

# **CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### **Part 5: Waste**

#### *Chapter 2: Deposit and Disposal of Waste*

#### **Offence of unlawful deposit of waste etc**

#### *Section 40 Defence of acting under employer's instructions*

138. **Section 40** amends section 33 of the Environmental Protection Act 1990 (under which it is an offence to make an unauthorised or harmful deposit etc. of waste) so as to remove the defence (at section 33(7)(b)) of acting under one's employer's instructions.

#### *Section 41 Penalties on conviction*

139. **Section 41(1)** amends the penalties available for offences under section 33 of the 1990 Act. It increases the maximum available fine on summary conviction for the illegal disposal of waste from £20,000 to £50,000 and raises the maximum term of imprisonment on conviction on indictment for non-hazardous waste offences to five years (the same as is already applied for offences involving hazardous waste).

#### *Section 42 Investigation and enforcement costs*

140. **Section 42** inserts a new section 33A into the 1990 Act. Section 33A applies where a person is convicted of an offence under section 33 and enables the court to make an order requiring the offender to pay the enforcing authorities' investigation and enforcement costs, and any costs associated with seizure of vehicles involved in the offence. In this section, the enforcement authorities are defined as the Environment Agency and waste collection authorities.

#### *Section 43 Clean-up costs*

141. **Section 43** inserts a new section 33B into the 1990 Act. Section 33B applies where a person has been convicted of an offence under section 33(1) of the 1990 Act consisting of the deposit or disposal of controlled waste. It enables the court to make an order requiring the offender to pay to either the Environment Agency or a waste collection authority or the occupier of land or the owner of land, any costs incurred by them in removing waste that has been illegally deposited or disposed of in or on land, or in taking steps to eliminate or reduce the consequences of the deposit or both.

**Section 44 Forfeiture of vehicles**

142. **Section 44** inserts a new section 33C into the 1990 Act. Section 33C applies where a person has been convicted of an offence involving contravention of section 33(1) of the 1990 Act consisting of the deposit or disposal of controlled waste. Section 44 enables the court to make an order to deprive the offender of his rights to a vehicle (and its contents) if the court is satisfied that the vehicle was used in or for the purpose of the commission of the offence.
143. The order by the court may give possession of the vehicle and its contents to the relevant enforcement authority. The new section 33C requires a court to take into account the value of the vehicle, the impact of forfeiture on the offender, the offender's need to use the vehicle lawfully, and, if it appears that the offender is engaged in a business that illegally disposes of waste, whether the order is likely to be dissuasive of further such activity.