



Local Authority Recycling Advisory Committee

## Waste Controls Consultation Responses

DEFRA

Area 6D

Ergon House

C/o Nobel House

17 Smith Square

London

SW1P 3JR

11 Sept 2008

Dear Sir or Madam,

### **Consultation Response - Controls on the handling, transfer and transport of Waste**

I am writing to present the LARAC response to the above Consultation, which is contained below, and I thank you for the opportunity to respond to the above consultation.

The comments below are sent on behalf of the Local Authority Recycling Advisory Committee (LARAC). LARAC is an association of well over 400 local authorities across England, Scotland Wales and Northern Ireland whose waste management and recycling professionals' co-ordinate and operate waste management services. Membership is drawn from all types of authority including statutory Waste Collection (WCA), Waste Disposal (WDA) and Unitary.

LARAC supports the proposals overall and welcomes more robust systems for registration of waste carriers and enforcement. Please find our detailed response to the consultation overleaf.

If you have any queries on this response or would like to discuss the matter further then please contact me on 01786 850326 or [khelwig@dsl.pipex.com](mailto:khelwig@dsl.pipex.com).

Yours faithfully,

Karin Helwig  
LARAC Policy Team



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## Part 1 - Duty of Care; Waste Carriers; Waste Brokers

### **Q1. Do you have any comments on the costs and benefits in the Impact Analysis?**

- If Local Authorities are to proactively enforce the proposed regimes they will require significant additional resources. The estimated £92K annual cost to use the proposed fixed penalty regime seems low.
- LARAC is not convinced by the estimate of a £450K saving which is based on saving 3 LA officers 20mins per week (out of 3hrs spent dealing with legislation) as a result of a simplified, updated and improved Code of Practice and Government Circular (19/91). Any such time savings are more likely to result in benefits in kind, such as improved service delivery on other LA tasks, than in a financial cost saving.
- LARAC is hesitant about the estimated 3% reduction in fly-tipping. The actual level of reduction would depend on a number of factors including the readiness to revoke licenses when an offence has taken place. The level of fly tipping by carriers would be expected to decrease in the longer term if householders become increasingly aware of the necessity to check any business handling their waste for registration; however this might be counteracted by the recent rising trend in household fly-tipping incidents.

### **Q2 Do you have any comments on the proposed charges?**

- The proposed Upper Tier charges seem reasonable and may help smaller businesses by avoiding 1 larger 3-yr payment when 3 yrs are not required.
- The Lower Tier charge is sufficiently low but may still be perceived as an unfair 'charge for carrying your own waste' as no service is received by the business. This might lead to non-compliance. However it would lead to a situation where all waste-producing businesses would either have a waste carriers registration, or a contract with another waste carrier, which would give authorities more control. This is to be welcomed.
- LARAC would like to see a consideration of options to avoid registration charges for the voluntary sector and charities, when these carry only their own waste.

### **Q3 Do you have any suggestions on a simple way in which the different types of waste carriers in the upper and lower tier could be described?**

- The table in par. 58 of the Consultation Document is unclear where a business fits in both categories, e.g. carrying the waste of others AND a charity.



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- A Flow Chart may provide a simple way for businesses to ascertain whether they should register as an Upper Tier or Lower Tier waste carrier

**Q4 / 5 Do you have any comments on the proposed model for regulating the regimes? Do you think the two tier system is fair and proportionate? How could it be more so while keeping it simple and enabling the EA to recover its costs?**

- Proposal 1d (80) states that For Upper Tier registrations, inspections would form part of a combined strategy of risk-based regulations under which waste streams would be prioritised for inspections, with Waste Tyres, Hazardous Waste and Construction and Demolition Wastes receiving higher priority. However, out of these high priority categories, only Construction and Demolition Waste are always registered in the Upper Tier. Perhaps there could be a similar requirement for all carriers of Tyres or Hazardous Wastes, perhaps above threshold tonnages, to be registered in the Upper Tier.
- Currently registration of carriers of brokers for what are to become Upper Tier businesses is required even if waste is only carried occasionally (from EA website: *'It also doesn't matter if carrying or dealing in waste is not your main business or if you only do it occasionally'*); from the table under 58 it appears that this would be no longer the case. I would suggest that
  1. the criteria of 'normally and regularly' only applies to Lower Tier businesses and
  2. for Upper Tier businesses the frequency of carrying waste does not affect the requirement to register.

**Q6 Do you have any comments on the requirement to display proof of carrier registration, specifically the costs and benefits in the Impact Assessment? Do you think it will reduce fly tipping?**

- In the longer term, and after significant awareness raising amongst householders, a disk system would allow householders to carry out a simple check that they transfer their waste to a registered carrier. This would certainly help prevent fly-tipping.
- However, it should be noted that the transport of waste in enclosed vehicles such as vans would still go unnoticed and the disk system would not help detection.

**Q7 Do you have any views on the proposed list of offences? Are any not accounted for and if so, what relevance do they have to waste carriers and brokers?**

LARAC would suggest including S 47 EPA (1990) offences.



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**Q8 Do you have any comments on giving the EA powers to remove details from the register in certain circumstances?**

LARAC would welcome such powers; the Environment Agency must be permitted to remove registrations when the operator either no longer requires to be registered or fails to comply with the requirements of registration.

**Q9 Do you think it is reasonable to ask a small number of businesses to supply the Environment Agency with additional information? How effective might this be?**

Yes. Ideally this could be done at time of application but if this would incur excessive cost to the EA, verification could take place at a later stage as appropriate, with the option of revocation of the registration if unsatisfactory.

**Q10 Do you have any comments on these proposed offences and the costs and benefits of using them?**

LARAC would welcome the introduction of such offences. If a disk system is to provide householders with a genuine opportunity to check for registration, failing to display the disk must constitute an offence. A fixed penalty is deemed appropriate.

**Q11 Do you have any comments on the effectiveness of the proposed requirement to prevent breaches of TFS controls? What should be deemed as 'reasonable' measures?**

Generally, the introduction of an obligation for the producer or holder of waste to take 'reasonable measures' to prevent breaches of TFS controls would be welcomed. The points raised as indications of waste being exported and reasonable measures seem appropriate. Such measures should not be seen as a main instrument to prevent such breaches, but could however be used to determine the producer or holder is culpable of allowing the breach to occur by not taking such reasonable measures.

**Q13 Do you have any comments on the introduction of new FPNs and the costs and benefits of using them?**

Such powers would be welcomed, provided that FPNs are only issued after appropriate awareness-raising of the Householder Duty of Care and the requirement to register as a waste carrier or broker. Significant publicity and promotion would be required to ensure the duties placed on householders and businesses are understood in the wider community.

**Q14 Do you think a fixed penalty fine of £300,- would be a sufficient deterrent to businesses?**

Yes - provided that enforcement officers are able to initiate prosecutions in case of more significant events or in cases of repeat offenders.



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**Q15 Do you think it is proportionate to introduce fines for householders? Do you think conditions should be applied to their use?**

Yes; in particular where the householder is unwilling or unable to state who they transferred their waste to. In the longer term, it may be realistic to expect the householder to verify that a carrier was registered by checking the disk is displayed on the vehicle, but - given current low levels of awareness - only after significant awareness campaigns. When the householder fully co-operates with the EA or LA in identifying and locating the unregistered carrier, the householder should generally not be issued with a FPN.

Issuing the householder with a fine for transferring their waste to an unregistered carrier should not lead to a reduced effort to fine or prosecute the carrier committing the fly-tipping offence.

**Q16 Do you think there is enough evidence to raise the maximum penalty for registration and waste duty of care offences?**

LARAC would welcome raising the maximum penalty. The Environment Agency, Local Authorities and Fly Tipping Forums should work with the courts to ensure appropriate fines are issued.

**Q17 Do you think that such sharing of enforcement information is fair and proportionate?**

Yes. Sharing enforcement information would benefit all those involved in addressing waste crime and the proposal is considered fair and proportionate.

**Q18 What role, if any, should the EA have in following up any LA prosecutions of relevant offences?**

A protocol including this issue should be developed between the EA and local authorities, similar to the existing protocol about enforcement of illegal dumping and fly tipping offences.

**Q20 Do you have any comments on the proposed content and format of the guidance?**

LARAC is satisfied with the proposed content and format of the guidance.

**Q21 How should the waste industry and local authorities share the responsibility for awareness raising?**

Although the waste industry and LAs may be asked to alert their own commercial customers to the guidance, it is deemed appropriate that a centralised programme of awareness-raising is undertaken.

**Q22 Do you have any comments on the proposed system of yearly registration?**



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The proposed system would be welcomed. The proposed requirement for an annual declaration that registration details are correct should be accompanied by a warning that it is an offence to fail to advise the EA of changes.

**Q23 Do you have any comments on the incentives that are proposed? In particular, are there any that haven't been taken into account?**

No further incentives are suggested.

**Q24 Do you have any comments on the estimates of additional waste carriers that will be affected by a change to the list of exemptions?**

None.

**Q25 Should the EA be able to recover its costs in registering these additional people through charging them? If not, how should this be funded?**

LARAC deems it reasonable to charge these additional people.

**Q26 Do you have a view on how the terms 'normally and regularly' are defined?**

LARAC suggest that 'normally and regularly' might be defined to include anyone that: EITHER carries their own waste at least once a fortnight OR has no alternative arrangements for the transfer of their waste (such as a collection contract or WTNs), unless they can make it believable that their business does not produce waste.

## **PART 2 - Vehicle Search and Seizure**

**Q1 Is 14 Days a reasonable time period to gather evidence to establish whether or not to take a prosecution. If not what would be more appropriate, and why?**

LARAC is unable to comment.

**Q2 Should extended retention of vehicles be allowed after a case has been made before a Magistrate? If not, why not? What other action could be taken to prevent people avoiding forfeiture or returned vehicles following a successful prosecution?**

LARAC is unable to comment

**Q3 Do you have any views on the form that the notices should take when either the regulator is able or unable to find the registered keeper?**

LARAC considers it is not necessary to publish the notice in a newspaper, in particular if the owner was found through a DVLA search. In all cases, publication of notices on the website is a convenient, low cost option for Local Authorities which should be utilised.



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**Q4 Do you have any views on the proposed information to prescribe in the notice?**

The notice should mention the right of appeal and relevant procedures.

**Q5 Is 7 days enough time to allow the owner to come forward and claim their vehicle? If not, what would be more suitable and why?**

LARAC deems 7 days to be an appropriate period.

**Q6 Would it be appropriate, if a future opportunity arises, to change primary legislation to allow cost recovery from the registered keeper in instances where vehicles are returned and no court action taken? If so, should there be a cap placed on this?**

LARAC considers this should only be allowed in certain circumstances, e.g. if a formal caution was issued by the courts. If the keeper had not committed an offence they should not be made to pay. It may be appropriate to have a central fund that local authorities could apply to in cases where costs could not be recovered from the registered keeper.