE IMPACT ASSESSMENT

There are no perceived adverse impacts on racial minorities.

Given that these measures will be most often used in deprived areas and that racial minorities are often more likely to live in deprived areas they are more likely to benefit from the outcomes of the measures.

Spray paints enforcement: Current legislation recognises that graffiti can often be racist and offensive. Ensuring better enforcement of the sale of spray paints is likely to reduce the incidence of offensive (including racist) graffiti and re-emphasise how seriously the Government view this issue. The new powers will have a positive impact.

J. COMPETITION ASSESSMENT

Generally these measures do not single out any particular business sectors. Two cases are worth noting where there is an impact on particular sectors.

The abandoned trolley proposals will impact on businesses that supply trolleys to their customers. However, since costs will primarily arise from measures relating to the management of trolleys and any deficiencies in such management (which are not expected to be sufficiently great to raise implications for competition), it is not expected that the proposal will have a significant effect on competition in these markets.

Fly-posting removal notices will provide additional costs to telecoms companies that have a major stake in phone-boxes who face tough competition from mobile phone as it may make them relatively less competitive.

K. SMALL FIRMS IMPACT TEST

During the development of the policy, representations have been received from small business groups to the measures proposed. In particular, responses received from the Federation of Small Businesses and the British Retail Consortium. Both groups are generally supportive of the measures but would like to see clear and detailed guidance accompany any new measures to ensure that local authorities do not use their powers disproportionately against the small business. The Federation of Small Businesses also made particular reference to level of legal awareness amongst their members. They would like to see any guidance produced communicated effectively to appropriate businesses to ensure that they are aware of their legal obligations. This is something that Defra will undertake to do.

Generally there are no significant impacts on small businesses, but the following measures are worth noting.

2.1 Nuisance vehicle measures will affect vehicle repair and sale businesses that operate from streets and highways which are likely to be small-scale businesses. However, this causes nuisance and businesses use highways to avoid overheads which provides unfair competition for other small businesses which operate more responsibly.

3.2 Litter Clearing Notices: There could be potential costs on local businesses dependent on the extent to which local authorities used these powers to impose cleansing obligations on businesses or take a partnership approach. Additional costs for businesses should only fall on those that are not already actively improving the appearance of the area in which they trade. In the long-term any costs should decrease as the overall level of local environmental quality improves.

3.3 Street Litter Control Notices: These are already available to local authorities to use where litter and refuse from businesses and premises creates a problem for the condition of the local environment. The introduction of an improved enforcement mechanism would potentially create greater costs for businesses, depending on the extent to which local authorities made use of the improved powers. There would also be costs for businesses selling goods from vehicles, stalls and at other on-street points of sale where these businesses do not already take action to clear up litter and refuse dropped by customers. The sector providing 'food on the go' is characterised by small operators and there is potentially an impact on small businesses in this sector that do not adequately manage litter and refuse that derives from them.

A voluntary code of practice¹¹ has been recently launched by Defra (November 2004) to provide a framework for premises and businesses that sell 'Food on the Go'. This will help develop partnerships between those businesses and local authorities to encourage the removal and prevention of litter and refuse in the local environment, thereby helping to reduce potential costs for the industry.

3.4 Free literature controls are likely to affect small businesses. If businesses, or any other activities distributing free literature decide to distribute in controlled areas the consent fee will be small. However, if distributors did not comply with designations then the penalties would be punitive at up to £2500. This is enough to put some micro-businesses out of business.

4.3 & 4.4 Fly-posting: These measures will only affect businesses that do not comply with rules.

¹¹ <http://www.defra.gov.uk/environment/localenv/litter/pdf/fastfoodcop.pdf>

9.1 The British Retail Consortium believe that the abandoned trolleys proposal will not affect the vast majority of small businesses as they generally do not offer trolleys, only shopping baskets.

We have contacted the Small Business Service on the results of the Small Firms Impact Test undertaken, and they are content with our approach and agree that no significant impact on small firms has been identified.

L. UNINTENDED CONSEQUENCES

1.2 Nuisance alleyways measure: There are certain obligations that pre-require access to certain areas which may be within alleyways. These include duties to maintain apparatus and to restore services in an emergency. It would be up to authorities to take this into account when gating alleyways, but would also be covered by guidance from Government on the measure.

M. SECURING COMPLIANCE

This section outlines how the measures will be enforced where used by reference to the individual measures:

2.1 Nuisance vehicles: The charges payable under this measure will be payable as a debt to the local authority. Failure to pay would result in the local authority pursuing the business concerned through the civil courts. We believe this would only happen in a limited number of cases with an agreement reached in most cases under the joint working approach mentioned above.

3. 2 Litter Clearing Notices: This measure will be enforceable through the provision for local authorities to serve clearing notices on the occupier or owner (see above).

3.3 Street Litter Control Notices. This measure would be enforceable through the provision for local authorities to serve fixed penalty notices for failure to comply with an Street Litter Control Notice. It would also still be possible for the authority to take action in the magistrates' court.

3.4 Free Literature Distribution: The offence would cover anyone who commissioned or paid for distribution of free literature in designated areas without consent. This measure would be enforceable through the provision for local authorities to serve fixed penalty notices for failure to gain consent to distribute free literature. It would also still be possible for the authority to take action in the magistrates' court.

4.1 Fly-posting removal notices: If a person fails to comply with a graffiti removal notice it is not an offence, however, the local authority may remove, clear or otherwise remedy the defacement and recover reasonable expenditure. The same enforcement mechanism would apply to fly-posting removal notices.

5.1 Landowner responsibility for fly-tipping: The Environment Agency and local authorities have powers to enforce against the illegal disposal of waste or fly-tipping. Section 59 of the Environmental Protection Act 1990 gives the authorities power to serve a notice on the occupier of land to clear fly-tipped waste. The Anti-Social Behaviour Act 2003 allows the Secretary of State to issue statutory directions to waste collection authorities and the Agency on the division of their responsibilities under s59 EPA 1990 which will help bring further clarification to the enforcement process. Fly-tipping can be a serious environmental crime and enforcement should be flexible enough to deal with the full extent of the incidents that occur.

6.1 Dog Control areas: Local authorities and local councils, or contractors acting on their behalf, will enforce the proposed statutory powers.

6.2 Stray dogs: This proposal is to extend the existing duty local authorities have to deal with stray dogs. Every local authority is already required under s.149(1) of the Environmental Protection Act 1990 to appoint an officer to deal with stray dogs. By amending s.150(1) we are to extend that duty to include out of office hours.

9.1 Abandoned trolleys: The charges payable under this measure will be payable as a debt to the local authority. Failure to pay would result in the local authority pursuing the business concerned through the civil courts. We believe this would only happen in a limited number of cases with an agreement reached in most cases under the joint working approach mentioned above.

9.2 Nuisance measures: For all of these measures, enforcement will be with the local authority. Local authorities may seek assistance from the police, especially when obtaining a warrant for entry to premises to deactivate an alarm, or when issuing a fixed penalty notice to licensed premises. However, the latter is less likely to require police assistance than the power under the Anti-social Behaviour Act 2003 to close licensed premises for up to 24 hours (sections 40 and 41).

N. MONITORING AND REVIEW

This section outlines what mechanism will be used to monitor and review individual measures.

1.2 Nuisance alleyways: The effectiveness will be monitored by the Home Office through their ongoing work with the anti-social behaviour “Trailblazers and Action Areas” programme.

2.2 Abandoned vehicles: We will assess the effectiveness of these provisions on a yearly basis by use of the Defra Waste Data Flow System which records instances of abandoned vehicles and the new Best Value Performance Indicator on abandoned vehicles that is currently being piloted.

3.2 Litter Clearing Notices: Steps will be taken to monitor and evaluate the effect of the proposed measures on non-local government bodies to ensure the measures do not impact disproportionately on them.

3.3 Street Litter Control Notices: The cleanliness Best Value Performance Indicator (BV199) requires local authorities to measure levels of litter and detritus across 900 sites covering 10 land use classes. The national benchmark requires that no more than 30% of sites surveyed should be below cleansing standard grade B as set out in the Code of Practice on Litter and Refuse. This indicator will provide very useful evidence as to whether the measures set out in this proposal are working as intended.

3.4 Free Literature Distribution: Again, the cleanliness Best Value Performance Indicator (BV199) will provide very useful evidence as to whether the measure set out in this proposal are working as intended.

4.1 Fly-posting notices: ENCAMS (Keep Britain Tidy) conducts, on Defra’s behalf, the annual Local Environmental Quality Survey of England. The survey is carried out over 10,000 sites across England and provides a very accurate benchmark as to the overall state of the environment. Statistics are gathered and monitored for a range of issues including fly-posting. It is also proposed to extend the cleanliness Best Value Performance Indicator (BV199) to include fly-posting and graffiti – although no decision has been made on this yet. This would enable further evaluation of the effectiveness of removal notices.

4.3 & 4.4 Fly-posting: It is planned to include fly-posting in local authorities cleanliness Best Value Performance indicators. However, at the time of printing, no decision has been made. Monitoring of the effectiveness of the fly-posting removal notices is likely to be developed on the monitoring of the graffiti removal notices (where applicable) should they be rolled out nationally.

5.1 Landowner responsibility for fly-tipping: Previously, no national data on the extent of fly-tipping existed so Defra has worked with the Environment Agency, Welsh Assembly Government and the English and Welsh Local Government Associations to develop a web-based system called Flycapture. The system went live on 5 April 2004.

Flycapture will be the first time a true national picture of the extent and scale of the fly-tipping problem has been collated but it will also be an invaluable management tool to assess the impact and effectiveness of local and central Government policies to deal with fly-tipping. Feedback has already indicated that Flycapture can be used well by authorities to encourage joint working and share best practice. Defra is currently working with users to ensure that data submitted to the system is as reliable and complete as possible. As the consistency of the database is confirmed it can be used to monitor the effectiveness of these measures.

6.1 Dog Control Areas: The effect of these powers will be monitored and reviewed annually.

6.2 Stray Dogs: The capacity of Local Authorities to deal with stray dogs will be assessed annually.

9.1 Abandoned Trolleys: The effectiveness of these provisions will be assessed on a yearly basis by review of local authority locally held administrative data.

9.2 Nuisance measures: There is currently no requirement from central Government for incidences of statutory nuisance to be recorded, and there is no Best Value Performance Indicator for statutory nuisance, as there is for litter and detritus (BV199). The Chartered Institute of Environmental Health collates statistics for the number of complaints received by local authorities each year, although these statistics are based on questionnaires sent to local authorities, and there is no requirement for local authorities to complete these questionnaires. The *Noise Complaints and Prosecutions 2002 – 2003* statistics show a 77 per cent response rate, or 290 local authorities in England and Wales.

Local authorities can compile their own statistics if they wish, and this would be an important step for a local authority to take if they are seeking approval for any noise and statutory nuisance targets that are included in an application for a Local Public Service Agreement. The Office of the Deputy Prime Minister is responsible for Local Public Service Agreement's, and a number of the second generation of Local Public Service Agreement's include noise and statutory nuisance targets in their proposals. By meeting targets agreed with the Office of the Deputy Prime Minister as part of a Local Public Service Agreement, local authorities will be entitled to extra funding from central Government. Defra encourages the use of Local Public Service Agreement's for the control of statutory nuisance as this can provide an efficient means to monitor and review nuisance.

O. SUMMARY AND RECOMMENDATION

The measures proposed in this Bill have been developed over a number of years with input from local authorities, Government departments, statutory undertakers and other stakeholders. The measures are based on sound policy and a clear request for change from those consulted.

The majority of measures provide local authorities with additional powers rather than duties. Local authorities will therefore only decide to use them where there is net benefit to doing so in the local context. Of the three new duties, one (the stray dogs measure) is a transfer of costs from the police to local authorities, the second (the spray paint measure) gives authorities discretion in how they respond (provided it is appropriate to the problem) and the third (statutory nuisance) extends existing duties to new areas of concern so although it is not possible to predict the level of complaints in this area, it should be possible to respond through existing structures.

Where there are costs to businesses these normally result from making them responsible for nuisance that they cause. Some of the measures transfer costs onto private individuals or organisations who have direct responsibility for property or land to which the powers relate. These costs would normally only apply where the individual had first not taken steps to minimise the problem and would be reduced through effective partnership working.

The measures in the Bill will give local authorities and others a modernised range of tools to tackle local environmental quality issues, leading to improved quality of life. The benefits of these measures outweigh the costs associated and it is therefore recommended that all the measures are included in the Clean Neighbourhoods and Environment Bill.

P. DECLARATION

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

Rt Hon Alun Michael MP

Minister of State Rural Affairs and Local Environmental Quality

2 December 2004

Annex 1: Calculations for the impact of Fixed Penalty Notices on Courts

Fixed Penalty Notice (FPN)	Current Prosecutions	Estimate of FPNs issued	Amount of FPN	Expected Prosecutions (20% of FPNs)	Expected Prosecutions (25% of FPNs)	Total receipts for all FPNs	Receipts to *LAs at 50% payment rate	Receipts to *LAs at 75% payment rate
<i>New Offences</i>								
Free Literature		1,000	£75	200	250	75,000	37,500	56,250
Nuisance Vehicles		800	£100	160	200	80,000	40,000	60,000
Noise (Licensed Premises)		10	£500	2	3	5,000	2,500	3,750
Nomination of key-holder (audible intruder alarms)		500	£75	100	125	37,500	18,750	28,125
Litter clearing notices		1,000	£100	200	250	100,000	50,000	75,000
<i>Existing Offences</i>								
Abandoned Vehicles	121	7,500	£300	1,500	1,875	2,250,000	1,125,000	1,687,500
Street Litter Control Notices	1	1,000	£100	200	250	100,000	50,000	75,000
Duty of Care (waste disposal)	100	10,000	£300	2,000	2,500	2,700,000	1,350,000	2,025,000
Waste left out in street	1	10,000	£100	2,000	2,500	1,000,000	500,000	750,000
Dog Control Offences	207	2,000	£75	400	500	150,000	75,000	112,500
TOTAL	430			6,762	8,453		£3,248,750	£4,873,125

*Includes district councils and parish/community councils as relevant (the latter assumes implementing regulations will permit parish/community councils to retain receipts, following approval by HM Treasury)

Total new prosecutions	6,762	8,453
less current prosecutions	-430	-430
<u>Total additional prosecutions (range of 20-25%)</u>	<u>6,332</u>	<u>8,023</u>