



Department
for Environment
Food & Rural Affairs



Llywodraeth Cymru
Welsh Government

Government response to consultation on enhanced enforcement powers and other measures to tackle waste crime and entrenched poor performance in the waste management industry

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Executive summary

Consultation on enhanced enforcement powers and other measures to tackle waste crime and entrenched poor performance in the waste management sector

Earlier this year, the UK Government and the Welsh Government ran a joint consultation seeking views on proposals to enhance enforcement powers to help the regulators tackle entrenched non-compliance at sites permitted (or previously permitted) as waste operations. Running alongside the consultation was a call for evidence which sought views on a range of other measures related to waste crime and entrenched poor performance in the waste management sector. Over 2,100 organisations in England and Wales were directly contacted by email to alert them to the consultation exercise and 112 responses were received.

Part I of the consultation

A majority of respondents (80%) supported all the proposals that we consulted on. We therefore propose to introduce legislative amendments in England and Wales that will clarify the regulators existing enforcement powers and will:

- enable the regulators to suspend a permit where an operator has breached their permit and there is a resulting risk of pollution,
- enable the regulators to specify in a suspension notice the steps that must be taken by the operator to remedy the breach of a permit and remove the risk of pollution; and require the operator to erect signage which informs the public about waste that cannot be brought onto the facility,
- enable the regulators to take steps to prohibit access to a facility,
- enable the regulators to take steps to remove a risk of serious pollution, regardless of whether the facility affected is regulated under a permit,
- make it easier for the regulators to make an application to the High Court for an injunction to enforce compliance with an enforcement or other notice by removing the current precondition, and
- amend the legislation to widen the regulators' ability to require the removal of waste from land in circumstances where the waste is being unlawfully kept.

Part II of the consultation

Part II of the consultation document was a call for evidence on a range of other measures related to waste crime and entrenched poor performance at waste operations. A large majority of respondents agreed that the introduction of Fixed Penalty Notices (FPNs) would help tackle the problem of fly-tipping. The UK Government welcomes the high level of support for the introduction of FPNs for fly-tipping and will therefore introduce legislation at the earliest opportunity to introduce FPNs for fly-tipping in England. The Welsh Government will explore this further in Wales.

Respondents to the consultation document agreed there is a need to better inform landowners of the potential liabilities associated with having waste operations on their land. The Government¹ will develop options to ensure operators demonstrate they have permission from landowners before they are granted a permit as well as promoting awareness amongst landowners. We have also called on industry to take the lead in promoting greater awareness amongst landowners and landlords of their potential obligations.

There was strong support for better enshrining the principle of an ‘operator competence test’ in legislation. The majority view was that the principle of operator competence should apply to all types of regulated activity carried out under an environmental permit. The Government plans to consult further on this issue. There was also majority support for the application of technical competence to all types of waste management operation and the Government plans to consult on proposals to better enshrine the requirement in the legislation. We asked whether financial provision for some or all permitted waste operations should be reintroduced. A majority supported the reintroduction but there were mixed views on the best way of making financial provision for permitted operations. Some argued it would protect the public purse from potentially expensive clean-up costs associated with abandoned waste sites. Others raised concerns regarding the increased costs of tying-up of funds that would arise from being required to make financial provision. We will explore this further alongside the other measures proposed. There was also clear support for ensuring that the regulator can take into account all aspects of an operator’s current and past performance in determining operator competence. We will therefore consider how we can best do this. We will discuss with the regulators and other government departments the case for reviewing whether relevant convictions under the environmental permitting regime should be spent after 12 months or should instead remain disclosable for up to 5 years as was previously the case.

¹ Unless otherwise stated, references to “the Government” are references to both the UK Government and the Welsh Government.

We asked whether the requirement for site management plans and their content should be embodied in legislation. The majority of those that responded on this issue did not want to have the requirements for a plan or the content of that plan embodied in legislation. The Government does not intend to enshrine the content of site management plans in the legislation. However, we will discuss with industry and the regulators how the requirement for site management plans is linked to a site permit in a consistent way.

There was a range of views on the proposal for a scheme to deal with abandoned or orphaned waste sites. It is not the intention of the Government to create a scheme that requires compliant businesses to contribute to the clean-up of illegal waste management operations. We therefore propose not to bring forward any further proposals relating to a national scheme to fund the clean-up of abandoned or orphaned waste management sites at this stage. We will instead pursue measures that will reduce the opportunity for abandonment and make sure that operators have made sufficient financial provision to meet the obligations associated with their permits and the cost of site clearance and remediation.

A majority of respondents supported the principle that the regulators' powers should be widened to allow the recovery of costs for investigations and remedial work undertaken to prevent or remedy pollution caused by the deposit of waste on land. We will explore further how this can be implemented and develop proposals for consultation.

We recognise that respondents have raised a range of issues regarding exemptions from environmental permitting as well as in relation to specific exempt activities. We intend to consider these further, taking into account work that the Environment Agency has planned on exemptions and waste crime through its Waste Enforcement Programme.

Introduction

The UK Government and the Welsh Government ran a joint consultation exercise from 26th February to 6th May 2015 seeking views and comments on proposals to enhance existing enforcement powers. The central aim of part I of the consultation document was to help the Environment Agency for England and Natural Resources Wales tackle entrenched non-compliance at sites permitted (or previously permitted) as waste operations. Although the focus of the consultation was on the regulation of waste operations, some of the proposed changes consulted upon apply to other activities regulated under the environmental permitting regime.

Part II of the consultation document was a call for evidence on a range of other measures related to waste crime and entrenched poor performance at waste operations. The Government was seeking views and information to determine specific further proposals. One of the proposals contained in part II of the consultation document was a call for evidence on the introduction of FPNs for fly-tipping. We are grateful to respondents for taking the time to consider and comment on the proposals set out in parts I and II of the consultation document.

Consultation and call for evidence proposals

The following measures were proposed in part I of the consultation document:

- Proposal A - enable the regulators to suspend permits where an operator has failed to meet the conditions of an enforcement notice;
- Proposal B - enable the regulators to issue notices that include steps an operator must take to prevent the breach of a permit getting worse;
- Proposal C - enable the regulators to take physical steps to prevent further breaches by an operator of their permit;
- Proposal D - enable the regulators to take steps to remove a risk of serious pollution, whether or not a facility is under a permit;
- Proposal E - enable the regulators to make an application to the High Court more readily by removing preconditions; and
- Proposal F - widen the regulators' ability to require the removal of waste from land.

Part II of the consultation document sought views on the following issues:

- FPNs for fly-tipping;
- Actions to improve landowner awareness of potential liabilities related to waste operations;
- Operator competence, including operator technical competence and the financial provision made by applicants for waste permits;
- Options to address abandoned or orphaned waste management sites;
- Powers to recharge for pollution works associated with the deposit of waste on land; and
- Exemptions from environmental permitting.

Overview of responses

Over 2,100 organisations in England and Wales were directly contacted by email to alert them to the consultation exercise. The consultation was also promoted on Gov.uk and via the Defra and Welsh Government's twitter accounts.

Part I of the consultation document

Eighty-nine responses were received in response to part I of the consultation document: 26 from local authorities; 21 from individual companies²; 15 from trade associations; 8 from organisations categorised as "Other Public Bodies" (this includes various fire and rescue services and local authority representative organisations); 6 from private individuals, 5 from professional bodies, 5 from consultancies and 3 from non-governmental organisations (NGOs).

Not all respondents responded to the specific questions in part I of the consultation document. One professional body commented generally in support of effective measures to enable regulators to tackle waste crime and poor performance but did not answer the specific questions in part I of the consultation document. One trade association provided a comment on the impact of waste crime on landowners but did not answer any of the specific questions about the proposals in part I and did not comment on any other issue. Of the 89 responses received 78 were from organisations or individuals based in England and 11 were from organisations or individuals based in Wales.

² 10 from the waste management industry, 4 from construction and manufacturing industries, 2 from the energy sector, 4 from the water industry and 1 from the legal services sector.

Part II of the consultation document

One hundred and twelve responses were received in responses to part II of the consultation document: 35 from local authorities; 22 from individual companies; 17 from trade associations; 12 from other public bodies; 10 from private individuals, 6 from professional bodies, 6 from consultancies and 4 from NGOs.

Not all respondents responded to the specific questions in part II of the consultation document. Of the 112 responses received, 96 were from organisations or individuals based in England and 16 were from organisations or individuals based in Wales.

Summary of responses to part I: a consultation on proposals to enhance enforcement powers at regulated facilities

Proposal A - Enable the regulators to suspend permits where an operator has failed to meet the conditions of an enforcement notice

Purpose of the proposal

The purpose of the proposal was to extend the regulators' powers of suspension to situations where an enforcement notice issued under regulation 36 of the Environmental Permitting (England and Wales) Regulations 2010³ (the 2010 Regulations) has not been complied with, irrespective of the risk of serious pollution from the site. We asked consultees if they agreed with the proposal. We also asked for any additional comments on the proposal and for any views on unforeseen costs and benefits to legitimate operators, the regulators or any other organisations.

Summary of responses

Eighty-seven respondents gave their views on Proposal A: 26 from local authorities, 21 from individual companies, 14 from trade associations, 8 from other public bodies, 6 from private individuals, 4 from professional bodies, 5 from consultancies and 3 from NGOs.

Overall, there was a clear majority (83%) in favour of Proposal A. Respondents who were in favour of the proposal thought that it would help the regulators deal more effectively with poor performing sites. Amongst respondents from Wales, a strong majority (91%) were in favour of suspending permits where an operator had failed to meet the conditions of an enforcement notice. Some expressed caveats which included calls for new enforcement powers to be used proportionately and for officers to be trained in the use of these powers.

Local authorities were almost entirely in support of Proposal A. Only one local authority opposed the proposal, commenting that operators that were unwilling to comply with enforcement notices were unlikely to take notice of a suspension and that criminal proceedings may be a better option. Fifteen of the twenty-one individual companies that responded supported Proposal A and all the responses from the waste sector were positive. Several waste companies commented that new enforcement powers should be

³ <http://www.legislation.gov.uk/uksi/2010/675/regulation/36/made>

exercised fairly and proportionately and not used for minor permit breaches. Some waste management companies also commented that the Environment Agency and Natural Resources Wales needed to be adequately resourced to tackle waste crime. Some respondents commented that officers needed to be adequately trained and accountable for their enforcement actions. There were also calls for guidance for the regulators on the use of new enforcement powers, for more robust procedures to ensure fairness and consistency in the application of enforcement powers, for operators to be given sufficient time to comply with notices and for decisions to be made available for public scrutiny. A common theme in the responses from companies opposed to Proposal A (6 of the 21 that responded) was that the regulators' existing powers were sufficient. Others commented that extending the circumstances in which the regulators could issue suspension notices was too draconian a measure because of the serious impact that suspension would have on a business. One company commented:

“Allowing a Suspension Notice based upon a failure for an operator to follow an Enforcement Notice will be grossly disproportionate, since this reliance will only come if a serious risk of pollution does not exist. Implementation of a suspension notice to bring about a change for an operator has the added detrimental effect of stopping cash flow into a business, which in turn can make compliance with a notice, enforcement or otherwise less likely to be achieved.”

Some of the respondents from the energy and water sectors and one from the manufacturing sector thought that Proposal A should be restricted to companies in the waste sector.

There were mixed views on Proposal A from trade associations; 9 of the 13 expressed support. Some trade associations commented that new enforcement powers should be exercised proportionately and called for guidance for the regulators. Trade associations opposed to Proposal A were concerned that the regulators could use the proposed power for minor permit breaches. One association commented that Proposals A to F should only be applied to the waste management industry. Another commented that the proposal was a move away from the current risk-based approach to enforcement. One association expressed concern that issuing a suspension notice simply for breach of an enforcement notice was “too blunt an instrument”.

Three of the four professional bodies gave qualified support for Proposal A. They commented that the regulators needed to be adequately resourced and that individual officers should be provided with effective training and support. They also called for guidance on the use of the proposed new powers. One professional body was opposed to Proposal A and expressed concern that it could lead to time-consuming litigation and the failure of small businesses. They also commented that the current appeal process was inadequate and that there was limited recourse for operators against a defective enforcement notice. They suggested setting up a fast-track appeal against suspension of a permit to the First-tier Tribunal.

Four of the five consultancies that responded supported Proposal A. As with other respondents, consultancies called for the proportionate use of enforcement powers, guidance and effective appeal procedures. The consultancy opposed to Proposal A called for more effective communication between regulators and operators rather than stronger enforcement measures.

Five out of six private individuals who responded supported Proposal A. One private individual was opposed to all the proposals in part I of the consultation document and commented that the regulators needed no new powers, simply a determination to crack down on waste crime using their existing powers. Another member of the public, who supported Proposal A, commented that this was “a good step” and that it was “bizarre” that it was easier for the regulators to revoke a permit than suspend it.

All of the NGOs that responded supported Proposal A. One of the NGOs, did however, express concern that enhancing existing enforcement powers would do little to tackle determined disreputable operators. This respondent called for the regulators to work more openly with the landowners of sites where waste management activities take place.

All of those organisations categorised as other public bodies supported Proposal A. One commented:

“The option to suspend a permit after breach of an enforcement notice should allow direct action to be taken more rapidly, rather than having to go through the prosecution route for breach of enforcement notice, during which time the operator can still be operating and causing increased problems.”

Figure 2 in Annex A contains a graph of all responses to Proposal A.

Costs and benefits

Consultees were asked if they were aware of any unforeseen costs or benefits to legitimate operators, the regulators or any other organisations arising from Proposal A. Many of the respondents commented that legitimate operations would benefit from rogue and poorly operated sites having their permits suspended as these facilities were generally undercutting the legitimate industry. A company in the manufacturing and construction sector commented that the risk of reputational damage to waste producers would be reduced if there was prompt suspension of permits held by poorly performing sites.

Some respondents expressed concern that compliant operators could be badly affected by untrained or inexperienced enforcement officers exercising this power. They commented that enforcement errors can impact disproportionately on generally compliant small and medium sized businesses (SMEs). A number of respondents highlighted that waste producers could incur additional costs seeking new contractors if their existing contractor has their permit suspended.

One NGO, although supportive of the proposals in part I of the consultation document, expressed concern about the impact on waste operations that lease their site or premises. They suggested that tenants may put their businesses into liquidation rather than comply and this could result in a significant impact on landowners who would be required to clear abandoned waste. The NGO thought that landowners would then be more reluctant to lease land to waste operators and that this could have an impact on the availability of land for waste management activities.

Several local authorities and other public bodies raised the issue of additional costs incurred by the regulators in the exercise of these powers and queried how this would be funded. Some local authorities, other public bodies and a consultant commented that increased enforcement could lead to an increase in fly-tipping.

Government conclusion

The Government notes the majority of respondents support providing the regulators with the power to suspend an environmental permit where an operator has failed to meet the conditions of an enforcement notice.

However, the Government has also noted the views of respondents on the importance of a proportionate and risk-based approach to enforcement expressed by many who were both opposed and supportive of the proposal.

The weight of argument is in favour of giving stronger powers to the regulators to take action against persistent and entrenched poor performance by some operators in the industry. The Government agrees that enforcement powers should continue to be linked to a risk of pollution rather than simply the breach of an enforcement notice. We therefore propose to make an amendment to regulation 37 of the 2010 Regulations⁴. The amended legislation will expand the regulators' powers to issue a suspension notice where there has been a breach of a permit condition and a consequent risk of pollution. This amendment will apply to all activities regulated under the 2010 Regulations and not just waste operations.

The Government notes the concerns from those in the energy and water industries about the application of Proposal A to their sectors. However, as the proposal is targeted at businesses that are patently breaching their permit, failing to comply or operating illegally and posing a risk of pollution, it would not make sense to subject the waste management industry to a different enforcement regime from other industries regulated under the environmental permitting regime.

The package of measures contained in part I of the consultation document is targeted at those who exhibit entrenched and persistent poor compliance with their permits. These operators represent a small percentage of permitted operations, perhaps only 4% of permitted operations in the waste management industry. Local authorities regulate a small percentage of permits issued under the environmental permitting regime and the Government does not consider that there is likely to be a significant impact on local authorities to exercise this wider power of suspension.

The Government considers that the modification to Proposal A will assist the regulators to take speedier and proportionate enforcement action. The Government acknowledges the calls by many of the respondents for guidance for the regulators on the use of the suspension power. Given the strictly defined nature of the revised regulatory proposal, the Government does not consider there to be a need for additional guidance in this regard but we will keep this matter under review.

Several respondents commented that the current appeals process against suspension notices is limited. The Government notes these comments and will consider the case for changes to the appeal process with industry and the regulators.

⁴ <http://www.legislation.gov.uk/uksi/2010/675/regulation/37/made>

Proposal B - Enable the regulators to issue notices that include steps an operator must take to prevent the breach of a permit getting worse

Purpose of the proposal

The build-up of waste at sites in excess of what is allowed under a permit may increase the risk of waste fires and may cause odour, dust or pest problems. The purpose of the proposal was to amend the legislation to ensure the regulators can specify practical steps in an enforcement notice to remedy an existing or likely contravention of a permit. These measures might include the removal of excess waste. It was also proposed that operators would be required to display a notice specifying that no further waste can be brought into that facility. We asked consultees if they agreed with the proposal. We also asked for any additional comments to support the responses and for any views on unforeseen costs and benefits that may result from the proposal to legitimate operators, the regulators or any other organisations.

Summary of responses

Eighty-six respondents gave their views on Proposal B: 26 from local authorities, 20 from individual companies, 14 from trade associations, 8 from other public bodies, 6 from private individuals, 4 from professional bodies, 5 from consultancies and 3 from NGOs.

Seventy-seven of those that responded supported Proposal B. There was unanimous support from respondents in Wales. Those in support commented that they thought specifying practical measures would be useful in resolving problems and preventing further non-compliance.

Aside from one local authority, all the local authorities that responded supported Proposal B. One commented:

“Offering practical measures will help to resolve the problem faster and prevent further problems. It can also help the operator to improve their practice to prevent repeated non-compliances.”

The local authority that opposed Proposal B observed that serving additional enforcement notices may only unnecessarily prolong the enforcement process.

Fifteen of the individual companies that responded supported Proposal B and all responses from the waste industry were positive. However, respondents from the energy and water industries queried whether the proposal would be applied to industries other than the waste management industry.

All but one of the trade associations that responded supported Proposal B. The trade association opposed to Proposal B stated that requiring operators to erect signs stating that no further waste was allowed on a site “*could impact on commercial relationships and cause irreversible damage to an operator’s reputation*”.

All 4 professional bodies that responded supported Proposal B. One professional body called for guidance on the use of the proposed power. Another body called for the regulators’ liability for any environmental or health impacts arising from directions they issued under this power to be made clear.

Four of the five consultancies that responded supported Proposal B. One called for guidance on the use of this power and suggested that it should only be used for sites that have repeated permit breaches. The consultancy opposed to the proposal thought that it would increase fly-tipping.

Five of the six private individuals who responded supported Proposal B. All the NGOs and other public bodies that responded supported Proposal B. One fire and rescue service commented:

“This proposal is important in trying to minimise the amount of excess waste brought on sites which may then ultimately become a fire risk or pollution risk.”

Figure 3 in Annex A contains a graph of all responses to Proposal B.

Costs and benefits

Consultees were asked if they were aware of any unforeseen costs or benefits to legitimate operators, the regulators or any other organisations arising from Proposal B. Comments received were similar with those received on Proposal A, namely that legitimate operations would benefit from tougher enforcement action against the waste criminals and that there would be additional costs for the regulators. One respondent suggested that the costs incurred by the regulators would inevitably be passed on to legitimate contractors through increased permit fees.

Government conclusion

The Government notes the broad based support expressed by a significant majority of respondents for Proposal B. The consultation document outlined scenarios in which the proposed power might be used and cited how the build-up of waste on a site can increase the risk of fires or cause loss of amenity. Proposal B was targeted at permitted waste operations that continue to bring waste onto their sites despite being in breach of their permit conditions. These operators pose a risk to the environment and to the neighbouring local communities.

In line with the proposal consulted upon, the Government will amend regulation 37 of the 2010 Regulations⁵ to enable the regulators to specify in the suspension notice the steps that must be taken to remedy a permit contravention and remove a risk of pollution. This amendment will apply to all facilities regulated under the environmental permitting regime. As the power of suspension is targeted at those businesses that are patently breaching their permit and posing a risk of pollution, it would not make sense to subject waste operations to a different enforcement regime from other industries regulated under the environmental permitting regime. However, there will be a specific provision in regulation 37⁶ that applies where a suspension notice has the effect of preventing waste of a specified description being accepted at that facility. Where that applies, the amended legislation will enable the regulators to specify in the suspension notice that the operator is required to display a sign informing the public that no further waste, as specified in the notice, may be accepted at that site. As consequence waste carriers delivering waste to a site which is the subject of such a notice will be expected to take account of it as part of their Duty of Care⁷.

The Government considers that this revised proposal addresses the concerns raised by respondents about the application of the original proposal to activities other than waste operations and the need for a proportionate, risk-based approach to enforcement to reduce entrenched poor performance.

⁵ See previous footnote reference

⁶ See previous footnote reference.

⁷ <https://www.gov.uk/managing-your-waste-an-overview/duty-of-care>

Proposal C - Enable the regulators to take physical steps to prevent further breaches by an operator of their permit

Purpose of the proposal

The purpose of the proposal was to amend legislation to make clear that the regulator may arrange for steps to secure a facility, except where this would prevent access to a private dwelling, to stop more waste entering the site by physical means (e.g. by locking the gates). This is considered important in cases where suspension notices have not been complied with and the entry of further waste onto the site creates a risk of serious pollution and/or nuisance. We asked consultees if they agreed with the proposal. We also asked for any additional comments on the proposal and for any views on unforeseen costs and benefits to legitimate operators, the regulators or any other organisations.

Summary of responses

Eighty-six respondents gave their views on Proposal C: 26 from local authorities, 20 from individual companies, 14 from trade associations, 8 from other public bodies, 6 from private individuals, 4 from professional bodies, 5 from consultancies and 3 from NGOs.

An overwhelming majority (90%) of those from both England and Wales who responded to this question were in favour of allowing regulators to take physical steps to prevent an operator from committing further breaches of the permit. Some in favour wished to expand the regulators' powers further so as to give them the ability to confiscate machinery, plant and the personal possessions of company directors or even to prohibit the use of the site.

All of the local authorities that responded supported Proposal C.

Seventeen out of the twenty individual companies that responded supported Proposal C and all the responses from the waste industry were positive. One waste management company commented:

"We believe that this is a good proposal, because it will allow the regulator to physically stop more waste from entering an illegal site. We also believe that the proposal should be extended to exempt as well as illegal sites."

A number of companies that responded also commented that the proposal should be extended to cover illegal waste sites and exempt waste operations as well as permitted waste operations. One respondent from the manufacturing/construction sector thought the proposal should only be applied to companies in the waste sector. One respondent from the energy and water sector also sought clarity on whether Proposal C would be applied to industries other than the waste management industry. The two companies opposed to Proposal C commented that the regulators' existing enforcement powers were sufficient.

Trade associations that responded were predominantly in support of Proposal C. Two trade associations sought clarity on whether the proposal would only apply to waste management sites. Both of these associations expressed concern that restricting access to agricultural land could have a serious impact on legitimate farming activities. Another commented that they saw merit in the proposal but they thought it could be abused by overzealous enforcement officers.

All of the 4 professional bodies that responded supported Proposal C. One called for the proposed power to be extended to cover illegal waste sites. Four of the five consultancies that responded supported Proposal C. The consultancy opposed to the proposal commented that it would increase fly-tipping. Five out of the six private individuals who responded supported Proposal A. All the NGOs and other public bodies that responded supported Proposal C.

Figure 4 in Annex A contains a graph of all responses to Proposal C.

Costs and benefits

Consultees were asked if they were aware of any unforeseen costs or benefits to legitimate operators, the regulators or any other organisations arising from Proposal C. Observations on costs and benefits associated with Proposal C were broadly in line with those for Proposals A and B. However, one local authority commented that Proposal C could have an impact at multi-use sites where access is shared between different operators. A professional body commented that consideration needed to be given to the need for police support for the regulators so they could use the proposed power effectively.

Government conclusion

The Government notes the high level of support expressed for Proposal C. The Government also notes the support expressed by respondents to applying the proposal to sites that operate under a registered waste exemption and illegal waste operations.

We will engage with the regulators and other government departments to develop legislation that will enable the regulators to act to restrict access to regulated waste facilities (this would include those operating without a permit) and exempt waste facilities where they are arranging for steps to be taken to remove a risk of serious pollution under regulation 57 of the 2010 Regulations⁸.

⁸ <http://www.legislation.gov.uk/uksi/2010/675/regulation/57/made>

Although the consultation drew comments in support of applying the proposed power wider than just regulated waste facilities some respondents highlighted the potential adverse impacts of preventing access to other types of facility i.e. non-waste facilities. However, a consistent, balanced and fair approach to the regulation of all types of permitted and exempt facilities is a key principle underpinning the environmental permitting regime. The Government will therefore consider the case as to whether the powers being developed should be applied more widely than just waste sites.

Proposal D - Enable the regulators to take steps to remove a risk of serious pollution, whether or not a facility is under a permit

Purpose of the proposal

The purpose of the proposal was to amend the legislation to broaden the scope of the power to prevent or remedy pollution even where an environmental permit is not in place. This would expand the power to include cases where an operator is operating without a permit, where a permit has been fully revoked, or where a permit is revoked during or subsequent to any remedial action under regulation 57 of the 2010 Regulations⁹. We asked consultees if they agreed with the proposal. We also asked for any additional comments on the proposal and for any views on unforeseen costs and benefits to legitimate operators, the regulators or any other organisations.

Summary of responses

Eighty-six respondents gave their views on Proposal D: 26 from local authorities, 20 from individual companies, 14 from trade associations, 8 from other public bodies, 6 from private individuals, 4 from professional bodies, 5 from consultancies and 3 from NGOs.

Eighty-two of those that responded supported Proposal D. Several respondents commented that the proposal would help close a loophole and that it was a welcome enhancement. Respondents based in Wales gave their unanimous support for the proposal. The main concern expressed was how it would be funded. One suggested a centrally held pot of money should be contributed to by permit applicants. Other respondents commented that it was important that the regulators ensure that any waste removed from a site is disposed of responsibly and in compliance with the duty of care for waste to prevent a rise in fly-tipping events. Others called for fire risks to be minimised.

All of the local authorities that responded supported Proposal D. Two local authorities questioned whether the proposal would incur additional costs for regulators and whether a mechanism should be introduced to fund these costs.

⁹ <http://www.legislation.gov.uk/uksi/2010/675/regulation/57/made>

Seventeen out of the twenty individual companies that responded supported Proposal D and all the responses from the waste industry were positive. Two respondents from the water industries opposed Proposal D. One commented that they considered existing enforcement powers were sufficient; the other noted that there was insufficient information on how the power would be used and observed that that the proposal granted the regulator sole discretion on determining the level of risk. One water company, although supportive of the proposal, indicated that it should only be applied to sites handling waste.

All the trade associations that responded supported Proposal D. One trade association supported the application of Proposal D to waste sites but challenged its application to all regulated sites. All the professional bodies, consultancies, NGOs and the other public bodies that responded supported Proposal D. Five of the six private individuals who responded supported Proposal D.

Figure 5 in Annex A contains a graph of all responses to Proposal D.

Costs and benefits

Consultees were asked if they were aware of any unforeseen costs or benefits to legitimate operators, the regulators or any other organisations arising from Proposal D. Observations were in line with those for previous proposals. No unforeseen costs or benefits associated with Proposal D were highlighted by respondents.

Government conclusion

The Government notes the high level of support expressed for this proposal (95%). Proposal D received the highest level of support amongst the proposals in part I of the consultation document. Under regulation 57(1)¹⁰ of the 2010 Regulations, the regulators already have the ability to take steps to remove a risk of serious pollution from **all** regulated sites, not just permitted waste operations. Proposal D seeks to extend this power to enable the regulators to remove a risk of serious pollution at sites that are operating illegally and at sites where a permit has been revoked.

The Government therefore proposes to introduce legislation to amend regulation 57 of the 2010 Regulations¹¹. This amendment will extend the existing power, which covers all regulated facilities under a permit, to facilities that are operating without a permit (illegal facilities), facilities that operate under exemptions and facilities that formerly operated under a permit prior to its revocation.

¹⁰ See previous footnote reference.

¹¹ See previous footnote reference.

Some respondents called for a mechanism for the regulators to recover the costs associated with exercising the proposed power. This mechanism exists already under regulation 57(4)¹².

¹² See previous footnote reference.

Proposal E - Enable the regulators to make an application to the High Court more readily by removing preconditions

Purpose of the proposal

The regulators can take proceedings in the High Court to secure compliance with enforcement, suspension or other notices (regulation 42 of the 2010 Regulations¹³). However, the exercise of this power is currently predicated on the regulator demonstrating that they have given due consideration to the use of criminal proceedings for failure to comply with a notice and concluded that such proceedings would be ineffectual. The purpose of the proposal was to amend legislation to provide that the regulators may take proceedings in the High Court to secure compliance with a notice, whether or not they have taken other enforcement steps.

We asked consultees if they agreed with the proposal. We also asked for any additional comments on the proposal and for any views on unforeseen costs and benefits to legitimate operators, the regulators or any other organisations.

Summary of responses

Eighty-four respondents gave their views on Proposal E: 24 from local authorities, 20 from individual companies, 14 from trade associations, 8 from other public bodies, 6 from private individuals, 4 from professional bodies, 5 from consultancies and 3 from NGOs.

Seventy-five of those that responded supported Proposal E. All of the respondents from Wales, who responded to this question, agreed that the regulators should be able to issue proceedings in the High Court to secure compliance regardless of whether they had taken other enforcement action. The main reason for this is to speed up the ability to take enforcement action and minimise the potential for the creation of very large problem waste sites. The only caveat expressed was that this should only occur in the most serious of circumstances. All the local authorities that responded supported Proposal E.

Seventy percent of the individual companies that responded supported Proposal E. One commented:

“We agree with this proposal. If a scenario occurs whereby the most effective way to stop offending and a risk of significant harm is to consider High Court proceedings, then this should be pursued, regardless of whether the regulator has followed the criminal enforcement route as a first step.”

¹³ <http://www.legislation.gov.uk/uksi/2010/675/regulation/42/made>

Six companies either expressed concern or were opposed to Proposal E. Several saw it as an attempt to undermine or circumvent the criminal enforcement route.

All but 2 of the 14 trade associations that responded supported Proposal E. The trade associations opposed thought that it undermined the criminal enforcement process, that operators would have a reduced opportunity to prove their innocence and that regulators would use this route as an easier option than criminal prosecution.

All the professional bodies, consultancies, NGOs and other public bodies supported Proposal E. All but one of the private individuals who responded supported the proposal.

Figure 6 in Annex A contains a graph of all responses to Proposal E.

Costs and benefits

Consultees were asked if they were aware of any unforeseen costs or benefits to legitimate operators, the regulators or any other organisations arising from Proposal E. No unforeseen costs or benefits associated with Proposal E were highlighted by respondents.

Government conclusion

The Government notes the high level of support for Proposal E. However, several respondents expressed concern or opposition to the proposal. A recurring theme in their comments was that the regulators would use proceedings in the High Court instead of criminal prosecution even when that was not appropriate. This is not the intention of Proposal E.

It is important to highlight that the regulators already have the power under regulation 42 of the 2010 Regulations¹⁴ to take proceedings in the High Court to obtain an injunction against an operator for failure to comply with an enforcement notice, suspension notice or other specified notice. This power applies to all facilities regulated under the environmental permitting regime.

However, the existing power is dependent on the regulator demonstrating to the satisfaction of the High Court that they have given due consideration to using criminal proceedings to secure compliance with the relevant notice and concluded that a criminal prosecution would not secure compliance. The burden on the regulator is to prove to the High Court that criminal prosecution would be ineffectual in securing compliance.

In the time it takes to secure compliance with an enforcement or other notice through criminal proceedings, the continued operation of a facility acting in breach of a notice can contribute to significant pollution or harm to local communities. This is not acceptable.

¹⁴ See previous footnote reference.

The Government does not anticipate that the proposed change will lead to the regulators favouring the High Court over criminal proceedings. Proceedings in the High Court are expensive and the Government expects that the regulators will use this power only in exceptional cases where there is a risk of serious pollution and the regulator is dealing with an intransigent operator. Furthermore, the Government expects the regulators to pursue criminal proceedings against operators who have committed offences, in accordance with the regulators' enforcement policies.

The proposed change will remove the statutory precondition that the regulator must satisfy before they are able to apply to the High Court. It will mean that in serious cases where an operator is acting in breach of an enforcement or other notice, the regulators can apply to the High Court for an injunction to enforce immediate compliance. The use of High Court injunctions does not preclude the regulators from pursuing criminal proceedings against the operator if there is case to answer.

The Government also acknowledges that the High Court can in any event exercise its discretion and will need to be satisfied that an injunction is appropriate in all the circumstances. The Government therefore proposes to introduce legislation to amend regulation 42 of the 2010 Regulations¹⁵. The amended legislation will specify that the regulators may issue proceedings in the High Court to secure compliance with an enforcement notice, suspension notice, prohibition notice, landfill closure notice or mining waste facility closure notice regardless of whether or not the regulator has taken other enforcement steps. The Government will keep the use of this power under review and if necessary issue guidance on its use to the regulators to ensure that it is used only in exceptional cases.

¹⁵ See previous footnote reference.

Proposal F - Widen the regulators' ability to require the removal of waste from land

Purpose of the proposal

The regulators can currently serve a notice under section 59 of the Environmental Protection Act 1990¹⁶ (the 1990 Act) on an occupier of land to remove waste that has been unlawfully deposited. In cases where a site is abandoned and there is no occupier, or the occupier cannot be found, or the occupier has been served with a section 59 notice but has failed to comply with it, or the notice is quashed on appeal on certain grounds, the regulators also have the power to serve a notice on the landowner under section 59ZA of the 1990 Act¹⁷ requiring them to remove unlawfully deposited waste from the site.

The purpose of the proposal was to amend the legislation to make clear that the regulators have the power to issue a notice requiring the removal of illegal waste deposits but also to cater for the situation where the initial deposit was lawful but the continued presence or storage of that waste subsequently became unlawful. The proposed change would not alter the overall obligations that might fall to an occupier or landowner. However, it will mean that landowners or occupiers may have to deal with all the waste left at a facility and as a consequence incur greater costs.

We asked consultees if they agreed with the proposal. We also asked for any additional comments on the proposal and for any views on unforeseen costs and benefits to legitimate operators, the regulators or any other organisations. We specifically sought further information on how the proposal would impact on landowners.

Summary of responses

Eighty-four respondents gave their views on Proposal F: 25 from local authorities, 19 from individual companies, 14 from trade associations, 8 from other public bodies, 6 from private individuals, 4 from professional bodies, 5 from consultancies and 3 from NGOs.

Of those that responded, 93% supported Proposal F. Organisations and individuals based in Wales, who responded, were unanimously in favour of the proposal. The only caveats came from a trade association that wanted assurance that the enforcement response would be proportionate to the scale of the non-compliance and associated environmental impact particularly when it relation to spreading permitted waste to land.

All the local authorities that responded supported the proposal. One commented:

¹⁶ <http://www.legislation.gov.uk/ukpga/1990/43/section/59>

¹⁷ <http://www.legislation.gov.uk/ukpga/1990/43/section/59ZA>

“For many of the people who complain about, and are affected by, waste stored illegally or unsafely on land, the priority is to have the offending material cleared and the site secured. Steps to facilitate this would have a practical benefit for the community.”

Sixteen out of the nineteen individual companies that responded supported the proposal. One expressed concern about the power being used retrospectively so that waste that had been deposited legally would be reclassified as illegally deposited *“by virtue of a change in regulatory position”*.

Three companies were opposed to Proposal F. One offered no explanation, one thought that existing enforcement powers were sufficient, the third suggested that the legislation be amended in a different way and that instead of “unlawfully deposited” section 59 of the 1990 Act¹⁸ be amended to “unlawfully present”.

Twelve of the fourteen trade associations that responded supported Proposal F. One trade association expressed concern about *“retrospective regulation”*. Another commented:

“In respect of actions against land owners on whose land illegal operations may be or have been taking place then whatever legal instruments are proposed, it is essential that Government should not allow the convenience of having a readily identifiable third party pay for a crime that that third party has not condoned or had any knowledge of, that Government proposals should not override justice and therefore the fact of ownership of the land should not necessarily result in responsibility for some other parties illegal activity and consequences of this.”

Two trade associations were opposed to Proposal F; they commented that they could see no reason why waste deposited in accordance with a permit at a regulated facility could become unlawful.

All of the professional bodies, consultancies, NGOs and other public bodies that responded supported Proposal F. All but one of the private individuals who responded supported the proposal.

Figure 7 in Annex A contains a graph of all responses to Proposal F.

Costs and benefits

Consultees were asked if they were aware of any unforeseen costs or benefits to legitimate operators, the regulators or any other organisations arising from Proposal F. One local authority commented that it would save expenditure by local authorities and enable the money saved to be spent on the community. No other unforeseen costs or benefits associated with Proposal F were highlighted by respondents.

¹⁸ <http://www.legislation.gov.uk/ukpga/1990/43/section/59>

The Government stated in the consultation document that it did not anticipate any impact on legitimate operators as the exercise of the proposed power would be limited to cases where waste had been deposited in breach of a permit or a registered exemption.

The consultation document also outlined that there is no overall change in the obligation on landowners. However, the Government did acknowledge that where liable, landowner's costs for meeting the obligation to clear waste could increase by virtue of Proposal F to include the removal of all the waste on a site and not just the waste that was deposited illegally. The Government sought further information on the possible impacts of this proposal on landowners. None of the respondents offered information on the impacts of Proposal F on landowners.

Government conclusion

The Government notes the majority support for Proposal F. Some of those opposed to Proposal F thought that the proposed power would be used by regulators to require an operator of a permitted facility to remove all waste. The regulators already have the power under section 59¹⁹ of the 1990 Act to serve a notice on an operator of a permitted facility requiring the operator to remove any waste that has been deposited unlawfully. Where waste is lawfully deposited at a facility, it is not a contravention of section 33(1) of the 1990 Act²⁰ or regulation 12 of the 2010 Regulations²¹ and no removal notice can be served.

The proposed amendment to section 59²² will enable the power to be used where waste is unlawfully deposited or unlawfully kept. For example, if a "deposit" was lawful at the time it was made, but the 'keeping' ceases to be lawful as a result of the revocation of the permit, then this power could be used by the regulators to require the landowner/occupier to remove waste that was 'lawfully deposited' but is no longer being 'lawfully kept'. The proposed amendment will not enable the regulators to require an operator (or a landowner/occupier) to remove waste deposited at a permitted facility where the deposit and storage is in accordance with permit conditions.

The Government therefore proposes to bring forward legislation to amend sections 59 and 59ZA of the 1990 Act²³. The amended legislation will specify that the power to remove waste under section 59 can apply to both waste that has been unlawfully deposited (the current power) or *unlawfully kept* (the widened power).

¹⁹ See previous footnote reference.

²⁰ <http://www.legislation.gov.uk/ukpga/1990/43/section/33>

²¹ <http://www.legislation.gov.uk/uksi/2010/675/regulation/12/made>

²² <http://www.legislation.gov.uk/ukpga/1990/43/section/59>

²³ See previous footnote reference and <http://www.legislation.gov.uk/ukpga/1990/43/section/59ZA>

Next steps for part I

The Government proposes to introduce legislative amendments during 2015 and the early part of 2016 that will clarify the regulators' existing enforcement powers and will:

- Enable the regulators to suspend a permit where an operator has breached their permit and there is a resulting risk of pollution;
- Enable the regulators to specify in a suspension notice the steps that must be taken by the operator to remedy the breach of a permit and remove the risk of pollution; and that the operator must erect signage which informs the public about waste that cannot be brought onto the facility;
- Enable the regulators to take steps to prohibit access to a facility;
- Enable the regulators to take steps to remove a risk of serious pollution, regardless of whether the facility affected is regulated under a permit;
- Make it easier for the regulators to make an application to the High Court for an injunction to enforce compliance with an enforcement or other notice by removing the current precondition;
- Amend the legislation to widen the regulators' ability to require the removal of waste from land in circumstances where the waste is being unlawfully kept.

Summary of responses to part II: a call for evidence on other measures to tackle waste crime and entrenched poor performance in the waste management industry

Fixed penalty notices for fly-tipping

Summary of responses

Questions 1 to 5 sought the views of consultees on the introduction of FPNs for fly-tipping. This topic received 95 responses, although not all of the respondents who provided comments answered all of the questions. 79 of the responses came from organisations or individuals based in England and 16 from organisations / individuals based in Wales. The majority of respondents (93%²⁴) agreed that the introduction of FPNs for the offence of fly-tipping would help tackle the problem. Respondents stated that FPNs would be a proportionate response for small scale fly-tipping. They also commented that they are a relatively simple, quick and cheap way of dealing with offenders, as opposed to prosecutions which are time and resource intensive and not always appropriate.

The call for evidence asked what the disadvantages of using FPNs for fly-tipping are. A number of respondents noted that there will be costs to set up the system and that there is a risk that any clean-up costs might not be covered by the penalty. A number of respondents expressed concerns that there is no mechanism to share details of FPNs across local authority borders and between enforcement bodies. As offenders discharge their liability by paying the fine, it will be difficult to identify persistent offenders and lack of intelligence sharing could mean that repeat offenders are issued with FPNs rather than being prosecuted.

Respondents also noted that FPNs should only be used for small scale fly-tipping and enforcement bodies should continue to bring prosecutions in serious cases. Some respondents noted that there is a risk that offenders will not pay the fine and in these circumstances local authorities would still pursue the offender by means of prosecution.

²⁴ 92% in England and 94% in Wales.

The call for evidence asked at what level the fixed penalty should be set to act as a sufficient deterrent to fly-tipping. Respondents suggested a range of penalties from £75 to £5,000 that they believed would act as a suitable deterrent. Twenty respondents suggested that the penalty should be set at £300 (the same as the existing FPN for failure to produce a waste transfer note under section 34A Environmental Protection Act 1990²⁵). Eleven respondents suggested that the penalty should be set at £200 which is the same level as the FPN for fly-tipping in Scotland.

A number of respondents suggested that there should be some element of flexibility in the level of the penalty. A number suggested that the level of penalty should be in excess of the legitimate cost of disposal (which is in turn dependent of waste type and quantity), the cost of removal plus a deterrent effect. Others suggested a sliding scale of FPNs dependent on type of fly-tipping activity and whether it was a first or second offence.

Some respondents suggested that the penalty should be lower than levels of fines imposed locally in Magistrates' Courts to incentivise the recipient to pay the penalty rather than defending the case in court. Some respondents suggested that there should be two tiers of FPNs: one for householders and one for businesses.

Government conclusion

The Government welcomes the high level of support for the introduction of FPNs for fly-tipping. We agree that they should only be used for small scale fly-tipping and enforcement bodies should continue to bring prosecutions in serious cases.

We have noted that 20 respondents suggested that the fixed penalty should be set at £300 (the same as the existing FPN for failure to produce a waste transfer note²⁶ and abandoning a vehicle²⁷). We have also noted that eleven respondents suggested that the penalty should be set at £200, which is the same level as the fixed penalty for fly-tipping in Scotland.

We believe that the level of penalty should be sufficiently in excess of the legitimate cost of disposal (which is in turn dependent of waste type and quantity), the cost of removal plus a deterrent effect. The Government acknowledges that fixed penalties that are set too high can be counterproductive as they may lead to substantial non-payment rates. This can also happen when penalties are set higher than the likely penalty for non-payment. We believe that there should be a default penalty and that issuing authorities should be given the flexibility to select an alternative amount from a range, taking into account what they think is appropriate for peoples' ability to pay and the levels of fines imposed locally in Magistrates' Courts.

²⁵ <http://www.legislation.gov.uk/ukpga/1990/43/section/34A>

²⁶ See previous footnote reference.

²⁷ <http://www.legislation.gov.uk/ukpga/1978/3/section/2>

We have noted that a number of respondents suggested that there should be a reduction for early payment of the penalty. This would be in line with other environmental FPN schemes and would reassure the public that the fly-tipping FPN was an enforcement tool rather than a money-generating exercise. We are considering setting a minimum level of penalty for early repayment but allowing issuing authorities the flexibility to define an early repayment level that is higher.

We recognise that setting up systems to issue FPNs to penalise offenders will incur start-up costs for local authorities. However, once operational, it would assist local authorities if their enforcement activity could be sustained as well as allowing for increased clear up of fly-tipped waste. We are aware that local authorities retain penalties paid for littering and other environmental offences and that there is an argument that issuing authorities should also be able to retain the receipts from FPNs for fly-tipping.

The Conservative Party's 2015 manifesto²⁸ included a commitment to allow councils to tackle small-scale fly-tipping through FPNs. There was a high level of support for the introduction of FPNs as set out in the call for evidence. Taken together the results of the call for evidence and the manifesto commitment provide a strong case to proceed to introduce amending legislation. Defra will therefore introduce legislation at the earliest opportunity to introduce FPNs for fly-tipping in England.

In Wales, the Welsh Government's Flytipping Strategy²⁹ gave a commitment to investigate introducing a new FPN or other enforcement tools for fly tipping incidents. Given the high level of support in the Call for Evidence, the Welsh Government will also be exploring this further in Wales.

²⁸ <https://www.conservatives.com/manifesto>

²⁹ <http://gov.wales/topics/environmentcountryside/epq/cleanneighbour/flytipping/?lang=en>

Actions to improve landowner awareness of potential liabilities for waste

Summary of responses

Questions 6 to 10 sought the views of consultees on actions to improve landowner awareness of potential liabilities for waste. This topic received 73 responses, although not all the respondents who provided comments answered all the questions. Sixty of the responses came from organisations or individuals based in England and 13 from organisations or individuals based in Wales.

Question 6 asked for evidence of waste being abandoned and landowners being left to tackle waste or pollution caused by current or former tenants. Respondents provided numerous examples, from orphaned sites and warehouses being filled with waste materials and then abandoned, to short-term tenants not removing possessions from rented property.

Question 7 asked for proposals for increasing awareness amongst landowners of their potential liabilities. A number of respondents suggested that there should be a campaign led by the Environment Agency and trade associations and supported by local authorities. Some respondents suggested that the National Fly-Tipping Prevention Group should be used to help raise awareness of landowner's liabilities.

Other respondents suggested that landowners should take part in the permit application process. They explained that one option could be that during the permit application process (and the registration of exempt waste operations), the regulator could provide the landowner with an information note highlighting their responsibilities. This note could contain suggestions as to what measures they could put in place to protect their interests. Landowners could then sign a declaration prior to the issue of a permit to confirm they have received and understood these responsibilities and the liabilities they may face.

Question 8 asked what more can be done through the lease arrangements with tenants to prevent or mitigate the potential liability of landowners. Respondents suggested that the lease should clearly specify activities taking place on site and if the operator diverges from those activities, they should provide evidence that the landlord has agreed to this change. Respondents also suggested that landlords should undertake regular checks on the activities of their tenants and provide evidence of these checks and if they take these steps they should not be held liable.

A number of respondents argued that there should be a requirement for landowner details to be recorded on operator permits. This additional requirement would enable the regulators to contact landowners to make clear their duties and should encourage landowners to undertake checks to ensure operators are legitimate.

Some respondents suggested a clause in tenancy contracts stating that the land can be used for waste activities and that it should be returned to its original condition. Others suggested that surety bonds or insurance policies should be part of the lease agreements between the tenant and the land owner.

Question 9 asked whether operators should provide evidence to the regulators of their landowner's awareness and consent to the proposed waste activity as part of the permit application process. The majority of respondents (88%), who replied to this question, would like to see operators provide evidence to the regulators of their landowner's awareness and consent to the proposed waste activity as part of the permit application process.

A number of respondents suggested a system should be in place where the landowner is involved in the permitting process and there is a direct link between the landowner and the regulator, rather than communication via the operator. Question 10 invited views on the ability of liquidators to disclaim environmental permits as 'onerous property' in England and Wales. The majority of respondents proposed that England and Wales should harmonise with the current position in Scotland and that liquidators should not be permitted to disclaim environmental permits as onerous property. They suggested that, if liquidators accept ownership, this should include some responsibility for ongoing compliance.

Government conclusion

It is clear that abandoned waste and orphaned sites continue to be an issue nationally and that action to raise landowner awareness would be beneficial. It is also evident that the ability to disclaim an environmental permit on liquidation allows some operators to by-pass their liability at the expense of the landowner.

We have noted proposals on the best mechanisms to increase awareness amongst landowners of their liabilities in relation to waste management operations on their land or their premises.

We note suggestions that the lease should clearly specify activities taking place on site and that if the operator diverges from those activities, they should provide evidence that the landlord has agreed to this. We have noted suggestions that there may be a role for surety bonds or insurance policies as part of the lease agreements between the tenant and the landowner.

We are pleased that a majority (88%) of respondents would like to see operators provide evidence to the regulators of their landowner's awareness and consent to the proposed waste activity as part of the permit application process. We have noted the numerous suggestions about how this should be achieved.

We have noted the views that operators and liquidators should be held responsible for ongoing compliance with an environmental permit which should not be capable of being disclaimed. Defra officials have discussed the disclaiming of environmental permits as onerous property with the Insolvency Service and the difference in approach between Scotland and England and Wales. In order to protect the liquidator's role there is little likelihood of changes to insolvency legislation to prevent an environmental permit from being disclaimed. However, we are examining with the Insolvency Service how to make better use of existing legislation that enables the directors of companies that repeatedly flout the law to be disqualified. The Insolvency Service is also examining proposals under which company directors may be required to compensate those affected by their actions or negligence under certain circumstances. Defra will continue to engage with the Insolvency Service on this issue and assist in the development of policy to ensure rogue company directors are as far as possible made responsible for their actions.

The Government will also ask the regulators to consider how the permitting process can be revised to ensure regulators are informed as part of the application process that landlords and landowners are aware of any waste management activities present on their land/premises and the liabilities that ensue. The Government believes that the waste industry and the organisations that represent the interests of landlords and landowners also have a big part to play in addressing awareness amongst landlords and landowner. The Government calls upon Industry to take a lead on this issue and come forward with recommendations for action.

Overall operator competence

Summary of responses

Questions 11 to 15 sought the views of consultees on overall operator competence. This topic received 75 responses, although not all the respondents who provided comments answered all the questions. Sixty-four of the responses came from organisations or individuals based in England and 11 from organisations / individuals based in Wales.

Question 11 asked for views on amending legislation to formally require operators of regulated waste management facilities to demonstrate effective technical competence, sufficient financial provision and satisfactory past performance. The majority of respondents to this question were in favour of some form of mandatory requirement for operator competence although this was not necessarily in respect of each of the 3 limbs i.e. technical competence, financial provision and operator performance. It was also unclear whether those supporting aspects of operator competence favoured a legislative solution, although many did.

Respondents who opposed the proposals considered the existing operator competence arrangements to be adequate or were concerned about additional burdens and costs particularly for SMEs. Most of those comments were made in respect of financial provision.

Question 12 asked whether enshrining operator competence in legislation should apply to just waste management activities or some or all other types of regulated facility. The majority of respondents supported the application of operator competence to all types of regulated facility. However, it was not always clear whether respondents meant all types of regulated facility or all types of waste management facility.

Those in support of the proposal ranged from outright support to those advocating the adoption of a risk-based approach. There were calls from a few respondents to extend the provisions to exempt waste operations and to waste brokers and dealers. Those against this proposal included representatives of other industries regulated under environmental permitting who were concerned that the current waste management competence provisions would be applied to them in the same way.

A number of respondents expressed views on the best way of enshrining an operator competence test. These views fall into 3 prevailing categories:

- those that favoured an independent assessment of competence; these included reliance on ISO 14001³⁰ or other environmental management schemes and/or auditing or other third-party accreditation or reliance on guidance;

³⁰ <http://www.iso.org/iso/home/standards/management-standards/iso14000.htm>

- those that favoured use of the permitting process and/or the use of permit conditions; and
- those that favoured a legislative approach or a combination of legislation and permitting.

The views expressed were not necessarily mutually exclusive. Private business expressed preference for reliance on third-party accreditation through systems linked to their activity or via permitting.

Question 13 asked if it would be appropriate for operator competence to be re-assessed if a company changes its directors, company secretary or similar managers. The majority of respondents agreed that it should and that it should be applied to all companies.

Many commented that reassessment should be proportionate and there were suggestions about when a reassessment should or should not be needed. For instance, there were suggestions of different accreditations or affiliations that could negate the need for reassessment. Examples included ISO14001, or any environmental management system.

Another criterion suggested was the size of the company with greater need to reassess small companies where a change in management may have greater impact on the management and operation of a site and lead to a change in compliance. Some larger companies thought it impractical to be reassessed when a single director changes.

Government conclusion

The call for evidence was partly brought about because of concerns that the legislation is not sufficiently detailed on this issue and concerns that there is an over-reliance on guidance. There was a high level of support from those who responded to this topic to better enshrine the principle of operator competence. The principle of operator competence is well supported in respect of waste management and seemingly in respect of other industries operating under environmental permitting. It would not make sense to subject the waste industry to a different requirement for operator competence from other industries regulated under the environmental permitting regime. However, there is little information from those in other industry sectors on how operator competence might be applied. We have therefore concluded that the principle of operator competence should be applied to all industry sectors but in a way that would allow the different sectors to work in conjunction with the regulators to determine the extent to which it should apply and the nature of the requirement on operators.

There is clearly a majority view that operator competence should be reassessed if a company changes its directors, company secretary or similar. However, views were expressed in response to Question 14 that such changes should not trigger a reassessment of operator competence in all cases. There was a view that this should be risk-based and proportionate, with a need to focus on changes in personnel that will significantly alter the running of the company and/or the operation. A majority that expressed a view indicated it may be more important to reassess changes in small companies than large ones that have many directors.

There therefore needs to be some flexibility on how such a requirement is exercised. We will develop proposals that would allow the regulators to be notified of changes to key personnel with a company. The regulators would then determine whether this should trigger a reassessment of the operator's competence.

We have concluded that the principle of overall operator competence should be enshrined in legislation. However, the Government does not want to overly intervene with the detailed mechanism for demonstrating operator competence. It should be for the regulator to assess overall operator competence at the application stage, when there is a significant change to the nature of the operation or when there is a change in the structure or management responsibilities of the operator.

Furthermore, operator competence is something that should be assessed on an ongoing basis by the regulator throughout the life of the permit and take into account operator compliance and other evidence of operator performance. The cost of regulatory effort needed should be recovered from the operator through fees and charges. We will develop proposals for a combination of regulatory changes and guidance to better ensure that the regulator is supported in ensuring operator competence is assessed and maintained throughout the subsistence of the permit and is able to take appropriate enforcement action if it is not. The Government plans to consult on these proposals in 2016.

Technical competence

Summary of responses

Questions 16 to 21 sought the views of consultees on technical competence. This topic received 50 responses, although not all the respondents who provided comments answered all the questions. Forty-one of the responses came from organisations or individuals based in England and 9 from organisations or individuals based in Wales.

We asked whether technical competence should be applied to all types of permitted waste management facility, through one of the two currently approved schemes. The majority of the respondents (72%) argued that it should. They called for a consistent approach to technical competence and suggested that technical competence schemes should be scaled according to the size of operation. Some respondents suggested that it would be useful to review the existing schemes to ensure that their aims and objectives are aligned with industry needs.

A number of respondents suggested that it was important to create a level playing field to avoid non-compliant operators undercutting legitimate businesses. Some respondents said that the proposals in the call for evidence would cause problems for small companies. They suggested that it would increase the regulatory burden on some operators, particularly those dealing with low-risk, small scale landspreading activities.

We asked for views on the ways in which the regulators are made aware of the name(s) of the technically competent manager(s) at permitted sites. Most respondents said that this requirement should be enshrined within the environment permit. Other suggestions included a central database with photo ID, details of competent persons or companies, noting the level of competence they hold, and a public register on a website showing the competence cover at permitted sites at any point in time.

We asked for views on how those providing technically competent management at a site should be held to account for the standards of performance. Most respondents supported the view that technically competent managers (TCMs) should be accountable for the standards of performance for the site. Ideas included: specifying the time spent on site, enforcement action, prosecution, fines and giving the regulators the power to suspend the status of the TCM. Some suggested a real-time database of TCMs.

We asked for views on the amount of time those responsible for managing the site should be present and what factors should determine that period. Most respondents suggested that it should be more than 50% of the time, while others suggested that the amount of time should be set in accordance with the compliance banding, so that those in a higher band would require less TCM time on site and those sites with a lower band requiring greater time spent on site by the TCM.

Some respondents were against any proposal that compliance banding should determine the amount of time that those responsible for managing a site should be on site. They argued that it should be left to businesses to decide, or enshrined in law. It was acknowledged that for landspreading permits, it would be unrealistic to ask for a minimum period of time for the responsible person to be present.

Government conclusion

The Government welcomes the range of views provided on the subject of technical competence. Given the support expressed for the application of technical competence to all waste management facilities, the Government will develop proposals that will better enshrine the technical competence requirement in legislation. We plan to consult on these in 2016.

The Government will also consider additional measures to ensure that technically competent management should be held accountable for site performance and that the regulators are made aware of the management arrangements and changes to them. However, the two schemes currently approved are different with one relying on individual competence while the other is based on corporate competence. It would therefore not be for government to come forward with specific legislative proposals for further covering the time individual managers are present on site. This is a matter for the scheme providers and the regulators to agree.

Financial provision

Summary of responses

Questions 22 to 26 sought the views of consultees on the subject of financial provision made by the operators of permitted waste facilities. This topic received 62 responses, although not all the respondents who provided comments answered all the questions. Fifty-two of the responses came from organisations or individuals based in England and 10 from organisations / individuals based in Wales.

Operators holding a permit for landfill or mining waste operations are required to make and maintain specific financial provision for their operations. We asked whether financial provision for other permitted waste operations should be reintroduced on a site-specific basis linked to the type of activity and the type of wastes received. We also asked whether the amount of the financial provision should be linked not only to returning the land to a satisfactory state to meet permit surrender requirements but also to foreseeable clear-up costs resulting from a breach of a permit or after an environmental accident.

A majority of respondents supported the reintroduction of financial provision for permitted waste operations. Many respondents thought financial provision should cover both returning the land to a satisfactory state and to foreseeable clean-up costs relating to the breach of a permit or environmental accident. Several commented that it was important that there were sufficient funds set aside to protect the public purse from potentially expensive clean-up costs associated with abandoned waste sites. A number of respondents urged the Government to link the assessment of financial provision to the level of risk posed by a waste site and to consider the type of activity and waste handled as a basis for calculating that risk.

A number of respondents also called for a greater focus by the regulators on enforcing compliance with permit conditions that specify the amount of waste that can be present on a site. One respondent expressed the concern that a risk-averse financial sector may be unwilling to provide insurance or help facilitate financial provision. They also suggested that extending the requirement to other permitted waste operations could lead to smaller operators going out of business because of the increased costs. Respondents opposed to the extension of the financial provision requirement were concerned that it would significantly increase costs for businesses and tie-up funds.

For landfill sites, we asked whether the scope of financial provision should be extended to cover operational costs incurred by an operator both before and /or after a site has ceased accepting waste. A slim majority of respondents (53%) agreed that financial provision at landfill sites should be extended to cover all of the operational costs associated with the operation of a landfill and not just the costs associated with closure and aftercare of a landfill site. Other respondents, including representatives from the landfill industry, thought that the current financial provision requirements for landfill sites were adequate and there was no justification for extending the requirement to cover the operational phases of landfill sites.

We asked about the best mechanisms to make and maintain financial provision so that it is secure and available to fulfil permit obligations and deal with the consequences of permit breaches or environmental accidents. No single favoured mechanism for financial provision emerged from the responses received. Some respondents supported the use of insurance, others supported the use of bonds or the use of escrow accounts. A number of respondents supported a combination of bonds/ bank guarantees, insurance and escrow accounts. Alternative suggestions included the development of a government-led indemnity scheme for the waste sector. Others favoured the option of regulators assessing business plans rather than requiring operators to tie-up funds or obtain insurance.

We asked about the likely costs of making financial provision and the impact on waste operators of different sizes. Respondents highlighted the significant impact that reintroducing financial provision would have on smaller businesses. Some commented that it would discourage poor performing sites from continuing to operate; others suggested that it could act as a barrier to entry into the waste management industry. One respondent thought that this was not necessarily a negative impact and they commented that it had become too easy to start up as a waste business. Other respondents called for both permitted and exempt waste operations to be required to make financial provision. Several reiterated the suggestion that the requirement for financial provision should be linked to an assessment of the risks posed by the proposed waste operator and waste operation.

Government conclusion

The Government welcomes the views provided on financial provision. We have noted the overriding view in support of the reintroduction of financial provision. The Government considers the challenge of the issue presented to us is finding a credible balance between the need to protect the public purse from potentially costly clean-up operations and the increased costs to business associated with extending the requirement to make specific financial provision to cover obligations that may arise from business failure. The Government recognises that extending the requirement for financial provision by waste management operators is not a “magic bullet” that will protect landowners and ultimately government from the costs of clean-up operations. However, it is one element in a package of measures that should contribute to reducing the frequency of problem sites abandoned by rogue operators.

For landfill operations, the Government is aware that the decline in the amount of non-hazardous waste going to landfill has led to many landfill site operators seeking extensions to deadlines for restoration; amendments to planning requirements to restore the site to lower contours; ‘mothballing’ the site for a time pending changed circumstances³¹; and in some cases dropping the gate price to complete the site and close it earlier than anticipated. Intelligence from the regulators suggests some landfills are entering into the closure phase but still have essential site infrastructure to install. Given income from waste inputs will have ceased by this point, the Government is concerned that the financial provision made by landfill operators may not be sufficient in such circumstances. The Government will discuss with the regulators and consider whether changes to the guidance on financial provision for landfill operations is required.

The Government notes the high level of support for the introduction of some form of financial provision at waste management operations and will liaise with the regulators, industry and other key stakeholders to develop proposals to enshrine financial provision in legislation. The Government is committed to bringing forward any changes using an approach that is based on the level of risk that new waste management operations pose. We plan to consult on proposals in 2016.

³¹ A temporarily closed landfill site that will reopen at a future date.

Past operator performance

Summary of responses

Question 27 sought the views of consultees on past operator performance. This topic received 45 responses. Thirty-six of the responses came from organisations or individuals based in England and 9 from organisations / individuals based in Wales.

We asked whether an operator's past performance and convictions should be taken into consideration by the regulators in assessing competence. A large majority of respondents agreed that past performance and spent convictions should be taken into consideration in determining an application for a permit. They argued that spent convictions, previous relevant convictions and persistent and serious permit breaches should be taken into account. Three respondents commented on the impact of recent changes to the Rehabilitation of Offenders Act 1974, with two encouraging the Government to review its impact on the waste sector to ensure protection of the environment. However, the third respondent highlighted the role of the justice system not only to punish but also to rehabilitate offenders. They observed that to refuse or revoke a permit on the basis of a conviction runs counter to the principles of the justice system.

Some respondents suggested that a period of probation could be imposed requiring an additional person or body to stand guarantee for a named person until an agreed time of satisfactory performance had been recorded. Others suggested evidence should be provided relating to changed practices, proof of consistency and renewal of qualifications.

A number of respondents suggested that details of previous waste businesses operated by an applicant should be recorded in the permit application process to prevent rogue operators re-establishing under a different company name. Others suggested that any failing which had the potential to cause injury or harm or had a financial implication on others should be taken into consideration.

Some respondents commented that in circumstances where previous convictions, civil sanctions, revocations or enforcement action are under consideration by the regulators, this performance record should be considered in the context of the offence committed and not considered in isolation. Respondents called for a fair, open and transparent risk-based approach that takes into account issues such as the size of the operation. There were also calls for a robust appeal process. Some respondents also noted that there should be time limits after which convictions and spent convictions should no longer be taken into consideration when assessing operator competence. Circumstances where a compliant operator purchases a historic non-compliant company would also need to be taken into account. It was also noted that a common source of information regarding convictions, and past compliance performance would significantly assist the assessment of an operator's suitability to hold a waste permit by the regulator. A number of respondents suggested clear guidance would be needed to support the decision-making process.

Those against consideration of past performance in the permit application process argued that there are many operators, both small and large, that have relevant convictions. They observed that these operators can often continue to trade and operate sites to very high standards.

Government conclusion

There is clear support for ensuring that the regulator can take into account all aspects of an operator's current and past performance in determining operator competence. These should include the conviction record but also the compliance record and the exercise of enforcement sanctions against the operator or a relevant person. We will therefore consider how best to ensure a wide range of relevant factors can be taken into consideration by the regulators when assessing operator performance.

Where convictions are spent, it would seem inappropriate for them to still be taken into consideration in respect of the assessment of operator competence. The effect of changes to the Rehabilitation of Offenders Act 1974 means that the conviction of individuals leading to a fine, are spent after one year. It is not the intention of the Government to amend the legislation to specify that a relevant spent conviction is a basis for refusing or revoking a permit. We will however, engage with the regulators and other government departments during 2016 to examine whether there is a case for reviewing whether relevant convictions under the environmental permitting regime should be spent after 12 months and should instead remain disclosable for up to 5 years as was previously the case.

Site management plans

Summary of responses

Questions 28 sought the views of consultees on site management plans. This topic received 58 responses. Forty-nine responses came from organisations or individuals based in England and 9 from organisations / individuals based in Wales.

We asked whether the requirement for site management plans and their content should be embodied in legislation. The majority of those that responded did not want to have the requirements or content embodied in legislation. Many respondents commented that this would be an inflexible approach, that it would be difficult to get right and that it would take too long to amend a site management plan once it is in place.

Arguments for embodying the requirement in legislation focussed mainly on inconsistent or differing interpretation of requirements by regulators and neighbouring local authorities. One Trade Association in support of embodying the requirement in legislation pointed to the large number of sites that operate under older permits which have no requirement for a site management plan. The general presumption was embodying the requirement in legislation would ensure greater consistency.

A number of respondents argued that the content of site management plans should be in technical guidance notes rather than in legislation and that this would be of more value to operators. They also suggested that concerns about the consistency of site management plans could be addressed through standardisation using an ISO or BSI protocol.

Other respondents argued that requirements set out under current permitting conditions are adequate and allow for various organisations and management systems styles to be incorporated. Some noted that the issue is more about incomplete plans being submitted and the regulators not having sufficient resources to check for completeness and detail at the application stage and during the life of the permit. An alternative view offered was that permits should be more specific to negate the requirement for specifics in the site management plan. It was suggested that this would provide more clarity for operators and regulators and would require less resource to prove a permit breach.

Government conclusion

The Government has considered the views expressed by respondents. A consistent approach to the use of site management plans is important; the Government will discuss with the regulators and industry how best to promote a consistent approach and we plan to consult in 2016.

Abandoned or orphaned sites

Summary of responses

Questions 29 to 33 sought the views of consultees on the subject of possible measures to address the clean-up of orphaned or abandoned waste management sites. This topic received 60 responses although not all the respondents who provided comments answered all the questions. Fifty-one responses came from organisations or individuals based in England and 9 from organisations/ individuals based in Wales.

We asked whether the Government needs to develop a mandatory scheme to cover the full costs of clearing and remediating abandoned or orphaned sites or whether a voluntary approach would work. The responses received encompassed a broad range of views. The majority of respondents supported the idea of some form of government scheme to tackle the clean-up of abandoned or orphaned waste management sites. However, there were mixed views on how this scheme should be funded. Some respondents suggested a scheme funded by industry contributions; others suggested that it should be funded from landfill tax revenue. Several respondents suggested that fines imposed in cases of environmental offences could support a clean-up scheme. Several respondents pointed to the requirement for financial provision in certain European legislation and suggested that the Government could not and should not seek to supplant those requirements with a national scheme.

A number of respondents observed that introducing a requirement for effective financial provision should ensure that operators are made to cover the costs of cleaning up their own sites. They commented that industry as a whole should not be required to cover the costs of a small minority of poor performing operators and waste criminals. Some respondents commented that a national scheme was contrary to the polluter-pays principle as it would inevitably lead to compliant operators meeting the costs associated with the actions of the non-compliant. Others commented that abandoned or orphaned sites were symptomatic of poor regulatory control and that it was the former site operators that should be held liable for the clean-up costs. Some respondents suggested that a national clean-up scheme would encourage the abandonment of waste sites.

We asked whether joining such a scheme should be an alternative to, or additional to site-specific financial provision. Just under half of respondents to this question suggested that a government scheme could be additional to site-specific financial provision and could apply if the financial provision made for a site was insufficient or became unavailable.

We asked what level of funding would be required for such a scheme so as to be proportionate to the risk. One trade association suggested a site-based levy in the region of £100 - £300 per site to provide a total fund of between £2 and £10 million a year. They also suggested that, if the fund was not fully utilised in one year, any surplus could be diverted to support enforcement action, training of the regulators and engagement between the regulators and industry. Views expressed by other respondents included a range of suggestions on how the level of funding could be calculated.

We asked for evidence or views of the costs and impacts incurred by the public sector, businesses or landowners in cleaning up and remediating land or premises which have been used for waste management operations and then abandoned. Several respondents commented on the impacts of fires at abandoned waste sites and the significant costs incurred by the fire and rescue services in responding to these incidents. Many responses underlined the view already expressed that the operators responsible for causing pollution should be made to pay for the clean-up of sites. Some respondents cited cases of abandoned sites and the costs or estimated costs associated with their clean-up, which ranged from £50k to £5m.

Government conclusion

The Government notes the range of views provided on the merits of a national scheme to fund the clean-up of abandoned or orphaned waste management sites. The Government supports the “polluter-pays” principle and it is not the Government’s intention to establish a scheme that would undermine that principle. The Government does not, at this stage, intend to bring forward further proposals relating to a scheme to fund the clean-up of abandoned or orphaned waste management sites.

The Government will consider the views and recommendations made by respondents on the broader use of financial provision as a means to ensure operators have sufficient funds to meet all the obligations associated with their environmental permit. We also think that more can be done with landowners and landlords to help prevent abandonment of waste sites or at least minimise its consequences and we will consider this further with the regulators and industry.

Powers to recharge for pollution works

Summary of responses

Questions 34 and 35 sought views and evidence on the subject of powers to recharge for investigations and remedial works to address pollution caused by the deposit of waste. This topic received 51 responses, although not all respondents who provided comments answered all the questions. Forty-four responses came from organisations or individuals based in England and 7 from organisations/ individuals based in Wales.

We asked for evidence of pollution caused by the deposit of waste on land by waste operations or abandoned waste that might merit powers to remediate. A number of respondents provided examples of sites that required investigation and remediation after many years of waste storage and treatment. The examples included historic closed sites as well as more recently abandoned illegal and permitted or registered ones.

We also asked for views on widening the scope of the regulators' powers to recover the costs of investigations and remedial works undertaken to prevent or remedy pollution caused by the deposit of waste on land. A large majority (84%) of respondents to this question supported this, with many citing the polluter-pays principle. Those who did not support this thought that existing powers allow the regulators to do this already.

Some respondents noted that the regulators would have to prove that there was negligence, with clear blame attributed or a conviction secured before charges are made.

Some respondents commented that charges should be reasonable and fair and should only be imposed when specific action taken can be itemised and validated. Some suggested that charges should only be based on necessary remedial works and not investigatory costs or that landowners who are victims of fly-tipping should be excluded from charging. Others suggested that the regulators should be empowered to seize the polluted land if the perpetrators are unable to pay the costs.

Government conclusion

The Government welcomes the examples provided by a number of respondents of cases where the deposit of waste on land has caused pollution.

The Government notes the high level of support for widening the scope of the regulators' powers to investigate, prevent and remedy pollution on land caused by the deposit of waste consistent with powers that are already available to the regulators in respect to the pollution of controlled waters under the Water Resources Act 1991³².

³² <http://www.legislation.gov.uk/ukpga/1991/57/section/161>

The Government will discuss the potential legislative changes with the regulators to better understand the practical implications of the amendments for the regulators and industry. Following these discussions, we will come forward with proposals to enable the regulators to either take action themselves or require responsible persons to take action to prevent or remedy pollution caused by the deposit of waste on land. The Government plans to consult on these proposals in 2016.

Exemptions from environmental permitting

Summary of responses

Questions 36 to 38 sought views on exemptions from environmental permitting. This topic received 50 responses, although not all respondents who provided comments answered all the questions. Forty-four responses came from organisations or individuals based in England and 6 from organisations/ individuals based in Wales.

We asked for evidence of the extent of waste crime and poor performance from those operating under registered exemptions from environmental permitting and received a number of responses describing how exemptions can be abused. Examples given included: sites operating under an exemption when the nature of their activity meant they should have been operating under a permit, sites carrying out illegal waste activities not covered by an exemption or a permit, and sites operating under an exemption without meeting other legal requirements such as having planning permission.

We asked if there was a need to tighten up the process for the registration of exempt waste operations and, if so, what steps are needed. A majority of the respondents agreed that there is a need to tighten up the process for registration of waste exemptions. Some respondents suggested that the following steps should be introduced into the registration system:

- assessments of operator competence;
- submission of operating procedures on registration; and
- confirmation of consent from a landowner.

However, concerns were raised regarding how these changes would affect charities, schools and voluntary groups. We asked whether we should limit the scope of the activities that are exempt from the need for an environmental permit. Just over half of respondents to this question said that they wished to limit the scope of the activities that are exempt from the need for an environmental permit.

Some suggested that there should be an overall review of all exemptions, with changes made to specific exemptions including U16, T6, T8, T17 and T19³³. It was suggested that T11³⁴ exemption should only be for non-chlorofluorocarbon waste types and that T13, T23, T24 and T25³⁵ should be subject to some form of competence/performance assessment. Most respondents agreed that the focus should be on limiting hazardous waste exemptions. Two respondents said that S1³⁶ exemption storage quantities should be reduced.

Government conclusion

The Government recognises that respondents have raised a range of issues regarding the operation of current exemptions regime as a whole in addition to concerns about specific exempt activities. The Environment Agency has commenced a broad ranging review of the exemptions regime. The Government will consider the results of that review and we plan to come forward with proposals to improve and streamline the exemptions regime for consultation in 2016.

In Wales, Natural Resources Wales, will also review information available on compliance with the exemption regime and will liaise closely with the Environment Agency to identify and share relevant evidence to inform consideration this issue in Wales.

³³ U16 – using depolluted end of life vehicles for parts, T6 – treating waste wood and waste plant matter by chipping, shredding, cutting or pulverising, T8 – mechanically treating end of life tyres, T17 – crushing waste fluorescent tubes, T19 – physical and chemical treatment of waste edible oil and fat to produce biodiesel.

³⁴ T11 – repair or refurbishing waste electrical and electronic equipment (WEEE)

³⁵ T13 – treating waste wood, T23 - aerobic composting and associated prior treatment, T24 - anaerobic digestion at premises used for agriculture and burning resulting biogas, T25- anaerobic digestion at premises not used for agriculture and burning resulting biogas.

³⁶ S1 - storing waste in secure containers.

Other comments

Some respondents commented on other matters not directly related to the proposals in the consultation document. These comments are summarised here.

General comments

One major waste management company, whilst supportive of the proposals outlined in part I of the consultation document, commented that the policy objectives outlined would be better achieved through a broader analysis and fundamental realignment of the waste sector towards a regulated utility model. They also called on the Government to assess the opportunities and economics of moving towards a more circular economy.

Training the regulators

One trade association called for more structured training of the regulators so they can fully understand the law and apply it fairly to all operators. They cited an informal 'work placement' scheme which they suggested has had some success, with officers carrying out site-based training helping them enhance their understanding of waste management operations. Another respondent called for the training records of individual officers to be made accessible.

Appeals

Several respondents commented that the existing appeals procedure was limited and was not always objective. One professional body commented that the current appeal process was inadequate and that there was limited recourse for operators to challenge a defective enforcement notice. One professional body queried why the First-tier Tribunal (Environment) was not used for environmental permitting appeals.

Nuisance from flies

One local authority called on the regulators to introduce stricter controls into permits to prevent nuisance caused by flies.

Funding regulatory effort

Several respondents called for effective funding to support enforcement by the regulators. One respondent commented that stronger enforcement powers were not a substitute for proper funding of the regulators.

Interaction with the planning system

One respondent raised the interaction of permitting and planning controls. They expressed concern that the regulators and planning authorities could enforce in relation to on a permit / planning condition breach at the same time. They also queried what they saw as contradictory permitting and planning conditions.

Transparency

One respondent proposed that more use should be made of “name and shame” tactics and that the regulators should publicise their enforcement notices. It was suggested that this would speed up compliance with notices and help legitimate organisations meet their duty of care obligations.

Compliance monitoring

Several respondents stated that for enforcement powers to be fully effective there was a need for them to be exercised in the context of regular site monitoring. One respondent from the landfill industry expressed concern that the proposed new powers could be used by the regulators against legitimate operators who are trying to do the right thing because they are easier targets than the criminal element in the sector. They observed that the industry should be given sufficient time to invest in line with plans agreed with the regulators and that placing generally compliant operators consistently in band D for persistent minor breaches did not help anyone. They also commented that they were worried that the changes would lead to officers singling out individual sites for attention rather than looking at the investment in improvements a company was making across the UK.

Duty of care for waste

A number of respondents highlighted the importance of the duty of care for waste and felt that it had been neglected in the proposals. A professional body also commented that the Government should focus more on the responsibility of waste producers, rather than simply focussing on waste managers. They suggested that many waste problems originated from a failure by waste producers to meet the duty of care and that more stringent enforcement would be more effective than many other measures.

Annex A: Analysis of consultation responses

Figure 1. Respondents by category

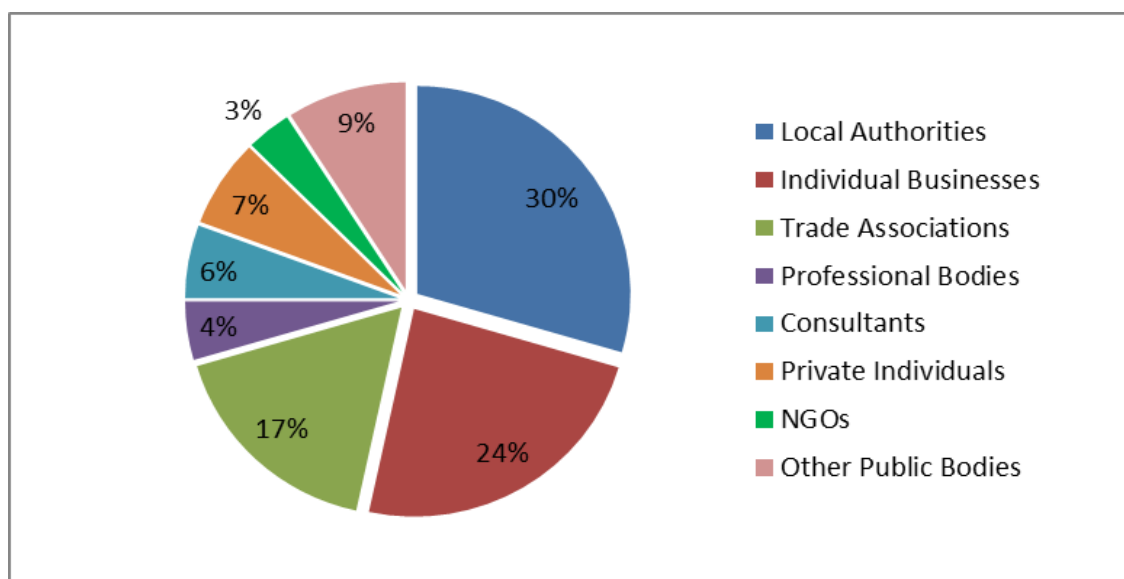


Table 1. Summary of responses

| Proposal | Yes | No | Other Response |
|--|----------|----------|----------------|
| A. Enable the regulator to suspend permits where an operator has failed to meet the conditions of an enforcement notice. | 72 (83%) | 15 (17%) | |
| B. Enable the regulator to issue enforcement notices that include steps an operator must take to prevent the breach of a permit getting worse. | 77 (90%) | 7 (8%) | 2 (2%) |
| C. Enable the regulators to take physical steps to prevent further breaches by an operator of their permit. | 77 (90%) | 4 (5%) | 4 (5%) |
| D. Enable the regulators to take steps to remove a risk of serious pollution, whether or not a facility is under a permit. | 82 (95%) | 4 (5%) | |
| E. Enable the regulators to make an application to the High Court more readily by removing preconditions. | 75 (89%) | 9 (11%) | |
| F. Amend legislation to widen the regulators' ability to require the removal of waste from land. | 78 (93%) | 6 (7%) | |

89 respondents provided feedback on part 1 of the consultation document but some (varying between 1 and 4) did not answer all the questions in the consultation; these responses have been excluded from the calculations in Table 1.

Figure 2. Proposal A: responses by category (number of respondents)

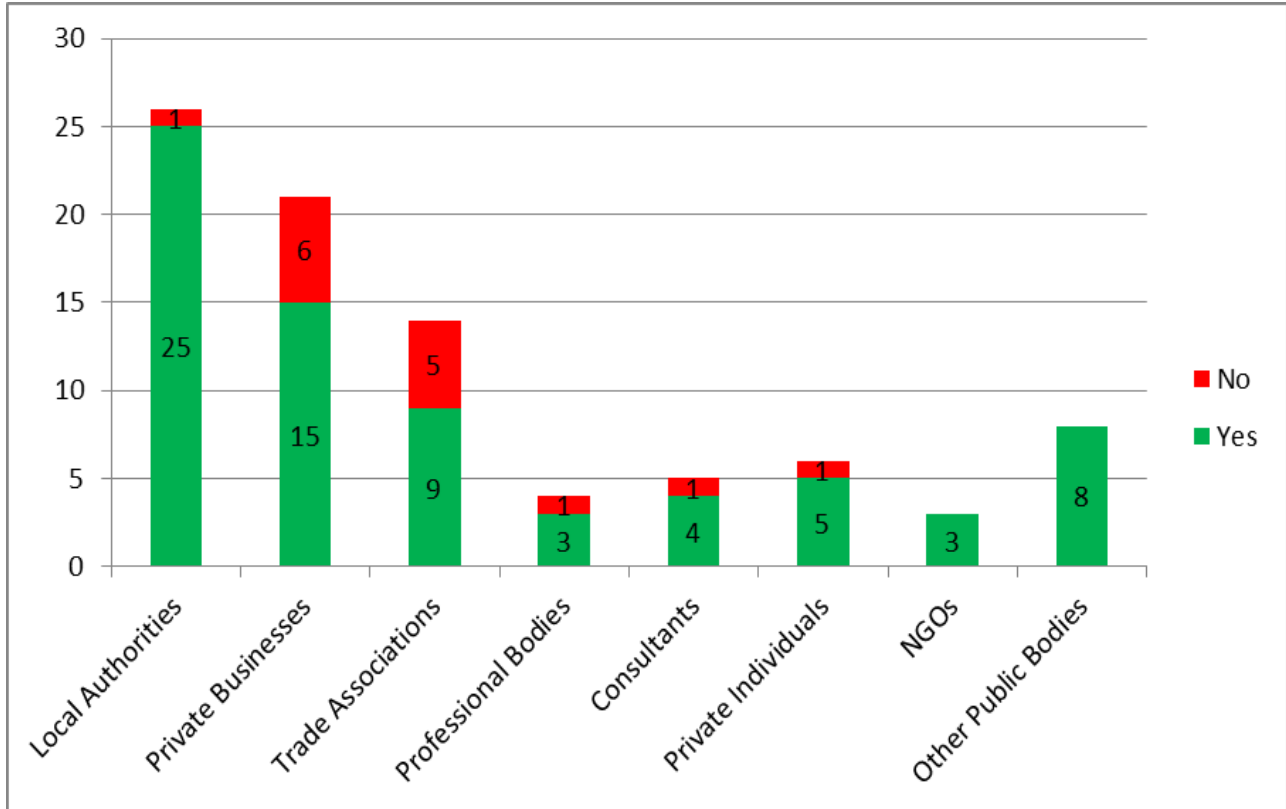


Figure 3. Proposal B: responses by category

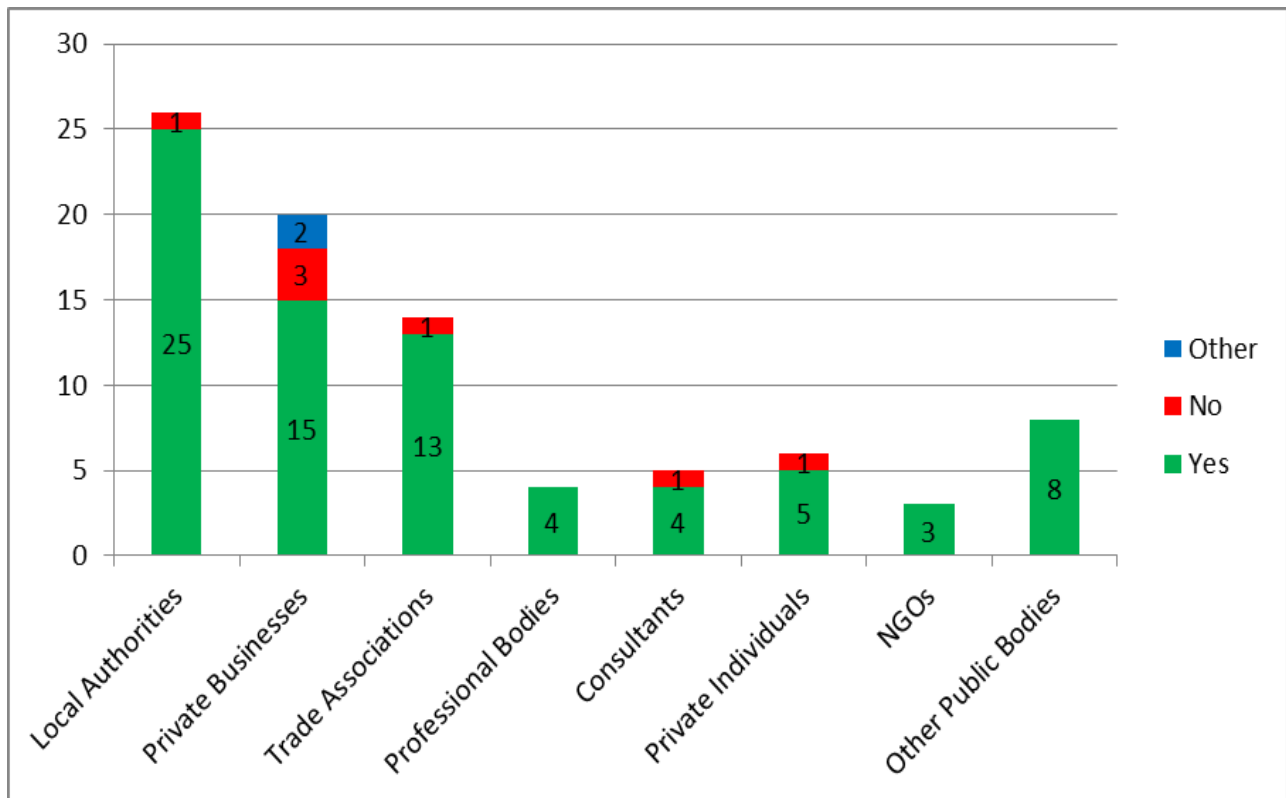


Figure 4. Proposal C: responses by category

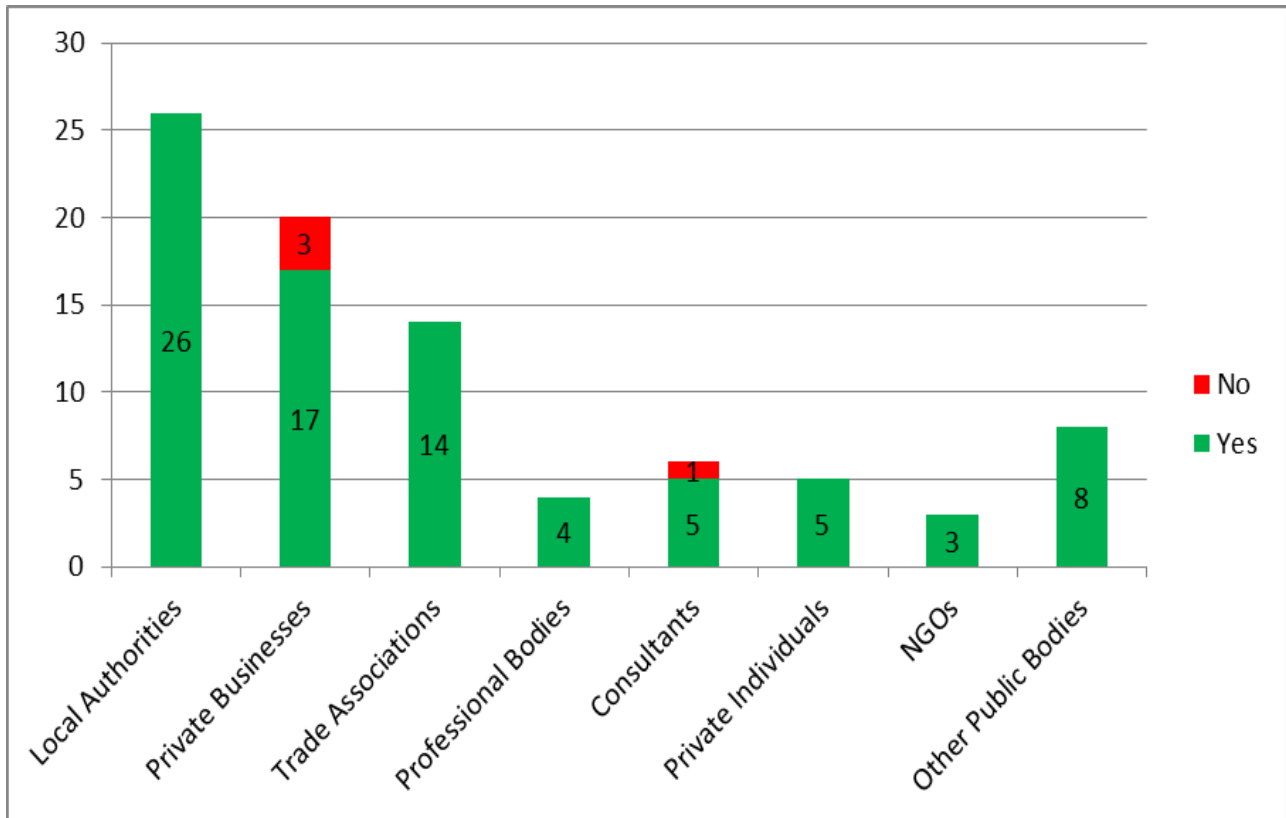


Figure 5. Proposal D: responses by category

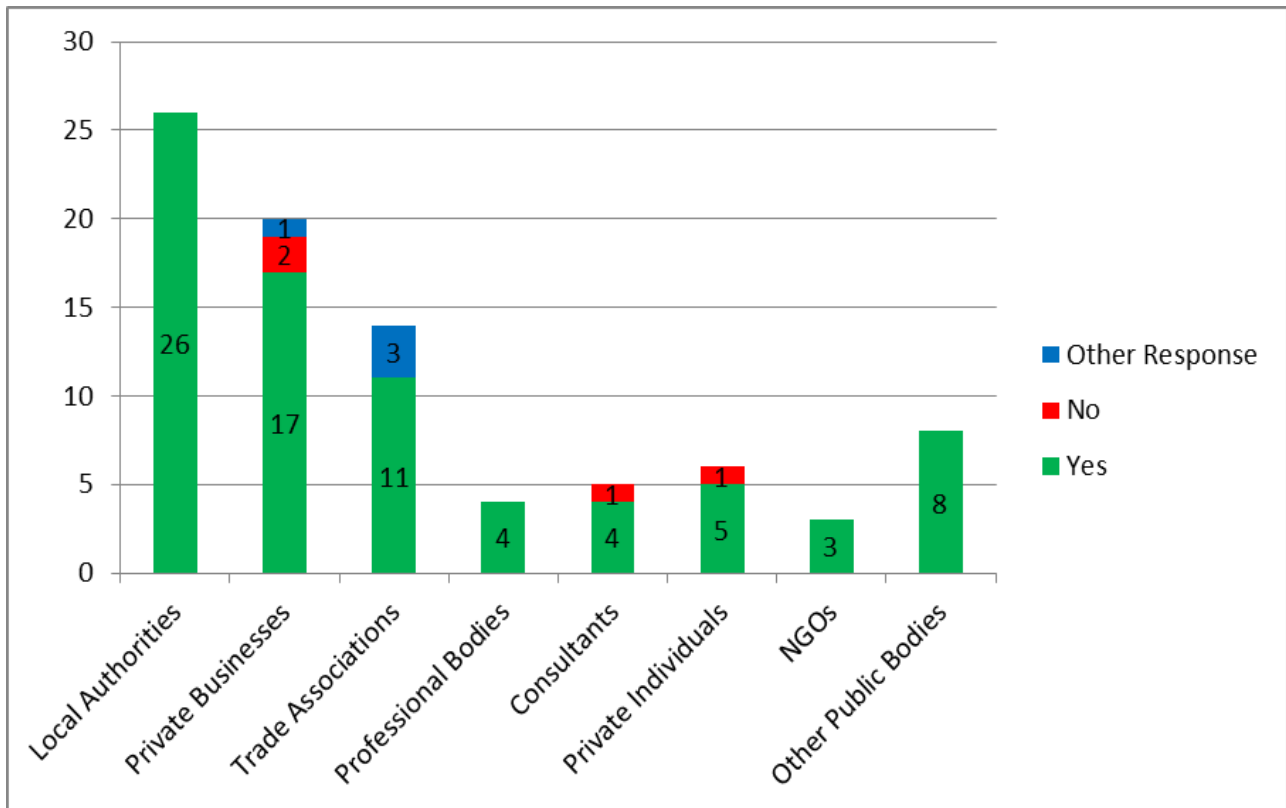


Figure 6. Proposal E: responses by category

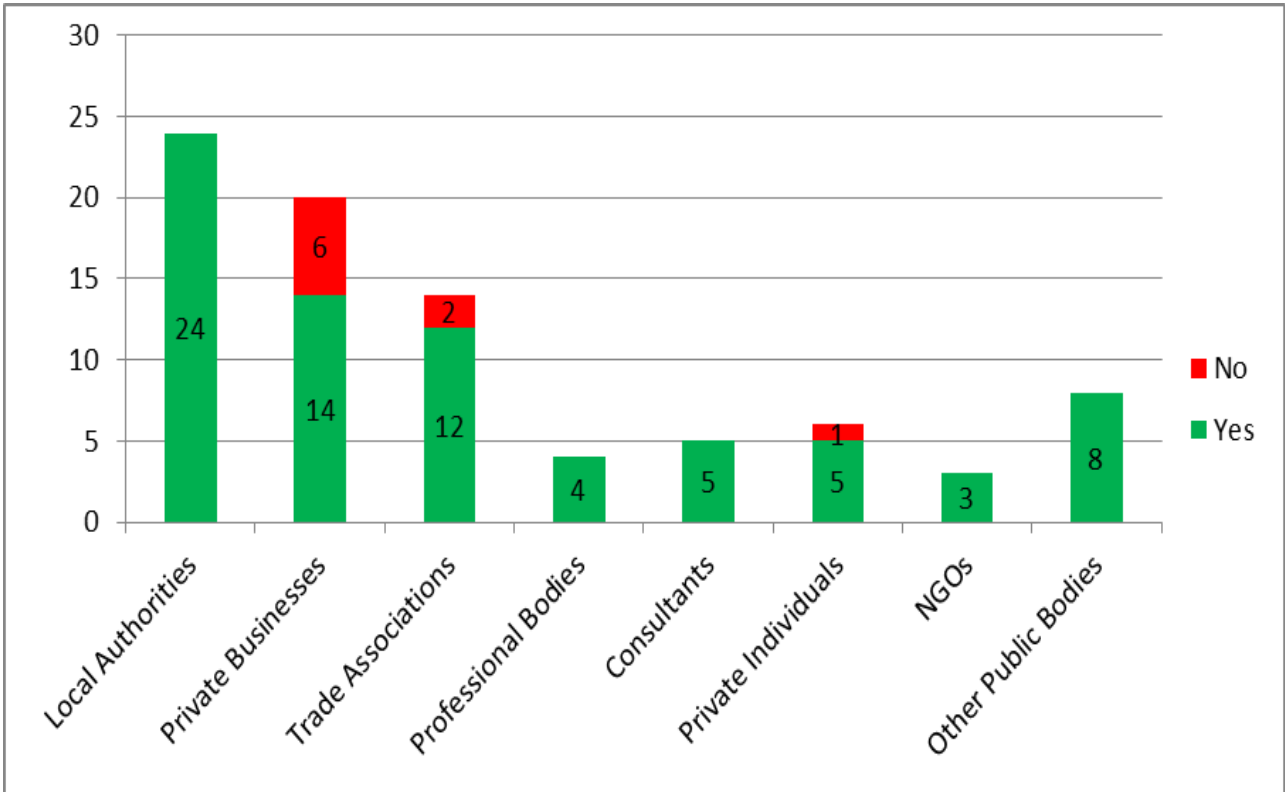
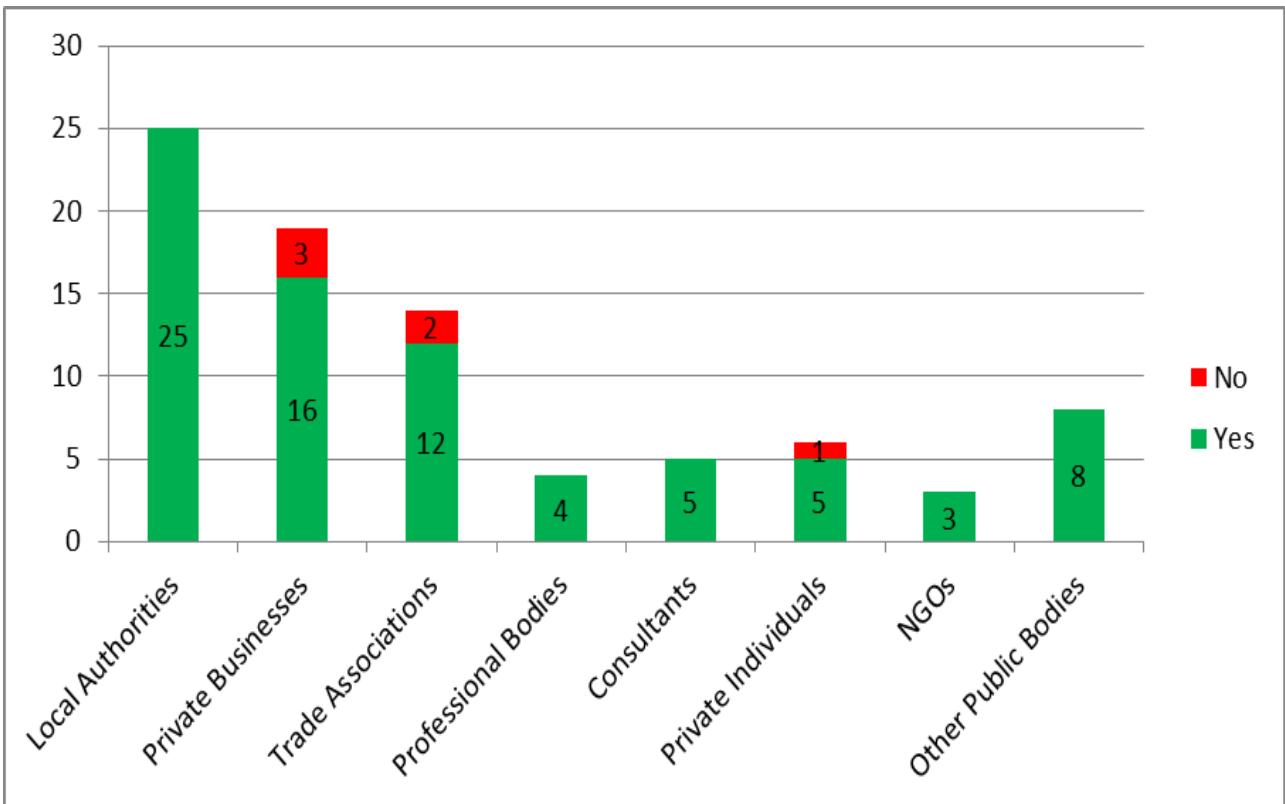


Figure 7. Proposal F: responses by category



Annex B: List of respondents to the consultation document

360 Environmental
All Wales Environmental Permitting Regulation Working Group (AWEPR WG)
Anglian Water
Ashford Borough Council
Association of British Insurers
Basildon Borough Council
Biffa
Broadland District Council
Calderdale Metropolitan Borough Council
Canal & River Trust
Canterbury City Council
Carmarthenshire County Council
Chartered Institute of Water and Environmental Management (CIWEM)
Chartered Institution of Wastes Management (CIWM)
Chartered Institution of Wastes Management (CIWM) Cymru
Cherwell District Council
Cheshire East Council
Cory Environmental
Country Land and Business Association (CLA)
CSR Associates
D J Laing Recycling Solutions Ltd
Dartford Borough Council
Denbighshire County Council
Dyne Solicitors Ltd
East Lindsey District Council
EDF Energy
Energy and Utility Skills
Energy UK
Enfield Council
Environmental Investigation Agency (EIA)
Environmental Services Association (ESA)
Eunomia Research & Consulting Ltd
Exeter City Council
FCC Environment
Fly Tipping Action Wales
Forest Heath District & St Edmundsbury Borough Councils
Gateshead Council
Grain and Feed Trade Association (GAFTA)
GSK Pharmaceuticals
Gwynedd Council
HOCHTIEF (UK) Construction
Institution of Civil Engineers (ICE) Wales
Keep Britain Tidy

Kent County Council
Kent Resource Partnership
Leeds City Council
Local Authority Recycling Advisory Committee (LARAC).
Local Government Association (LGA)
London Borough of Bexley
London Borough of Havering
London Fire Brigade
Manchester City Council
Mid & West Wales Fire Service
Mineral Products Association (MPA)
Motor Vehicle Dismantlers' Association of Great Britain (MVDA)
National Farmers' Union (NFU) England
National Farmers' Union (NFU) Cymru
Non-Ferrous Alliance Ltd
North Wales Fire & Rescue Service
Northamptonshire Local Authorities
Oil Recycling Association (ORA)
Outokumpu Stainless Ltd.
Plymouth City Council
Pontypool Park Estates
RDC
RE: Group UK Ltd
Refuse Derived Fuel (RDF) Export Industry Group
Renewable Energy Association (REA) - Gasification and Pyrolysis
Member Group
Renewable Energy Association (REA) - Organics Recycling Group
Sahariviriya Steel Industries UK
Salford City Council
Sevenoaks District Council
South Northants Councils
South Wales Fire and Rescue Service
South West Water Ltd
Southern Water
St Albans City & District Council
Stafford Borough Council
Stobart Biomass Products Ltd
SUEZ Environnement
Surrey Waste Partnership
Thames Water
The Health and Safety People (THSP)
Tonbridge & Malling Borough Council
Torfaen County Borough Council
Tyre Recovery Association (TRA)
UK Environmental Law Association (UKELA)
United Resources Operators Consortium Ltd (UROC)
Vale of Glamorgan Council
Vale of White Horse District Council

Valpak
Veolia
Viridor
Wandsworth Borough Council
Waste Management Industry Training and Advisory Board (WAMITAB)
Waste Transition Limited
Wealden District Council
Welsh Land Contamination Working Group
West Lancashire Borough Council
Winlaton Action Group
Wood Recyclers Association (WRA)