

Environment Agency
Protecting the Public from Waste



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
HC 156 Session 2002-2003: 18 December 2002

executive summary

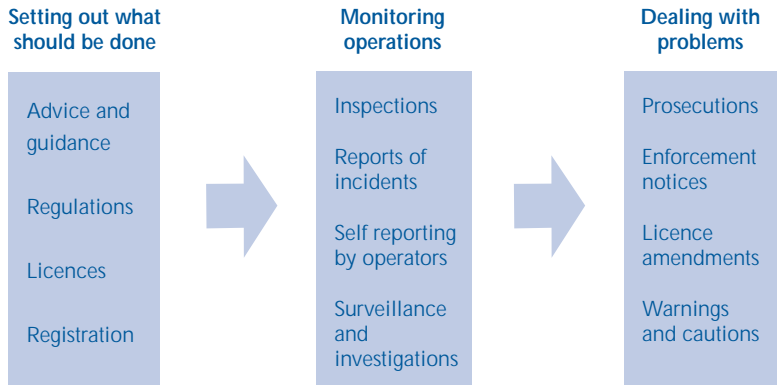
- 1 The Environment Agency (the Agency) regulates the management and disposal of over 170 million tonnes of waste produced by homes, commerce and industry in England and Wales each year. Around 45 per cent of this waste goes to landfill, including 80 per cent of household waste; the rest is recycled or incinerated. This report focuses on the Agency's inspection and licensing work in England.
- 2 The Agency's main objective in regulating waste is to ensure that waste is managed and disposed of properly so as to prevent harm to health and the environment, for example by preventing pollution of air and water, and through requiring controls on smells, litter, pests and noise. In carrying out our review we have considered how the Agency and the Department for Environment, Food and Rural Affairs (the Department) might improve their management of risk and the impact of regulation on industry.
- 3 The waste industry is estimated to have an annual turnover exceeding £4 billion and to employ some 90,000 people. It is made up of a wide variety of firms and activities ranging, for example, from single person businesses to large multinational companies. The Agency spends £78 million a year on waste regulation, funded by charges paid by operators of £38 million a year and by grant-in-aid from the Department and the National Assembly for Wales. The Agency employs the equivalent of 1,800 full-time members of staff on all its waste regulation activities, mainly in 26 area offices grouped into seven English regions and Environment Agency Wales, and with a small team at Head Office.



- 4 The Agency was established in April 1996, taking over responsibility for waste regulation from 83 local waste regulation authorities. It regulates waste within a legal and policy framework established by the Department and reflecting European Union legislation. This framework sets out the responsibilities of producers and handlers of waste, and requires the more significant waste sites and activities, such as landfill sites, to be licensed. Other sites and activities must be registered with the Agency, providing much less control than a licence.
- 5 Some 7,700 waste sites and activities are currently licensed, and a further 54,000 sites and 67,000 waste carriers and waste brokers are registered with the Agency. The legal framework provides for the Agency to regulate waste in three main ways: by setting out how waste should be managed, for example in conditions included within licences; by monitoring to check compliance with licences and the law, primarily by inspecting waste sites and activities; and by dealing with problems, for example by prosecuting those disposing of waste illegally (**Figure 1**).

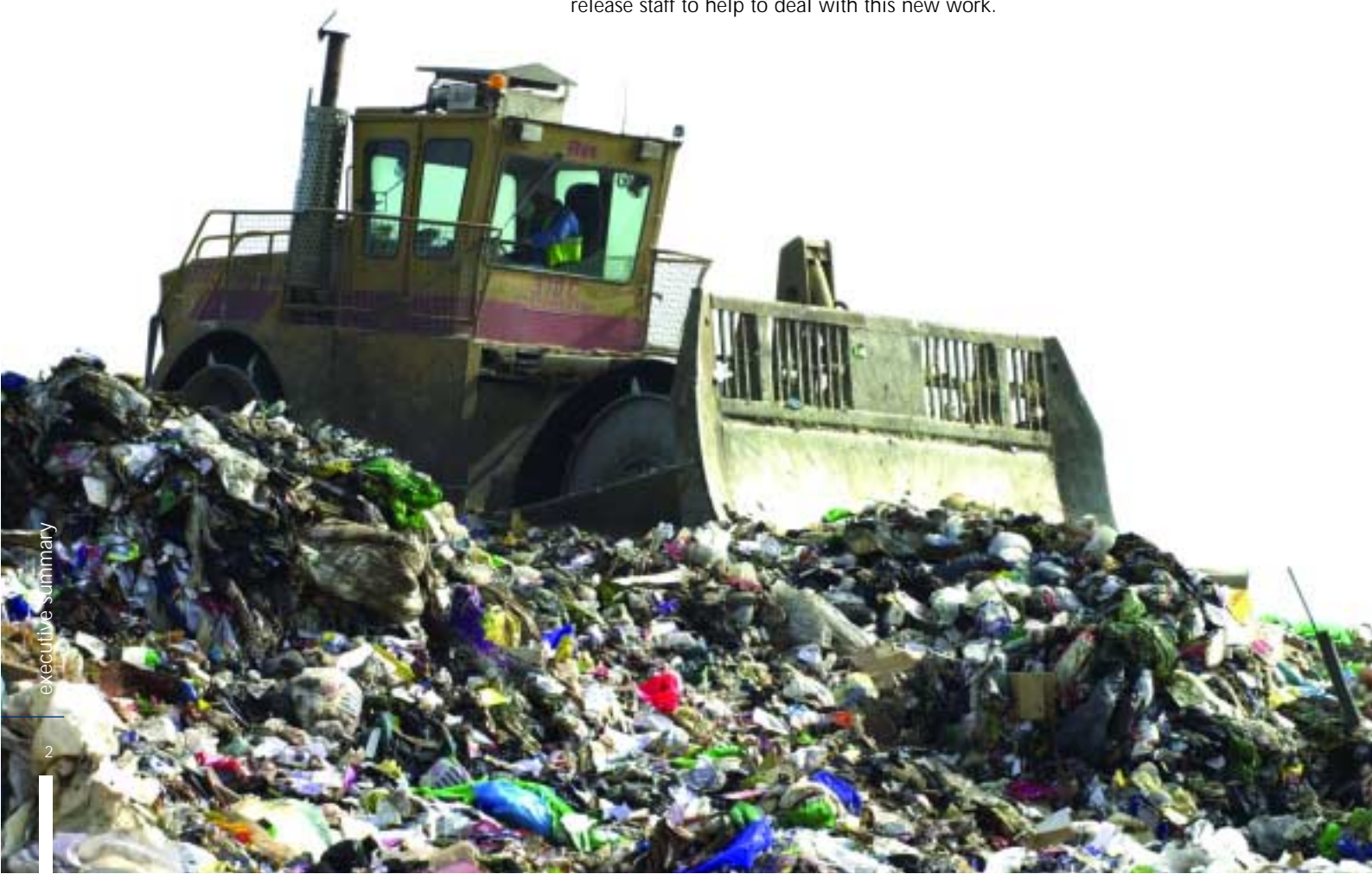
1 How waste is regulated

The Agency provides advice and guidance on how waste is to be managed, licences and monitors operations, and acts in response to problems.



Source: National Audit Office

- 6 Recent European Union legislation has increased the Agency's workload, and more is expected to do so in the near future. In particular, to implement the Landfill Directive the Agency is required to oversee major improvements in environmental standards at all landfill sites. And to comply fully with the Waste Framework Directive the Department intends to extend waste regulation to include agricultural waste, bringing into the Agency's regulation some 180,000 farms in England and Wales generating an estimated 96 million tonnes of waste annually. Other significant demands on the Agency include the new European Hazardous Waste list and the End of Life Vehicle Directive, which will have to be implemented and enforced over the next 18 months. The Agency is therefore seeking to modernise its approach to waste regulation to release staff to help to deal with this new work.



Main findings

- 7 The Agency has made much progress since 1996 in creating a single organisation providing consistent and professional regulation across the country. It has become increasingly active in prosecuting waste offences, and improving standards of waste licensing and management, and continues to seek to improve its performance. Nonetheless:
- The Agency could make better use of the resources it uses to inspect waste operators, improve the effectiveness of regulation, and reduce unnecessary regulatory burdens, by carrying out fewer but more comprehensive and in-depth inspections.
 - The Agency needs to deal more effectively with operators that persistently fail to comply with their licences.
 - The Department recognises that controls over sites exempt from the requirement to be licensed need to be changed, for example to bring some currently exempt types of site within the scope of licensing, and to exempt others that are currently licensed, but it has taken too long for the Department to complete a review of these controls.
 - The Agency needs to look for ways of reducing the time taken to deal with licence applications.
 - Taxpayers may end up paying for dealing with problems caused by abandoned waste sites, particularly landfill sites, because operators' financial provisions are either insufficient or unavailable.

Some improvements will require action by the Department. For example, to change its guidance to the Agency on the targeting of its inspections of waste operators, and to propose changes to the law on financial provision, exemptions and waste licensing.



The Agency could make better use of the resources it uses to inspect waste management operations by carrying out fewer but better inspections

- 8 In 2001-02 Agency staff carried out over 100,000 inspections of licensed waste sites (compared to some 118,000 planned) to check compliance with licences and waste regulations, at a cost of about £17 million. The great majority of inspections are unannounced, and the Agency uses other techniques, such as covert closed circuit television surveillance, to detect non-compliance by operators and other illegal waste activities, such as fly tipping.
- 9 Almost all inspections are what is termed 'routine', consisting of short visual inspections typically lasting less than two hours for smaller sites. However, the Agency also carried out 62 in-depth inspections in 2001-02. These involve several inspectors spending several days on a thorough review of the operation of the site and checking that the terms of the licence remain appropriate.
- 10 The Agency is required to have regard to guidance issued by the Department on the conduct of its waste regulation function. Since 2000 the guidance has allowed the Agency flexibility in targeting inspections to reflect the potential hazard posed by individual sites and the standard of site management, allowing the Agency to reduce the frequency with which well run and low risk sites are inspected.
- 11 Despite this change, the Agency planned to carry out an average of 15 visits to each licensed site in 2001-02. This is more than a number of other countries with whom we compared the Agency's regulation of waste, including France, Ireland and the United States.¹ It is also more often than the Agency inspects municipal waste incinerators, which are also subject to the European Union Waste Framework Directive, but which the Agency is currently required to license and inspect under a separate legal regime, and with different guidance from the Department. Following recent criticism of its regulation of incinerators and the control of recycled fly ash, the Agency reviewed its inspection of incinerators and from 2003-04 will double the frequency of visits to six announced and six unannounced inspections a year for each incinerator. The Agency is still required to inspect all licensed waste sites at least quarterly and some low risk sites are inspected even more often; for example a pet cemetery we visited is inspected eight times a year.
- 12 There is no evidence that this high frequency of inspections, covering all licensed sites, is required to deliver effective regulation. Most reports of waste pollution incidents relate to a small proportion of sites; for example in 2000-01 such reports were recorded at only 12 per cent of licensed waste sites, and nine sites accounted for 35 per cent of all the major or significant incidents recorded in that year. The Agency believes that landfill site activities are inherently less consistent and controlled than those of a process operation such as an incinerator, and are therefore always likely to require more frequent inspection. However, it is considering whether it can reduce the number of inspections while still ensuring that operators deliver the same level of environmental protection.



¹ Appendix 5 summarises our findings on waste regulation in seven countries in Europe and North America.



- 13** Routine inspections have value in helping the Agency to monitor the operation of sites and to detect quickly, and put right, poor waste management. However, routine inspections are not always in sufficient depth to identify all risks to the environment. In our review of prosecutions and major incidents we found some examples of problems at licensed sites which had not been rectified despite the Agency's frequent inspections, and some of the site managers we interviewed were critical of the limited nature of inspections carried out. In addition, the Agency does not routinely examine the systems established by some operators to manage their own compliance with regulatory requirements; these systems can provide evidence that appropriate standards are maintained continuously and not just when an inspector is on site. The Agency should therefore investigate whether it can make better use of its resources by:
- carrying out fewer inspections and using the resources released to deal more effectively with operators responsible for multiple breaches of licence conditions;
 - carrying out more in-depth inspections;
 - examining the scope to rely more on operators' management systems, where these are of a good enough standard.
- 14** The Agency is moving in this direction in 2002-03 by reducing the number of routine inspections and using the resources released to increase, over a period of years, the number of in-depth site investigations to over 600 a year, compared with 62 completed in 2001-02. However, the Agency believes that any further redirection of effort will require additional training of Agency staff, particularly in the detailed auditing of operators' management systems. In addition, planned improvements in the Agency's monitoring of findings from inspections will be needed to enable the Agency to monitor changes in standards of waste management in response to any redirection of effort. The Agency also believes that the Department will need to revise its guidance to the Agency to clarify further the flexibility available to the Agency to target inspections according to risk. The Department's current review of statutory guidance on waste licensing and inspections, which will be going out to consultation shortly, will seek to provide this clarification.

The Agency has become increasingly active in prosecuting waste offences but needs to use its enforcement powers more effectively

- 15** No information is available on the amount of pollution involving waste before the Agency's establishment in 1996, but in 2001-02 the Agency investigated around 20,000 reports of potential waste pollution incidents. Following investigation, some 3,900 substantiated pollution incidents were attributed to waste management premises, of which some 400 incidents were assessed as posing a serious or significant risk to health or the environment. Major changes in the Agency's methods of recording reports of alleged pollution incidents, following the introduction of new computer systems in 1998 and during 2001, make it difficult to determine whether there is any clear trend in incidents over time.

- 16 The Agency has powers to prosecute individuals and companies for offences under waste legislation. In 2001-02, it secured convictions in 466 cases, a 93 per cent increase over 1996-97. Fines imposed by the courts in 2001-02 totalled £1.4 million, and the average fine increased from £1,132 per case in 1996-97 to £3,004 per case in 2001-02. Nevertheless, the Agency is concerned that even the current level of fines does not reflect the seriousness of some waste offences and the potential rewards to unscrupulous operators from the illegal disposal of waste.
- 17 Residents and environmental groups near some sites complained that the Agency had been slow to take action against operators. We found that the Agency did not always escalate the action it could take where there were multiple, but individually, minor licence breaches at a site. A study by the Agency in May 2000 of the operation of its enforcement and prosecution policy also found that some cases were not considered for legal action when required by the policy, although a follow-up study in 2002 found significant improvements in enforcement activity.
- 18 To improve its response to multiple breaches, the Agency is developing standardised arrangements for categorising the severity of licence breaches, and plans to provide greater clarification for staff and operators on how it will respond to particular categories of breach. Proposals were published for consultation during 2002 and the Agency plans to implement the new arrangements from April 2003. To provide further incentives for operators to comply with their permits, the Agency is currently trialling a proposal to link operators' annual licence fees to the frequency of inspection. Subject to approval by Ministers, the Department would like to see the revised scheme implemented from 2003-04.
- 19 The Agency's enforcement and prosecution activities are largely funded through Government grant-in-aid. The Agency told us that any further increases in its prosecution activity will require either significant improvements in efficiency, an increase in grant-in-aid or reduced service levels in other regulatory activities.



The controls over sites exempt from the requirement to be licensed need change, but the Department has taken too long to complete a review of these controls

- 20** The European Union Waste Framework Directive requires that all licensed and exempt activities are subject to appropriate periodic inspections. The UK regulatory framework was designed on the understanding that only licensed sites require frequent inspection. The Department and Agency have not agreed on any particular frequencies for meeting the requirement to inspect the 54,000 waste sites exempt from the requirement to have a licence, nor for inspecting the 67,000 registered waste carriers and waste brokers.
- 21** Many exempt activities are very low risk, for example, bottle banks. However, the Select Committee on the Environment, Transport and the Regions, the European Commission and the media have highlighted possible abuse of some exemptions, such as construction waste being dumped on land under the pretence that it is being used for landscaping. At present there is no charging scheme associated with most exempt activities. The Agency has limited funds earmarked specifically for inspecting exempt sites and carried out fewer than 7,000 inspections of exempt activities in 2001-02, targeted mainly at higher risk sites such as scrap yards and the spreading of waste on agricultural land.
- 22** The Department recognises that controls over some exempt sites need to be changed. For example, the Agency would like to bring some sites that are currently exempt within the scope of licensing and exempt some sites which are currently licensed. The Department has been reviewing proposals to amend a number of exemptions since 1998 and is currently preparing draft Regulations for consultation. Subject to approval, the revised Regulations will tighten the controls over some types of exemptions and will include licence fees to enable the Agency to inspect exempt sites more effectively. The Department and Agency have also agreed on the need for a more fundamental review of waste licensing and exemption, and of the definition of waste. Work on this review is due to begin shortly.



The Agency has improved standards of waste licensing but needs to improve further on the time taken to deal with licence applications

- 23** The Agency uses its scrutiny of applications for new licences, and its power to amend licences, to help secure modern standards of site construction and operation to protect health and the environment. It has provided guidance to staff to promote greater consistency and speed in scrutinising licence applications and is proposing a range of improvements in its licensing system as part of a reorganisation of its regulatory activities (project BRITE).
- 24** The overall length of time taken to deal with licence applications is of concern to the industry. In 2001-02 only 20 per cent of new licences were issued within four months from the date of application and around one in seven can take more than a year. We also found that, in general, licensing files contained little documentation of the authorisation of, and reasons for, licensing decisions. The Agency has available examples of good practice in recording such decisions and plans to re-issue these to offices to make sure that all staff are aware of them.
- 25** The Agency recognises that dealing with applications can be a lengthy process, and that the time taken to process applications could discourage innovation by current or prospective site operators. However, it considers that additional time is often needed to ensure that licences meet the requirements of the legal framework established by the Department. It is not always possible to attribute responsibility for delays between the Agency and the applicant. Many factors can contribute to the delays in each case including: incomplete applications, delays in establishing the planning status of the proposal, delays in agreeing adequate financial provision and delays in meeting the Agency's requests for further information. The Agency has submitted proposals to the Department to simplify the licence application process where possible and thereby reduce the time needed to scrutinise applications.
- 26** The Agency is able to vary licences at any time if it believes that this is required to ensure protection of the environment, although this may be subject to challenge and appeal by the operator. Around 5,800 of the 7,700 waste licences currently in force were issued by local waste regulation authorities before the Agency's creation in 1996, following a variety of practices and standards. Since 1996, the Agency has revised many of these licences to bring them up to a more modern and consistent standard.
- 27** The Agency believes that older licences remain highly variable in quality, although it does not collate national information on how many. The Agency plans to replace many of its waste licences between 2004 and 2007 in order to implement the Landfill Directive and other European Union legislation. The Agency decided in 2000 to postpone any further review of pre-1996 licences as the risk to the environment posed by these licences is not sufficient to justify the effort required to make changes that will then be in effect for only a limited period.

- 28 Both the Agency and the Department recognise difficulties with the existing waste regulatory framework and have committed to a full review of waste licensing legislation. The Department is already considering a number of concerns expressed by the Agency and will formulate proposals for a risk-based system of licensing for all waste recovery and disposal activities. Such changes would help to better match regulatory effort to risk to the environment and allow for proportionate implementation of recent European Union requirements. The Department is also reviewing its guidance to the Agency on the review and revision of existing licences.

Taxpayers may end up paying for the management of abandoned waste sites because operators' financial provisions are unavailable or insufficient

- 29 Operators licensed since 1994 have been required to make financial provision to meet obligations arising from the licence including the continuing costs of managing sites after closure, for example, to stop liquid leaking from the site and polluting local rivers and water supplies. In April 2002, the provisions made by operators totalled £196 million. Since the Agency's establishment in 1996, operators' provisions have proved inadequate to meet all obligations on six of the 15 occasions they have been called on, by a total of some £2.7 million. Of this, the Agency expects to fund works totalling £121,000: the rest is likely to be met privately (including £2.4 million by the landowner of one site).
- 30 In addition, recent case law suggests that financial provisions may not be available to pay for meeting licence obligations where operators have gone into liquidation and the liquidators disclaim the waste licence. This could become an increasingly serious problem and the Department is working closely with the Agency, the Department of Trade and Industry, and the industry in seeking to ensure that the costs of recovery and disposal are borne by the operator in accordance with the "polluter pays" principle.
- 31 Fly tipping (the illegal dumping of waste without the landowner's permission) is typically motivated by a wish to avoid the cost of disposing of waste legally - landfill operators' charges for accepting waste are typically around £12 to £38 a tonne. Local authorities deal with most fly tipping, but the Agency has agreed to deal with the more serious cases, for example incidents involving hazardous waste. The Agency estimates that each year there are around 50,000 fly tipping incidents in total, costing authorities some £50 million to £150 million to deal with. There is some anecdotal evidence of an increase in fly tipping following the introduction of the Landfill Tax in 1996, but most information on the amount of fly tipping is held by individual local authorities and is not collated nationally. The Agency's records of major fly tipping incidents do not show a clear trend and it does not collect overall statistics on all types of fly tipping.

Recommendations

- 32** The Department, working with the Agency, is reviewing its guidance to the Agency on waste licensing and inspection, which will provide an opportunity to address many of the issues raised in our report. We make the following main recommendations, many of which correlate with the emerging findings from the Department's and the Agency's review, and some of which may have resource implications:
- 1 In licensing and inspecting operators, the Agency and the Department should increase the reliance placed by the Agency on operators' own management systems and controls for waste management, where operators' systems are of a suitable standard. Reducing the large number of routine inspections of well run sites could release resources to help meet the new demands on the Agency's waste regulation staff and the costs of carrying out more detailed reviews of problem sites. To achieve this change the Agency needs to:
 - examine operators' own internal management systems for ensuring compliance with licences and waste legislation;
 - strengthen the training of its staff to improve their inspection and audit of operators' management systems;
 - monitor the outcomes of routine inspections, for example, in detecting licence breaches and pollution incidents;
 - review the impact of its planned increase in the number of in-depth inspections;
 - address with the Department the frequency of inspection for certain closed and non-operational sites.
 - 2 There should be an increase in the incentives for companies to comply with their licences and waste legislation. For example, the Agency should:
 - articulate more clearly what enforcement action will be taken in response to breaches of different types, and especially repeat breaches, to promote consistency in treatment and reinforce deterrence;
 - take prompt and appropriate enforcement action when a compliance failure is found, particularly where there is repeated disregard of the requirements of good waste management.
 - 3 The Agency should introduce a formal periodic review of licences for fitness for purpose and compliance with current standards of waste management. The Agency should collate the results of such licence reviews centrally to monitor the quality of the population of licences.

- 4 The Agency should improve the standard of the information retained on its licensing files after licences have been granted, in particular the reasons for decisions and the authorisation of decisions, both to protect the Agency in the event of judicial review and to assist staff using the files in the future. The improved standards of documentation for issuing licences under the Landfill Regulations should also apply to other waste licences.
- 5 As part of the proposed improvements to its system for processing licence applications, the Agency should develop improved targets which recognise the risk and complexity of different types of waste site, further improve the quality of its guidance to applicants and increase the use of standard licences for low risk waste sites.
- 6 In conjunction with the Department, the Department of Trade and Industry, and the industry, the Agency should establish what changes in the law should be proposed to achieve a more secure system of financial provision for waste sites where, for example, operators go into liquidation or disclaim the waste licence.
- 7 The Department should complete the review of exemptions, including the provision of a charging mechanism, so that the Agency can provide more active regulation of those sites that need it. Pending the completion of the review, the Agency should increase the work carried out to detect illegal waste disposal.
- 8 The Agency should address the deficiencies in its management information systems on environmental incidents and prosecutions so that it can, for example, routinely monitor, based on reliable data:
 - types of waste incidents and offences at licensed waste sites;
 - trends in the environmental impact of waste incidents;
 - the quality and timeliness of prosecution files submitted to legal teams;
 - the operations of the newly formed dedicated enforcement teams;
 - the effectiveness of the Agency's response to the more serious incidents.
- 9 The Environment Agency and the Department need to consult with the Local Government Association and other interested parties to agree a system for monitoring fly-tipping nationally which is both economic and reliable.