

FLY TIPPING STAKEHOLDERS' FORUM

FLY TIPPING GUIDANCE

The Fly tipping Stakeholders Forum represents a partnership approach to the problem of fly tipping between:

The Country Landowners Association

The National Farmers Union

The Federation of Small Businesses

Railtrack

British Waterways

The National Trust

Tidy Britain Group

The Local Government Association

The Scottish Environment Protection Agency

The Environment Agency.

These organisations have collaborated to develop a co-ordinated approach to the problem of fly tipping. To that end the forum has produced the attached guidance to help landowners, managers and members of the public combat fly tipping.

The forum continues to meet to develop practical solutions to the ever-present problem of fly tipping.

Please note that the Environment Agency has responsibility for England and Wales whereas the Scottish Environment Protection Agency has responsibility for Scotland. In this guidance you will see the term "appropriate Agency" used. If you are resident in England and Wales please take this to mean the Environment Agency, whereas if you are resident in Scotland please take it to mean the Scottish Environment Protection Agency.

FLY TIPPING STAKEHOLDERS' FORUM

TACKLING FLY TIPPING: GUIDANCE FOR LAND OWNERS, MANAGERS AND MEMBERS OF THE PUBLIC

What does this guidance do?

This note provides guidance for the owners, managers of land and property and members of the public on:

- gathering evidence on fly tipping incidents;
- how Local Authorities and the Environment Agency/Scottish Environment Protection Agency (the Agencies) can help tackle fly tipping;
- how to deal with different types and quantities of fly tipped waste;
- steps that can be taken to reduce the risk of becoming a victim of fly tipping; and
- the relevant legal powers and duties of Local Authorities, the Environment Agencies and the police.

Who is this guidance for?

The guidance is intended to be used by:

- **advisers** in dealing with queries from individual landowners or farmers (e.g. advisory staff of the NFU and CLA, and Land Agency firms); and
- **property managers** for institutional owners (e.g. Railtrack, British Waterways, National Trust, estates managed by financial institutions).
- **individuals** (any owners, managers, advisers, consultants, members of the public, etc who wishes to see it or use it).

This guidance is accepted by the members of the Fly tipping Stakeholders Forum as best practice in dealing with suffer fly tipping and is available from each member of the forum. Details (e.g. telephone numbers) of those members can be found in section 4 of this document

Comments on the guidance are welcomed and can be sent to any of the member organisations (at the addresses shown in section 4) who will be able to raise your issues at the forum. The guidance will be reviewed periodically and may be amended.

What is fly tipping?

Generally speaking fly tipping is ‘the illegal deposit of any waste onto land i.e. waste dumped or tipped on a site with no licence to accept waste’. Waste includes: general household waste; larger domestic items including fridges and mattresses; garden refuse; and commercial waste such as builders’ rubble, clinical waste and tyres. Such waste can occur in any quantities in any mixture in any location. Accordingly fly tipping incidents need to be treated on a case-by-case basis.

This guidance is divided into four sections:

- **Section 1** – Guidance to members of the public, landowners/managers on the evidence required to prove a case of fly tipping.
- **Section 2** – Practical guidance to landowners/managers on what to do when waste is fly tipped on their land.
- **Section 3** – A brief guide to the law surrounding fly tipping.
- **Section 4** – Forum member details.

Do not use these details to report fly tipping.

In addition there are two annexes. These are:

- **Annex 1** – A “fly tipping matrix” which embodies an agreement between the Environment Agency and the Local Government Association on responding to fly tipping incidents.
- **Annex 2** – A form for recording relevant details on fly tipping.

SECTION ONE:

GATHERING EVIDENCE ON FLY TIPPING INCIDENTS

What should you do when you discover fly tipping?

If you observe fly tipping - or, more often, discover fly tipped waste some time after the tippers have flown, you should observe the following “do’s and don’ts”:

- **Visually inspect the waste.** Stand up-wind of it to avoid any possible fumes. Note down what it consists of, what quantities are involved, and where it is lying - in particular whether it is in, or anywhere near, to water (surface water or ground water).
- **Do not touch the waste** unless it is clearly inert. Fly tipped waste can sometimes include toxic chemicals, asbestos, broken glass, or clinical waste (e.g. contaminated syringes). What initially appears to be simply a pile of inert builders’ rubble or soil may actually contain hazardous substances.
- **Do not disturb the site.** There may be evidence which can lead to tracing the culprits and prosecution.
- **Contact the Local Authority or the Environment Agency** (see table 1, Section 2 for guidance on who to call) for immediate advice on what steps to take to secure the safe removal of the waste.

Write down as many relevant details as possible for use by the Police, Local Authority or the appropriate Agency. Please record the following details:

- 1 The day, date and time that you saw the fly tipping (including when the tipping stopped);
- 2 Who was with you;
- 3 What you saw;
 - (i) Make a note of how many people you saw fly tipping and what they looked like. Did you recognise any of them?;
 - (ii) What did these people actually do?;
 - (iii) Was there a vehicle involved? If so what did it look like? What was its make and colour and what was its registration number? Were there any distinguishing features on the vehicle?
- 4 Where you were when you saw the fly tipping;
 - (i) What kind of view did you have?;
 - (ii) How far away were you?;
 - (iii) What was the weather like, and was it dark or not?;
- 5 A description of what was tipped: **PTO**

- (i) How much was tipped?;
- (ii) What did it look like (e.g. black bags, drums etc)?

A form for recording these details may be found in Annex 2 to this document (at the end).

If you see someone fly tipping it is important to write down the details as soon as possible. You will be asked to make a statement and you can use these notes when making it. It is also important that you do not throw these details away. You may need to refer to these details later on.

When you are making your statement, or giving evidence in Court, it is important that you only report what you saw, heard, smelt etc. You should not say what someone else saw etc. If someone else saw the fly tipping and they agree with your notes they should sign them. They can then refer to them at a later stage.

Also please

- **Take photographs** of the waste itself and of any relevant evidence (e.g. tyre tracks); where possible use the date code on your camera. Photographs may be useful not only as evidence against fly tippers but also to avoid any subsequent misunderstandings by regulators about the incident and your own role in dealing with it.
- **Record details** of how the waste was subsequently dealt with. When the waste was tipped on your land you should always ask for proof that any contractor (other than a Local Authority) who removes the waste is registered as a carrier of waste, and seek full details of how and where the waste will be disposed.
- **Ensure that the incident is recorded in official statistics**: even if the incident is not followed-up by the Police and/or the appropriate Agency and/or Local Authority, provide them all with any information on the incident and encourage them to record it, so that the incidence of this form of environmental crime is correctly reported in official crime statistics.

Please remember that fly tippers are doing something illegal. They do not want to be caught. Some fly-tippers may become violent. You should not approach them. Some wastes can be hazardous. Again you should not approach it and certainly not open any black bags, drums etc.

SECTION TWO:

DEALING WITH FLY TIPPED WASTE

This section is primarily aimed at land owners/managers.

This section does not apply to waste fly tipped on Railtrack land as it is up to the Railtrack contractor to take it away.

Who should you tell about fly tipping?

Contact either the Local Authority or the appropriate Agency for advice on what action should be taken to remove the fly tipped material. You will need to let them know the broad nature and specific location of the waste. Record the names of any officials contacted and make a note of the advice given.

- The **Environmental Health Department** (or other relevant Department) of the local District or Unitary Councils may be able to inspect the waste, or ask the appropriate Agency to do so. **They will advise on:**
 - **who** should/can take responsibility for clearing the waste (the appropriate Agency, Local Authority itself or the land manager);
 - **when** it can/should be cleared;
 - **how** it should be cleared (e.g. if the land manager is to do the work, whether any special equipment is needed); and
 - **where** it should be taken.
- The **appropriate Agency** should be informed where **hazardous waste** is/might be involved and/or the waste might pose a **pollution risk** (to water, soil or air). Use the emergency hotline 0800 807060 for serious incidents in England, Wales and Scotland. For non-hazardous incidents in England and Wales use the general inquiry number 0645 333111, and for non-hazardous incidents in Scotland contact the Scottish Environment Protection Agency local office. In England and Wales the Environment Agency has agreed a Protocol with the Local Government Association which states when the Agency rather than the Local Authority will take responsibility (see **Annex 1**). Please note that this agreement is only relevant in England and Wales, and does not apply in Scotland.

Report all fly tipping incidents to the police so that they are aware of their extent and nature and accordingly the incidents figure in police statistics on local crime. The police have specific responsibilities in relation to abandoned vehicles. Incidents may be investigated by the Local Authority and/or the appropriate Agency and/or the police depending on the specific circumstances of the case.

You can expect varying amounts of assistance from the Local Authority, the appropriate Agency and/or the police depending on the nature of the waste and its location. Fly tipping in any form is a criminal offence and should be treated as such by all parties. However, you may find that none of these organisations is prepared to remove the waste itself.

What should you do if you find you are responsible for removing the waste?

Various options are available for the disposal of fly-tipped waste. Some of the options are set out below. The options should always be discussed - before you take any action - with the Local Authority or the appropriate Agency. It is advisable to obtain written confirmation of the advice given to avoid any potential for misunderstanding.

You may:

- **Ask the Local Authority to remove and dispose of the waste.** Local Authorities do not need to be registered as carriers of waste. They can collect and remove any form of fly tipped waste on request. A fee will be charged. You should seek confirmation of the likely fee in writing before formally asking the Authority to remove the waste;
- **Ask a registered waste carrier to remove and dispose of the waste.** Note that, in general, anyone who moves waste as a business (other than a Local Authority) must be registered as a carrier of waste. Registration is generally not needed where you remove waste from your own land for **personal** reasons. To avoid any suggestion that you are acting as an unlawful carrier of waste yourself in removing fly-tipped material, it is essential to get the prior agreement of the appropriate Agency to such action. The appropriate Agency can advise on what formal requirements (registration and the use of consignment notes (see page 8)) apply in relation to different quantities of different wastes. In asking someone else to remove fly tipped waste, you have a Duty of Care to ensure that you use a **registered** waste carrier, **and** that the waste will be disposed of at an appropriately licensed site. You should seek written proof on these points. If the carrier (other than a Local Authority) states that he does not need to be registered, you should check his credentials with the appropriate Agency before letting him remove the waste. A fee will be charged by the carrier for any waste removed. You should secure written confirmation of the likely fee in writing before formally asking the waste carrier to remove the waste.

If someone offers to take away your business rubbish make sure you check that person's status. Do not accept what they say on face value. Check the person's status with the appropriate Agency.

Further details on this “Duty of Care” may be found in:

WASTE MANAGEMENT

THE DUTY OF CARE

A CODE OF PRACTICE

Available from the Stationery Office (telephone orders 0171 873 9090)
(ISBN 0-11-753210-X)

- **Remove the waste yourself and dispose of it** at a recycling centre or civic amenity site or licensed landfill site (provided that you do not need to be registered as a waste carrier to remove the waste - see the bullet point above - and that the recycling centre, civic amenity site or landfill site is licensed to take the waste involved). The Local Authority can advise on the location of local recycling centres or civic amenity sites and on whether these sites will be able to accept the fly tipped waste involved. If they do so, a fee may be charged. You should seek their agreement to move the waste to one of these sites before doing so - without such agreement, you may find yourself turned away from a civic amenity site or recycling centre. The appropriate Agency can advise on the location of licensed landfill sites. Note that waste may only be deposited on an appropriately licensed site: disposing of it elsewhere, on your own land, or passing it to a neighbour who does not hold a waste management licence, may be illegal. Note that a transfer note must accompany any transfer of waste (see the above mentioned Code of Practice for information on “transfer notes”) or;
- **Dispose of the waste on site by lawful means**. Some waste can be composted on site (e.g. garden waste): in this case you should contact the appropriate Agency to register the site for composting. Some waste can be re-used (e.g. clean bricks). Burning waste is not generally permitted. You should contact the appropriate Agency before re-using fly-tipped waste by any of these means.

Are there any standard ways of dealing with different types of waste?

The attached Table (Table 1) lists a range of fly tipped wastes which are often fly-tipped in England and Wales. For each it:

- sets out whether the Local Authority or the Environment Agency should be contacted regarding disposal options and whether the incident should be reported to the police
- sets out whether land managers should consider taking responsibility for removing and disposing of the waste themselves; and
- provides comments on these issues - or related issues.

Please note that the Table is purely advisory and gives general guidance only. Action in any specific case should be related to the specific circumstances of the incident. In particular, your safety is paramount. If in doubt about the nature of any fly tipped waste, do not approach or touch it. Instead, seek expert advice from the Local Authority and/or the Environment Agency.

This table does not apply to Scotland. The forum continues to meet to develop guidance for Scotland but in the interim please contact either the Local Authority or the Scottish Environment Protection Agency local office for guidance on the disposal of fly tipped waste in Scotland.

For routine reports of fly tipping call 0645 333111

In an emergency only, that is where there is a threat of pollution, please call 0800 807060.

Consignment notes

Please note some wastes are difficult to dispose/dangerous to dispose of. These are known as special wastes. Special controls are placed on the movements of these wastes to ensure that they are disposed of correctly. To move these wastes you have to have a “consignment note” and give the appropriate Agency at least three days notice. Contractors should be able to provide you with a consignment note, but if they can’t or the note does not have a printed code in the top right- or left-hand corner, please contact the appropriate Agency.

If you would like to know more about special waste please visit the Environment Agency’s website at www.environment-agency.gov.uk

How can you reduce your chances of becoming a fly tipping victim?

- You should consider action to reduce or prevent fly tipping or to increase the likelihood of incidents being detected (and thereby to deter further tipping). Advice can be sought from the Local Authority and/or the appropriate Agency. This applies especially where fly tipping has already occurred on the land or in the neighbourhood.

Action could include:

- lighting the site,
- installing video cameras,
- fencing the site,
- gating open path or road entries,
- closing up lay-bys or sites where vehicles can just pull off the road,

- clearing vegetation to increase visibility at sites where waste is tipped, and so on.
- It is important that action is taken to tackle fly tipping as soon as it is discovered. **Waste left lying tends to attract other waste**. Hazardous wastes can cause pollution and harm to people and animals. Many wastes can pollute air, soil and water. If accumulations are left for a substantial time then suspicion may arise that the owner is causing the tipping - which is a criminal offence. Rapid action to report the incident and to follow advice for clearing the waste is essential, followed by preventative steps to reduce the risk of subsequent incidents.

TABLE 1: DEALING WITH DIFFERENT TYPES AND QUANTITIES OF FLY-TIPPED WASTE

The Table below lists a range of fly tipped wastes that are often fly-tipped. For each it:

- sets out whether the Local Authority or Environment Agency should be contacted regarding disposal options and whether the incident should be reported to the police;
- sets out whether land managers should consider taking responsibility for removing and disposing of the waste themselves; and
- provides comments on these issues - or related issues.

Please note that the Table is purely advisory and gives general guidance only. Action in any specific case should be related to the specific circumstances of the incident. In particular, your safety is paramount. If in doubt about the nature of any fly-tipped waste, do not approach or touch it. Instead, seek expert advice from the Local Authority and/or Environment the appropriate Agency.

Fly tipped waste	Contact Local Authority?	Contact Environment Agency?	Report to Police?	Consider removing it yourself?	Comments
Animal carcasses	Yes	Yes - if in/near water	Yes	Seek advice from the Environment Agency on disposal options. Carcasses may be diseased and health and pollution hazards.	Some carcasses may be buried or disposed of through a licensed knacker's yard or hunt kennel authorised incinerator or rendering plant.
Fibrous asbestos	No	Yes	Yes	No	Contact the Environment Agency using the emergency hotline number (0800 807060). Fibrous asbestos is dangerous. Stand upwind and wet the waste if possible (that is to say, wet it as long as you do not put yourself in danger).
Asbestos board/cement	Yes	Yes – but only to ensure that removal is covered by consignment notes.	Yes	No	Use registered carriers for asbestos removal.
Batteries: wet - lead acid	Yes	Yes - if more than five to ensure that removal is covered by consignment note.	Yes	No	Battery acids are strong corrosives. May emit irritant fumes, especially on reaction with water. Return to supplier. Contact the Environment Agency emergency hotline (tel: 0800 807060) immediately if watercourses are threatened.
Batteries: dry - Ni/Cd, mercury, alkaline	Yes	Yes - if in/near water (also to ensure removal is covered by a consignment note).	Yes - if large quantities	Yes - take to recycling centre	Damaged batteries may react with other substances. Explosive reaction if water is added. Return to suppliers or take to recycling facility
Bottles	Yes	No	Yes - if large quantities	Yes - take to recycling centre	

Fly tipped waste	Contact Local Authority?	Contact Environment Agency?	Report to Police?	Consider removing it yourself?	Comments
Builders' rubble (including cement, stone, concrete, aggregates, sand)	Yes	Yes – if more than 50m ³ or if polluting a watercourse.	Yes	Yes - if clearly inert and in small quantities to landfill or civic amenity site.	Bricks can be re-used if clean (clean means free from polluting matter e.g. plaster board). N.B. also can be used as construction material – if you want to do this please contact the Environment Agency. On no account should polluting materials be used e.g. any form of asbestos.
Cans (steel, aluminium)	Yes	No	Yes - if large quantities	Yes - take to recycling centre	
Chemicals (including pesticides and wood preservatives)	No	Yes	Yes	No	These can present particular problems in the water environment - contact the Environment Agency emergency hotline (tel: 0800 807060) immediately; Be aware of fumes.
Clinical and sanitary waste	No	Yes	Yes	No	May include blood-contaminated products, syringes, needles and materials contaminated with faecal material. Contact the Environment Agency emergency hotline (tel: 0800 807060) immediately.
Drums	Yes	Yes - if leaking or in poor condition	Yes	No	Always seek advice on contents - labels may not indicate contents - be wary of fumes
Electrical goods (e.g. fluorescent tubes, computer waste, TVs)	Yes	Yes - if large quantities	Yes	Yes - if small - to civic amenity site	Fluorescent tubes contain toxic compounds requiring special care.
Fabrics	Yes	No	Yes	Yes - if small take to civic amenity site	Do not disturb blood stained clothing - call the Police immediately.
Fire extinguishers	Yes	No	Yes	Yes - return to suppliers or civic amenity site	Many suppliers will take back abandoned fire extinguishers free of charge.
Furniture (household or office, including carpets, mattresses, chairs, sofas)	Yes	No	Yes	Yes - for disposal at civic amenity site	
Garden waste (grass cuttings, tree or shrub loppings, etc)	Yes	Yes	Yes	Yes - for composting on own land or civic amenity site	Composting on site needs to be registered with the Environment Agency. Phone 0645 333111 to register.
Gas cylinders	Yes	Yes - if many or if in/near water	Yes	No - unless clearly identifiable and can be returned to a vendor	Return to suppliers or vendors - the Liquid Petroleum Gas Association can provide advice on these (tel: 01425 461612/ fax: 01425 471131).
Household bin bags	Yes - if large quantities	No	Yes - if large quantities	Yes - take to civic amenity site	
Litter	No	No	Yes - if large quantities	Yes - take to civic amenity site	
Metal (other than drums)	Yes	No	Yes	Yes - if small to civic amenity site or scrap yards	Some metals may be contaminated with chemicals - handle with care.

Fly tipped waste	Contact Local Authority?	Contact Environment Agency?	Report to Police?	Consider removing it yourself?	Comments
Oils (e.g. engine oil, lubricating and hydraulic oils, collected oil pollutants (oil/water mixes))	Yes	Yes - if in/near water or where more than 5 litres to ensure that the removal is covered by a consignment note.	Yes	No - except for small individual cans (less than 5 litres) which should go to recycling centres	Oils can present particular problems in the water environment - contact the Environment Agency emergency hotline (tel: 0800 807060) immediately if watercourses are threatened.
Packaging waste	Yes	No	Yes - if large quantities	Yes - if small to civic amenity site	
Plastic	Yes	No	Yes	Yes - if small - to civic amenity site	
Solvents (e.g. solvent-based paints, paint thinners, anti-freeze, degreasers)	Yes	Yes - if in/near water (also to ensure that removal is covered by a consignment note)	Yes	No - except small numbers of paint cans etc	Solvents can present particular problems in the water environment - contact the emergency hotline (tel: 0800 807060) immediately if watercourses are threatened.
Timber (including preservative treated timber)	Yes	Yes - if in/near water	Yes	Yes - if small quantities for re-use, or to civic amenity site	Untreated timber can be used for firewood. This is not to say that the wholesale disposal of waste by burning is generally acceptable. Do not burn treated timber.
Tyres	Yes	Yes - if many or in water	Yes	Yes - if small quantities to civic amenity site	Tyres should not be burned.
Vehicles which have been abandoned	Yes - duty to remove if on any land	Yes - if in/near water	Yes - duty to remove if on the highway or verge	No	Lubricating oils, brake fluids, battery acids, antifreeze and other vehicle related fluids may present particular problems - especially in the water environment. Contact the Environment Agency emergency hotline (tel: 0800 807060) immediately if watercourses are threatened.
White goods (including refrigerators, cookers washing machines)	Yes	Yes - if danger of CFC leaks	Yes	Yes - if single items to civic amenity site or scrap yards	

HOTLINE NUMBER:

The Environment Agency

Tel: 0800 807060

This table does not apply to Scotland. In the interim please contact either the Local Authority or the Scottish Environment Protection Agency local office for guidance on the disposal of fly tipped waste in Scotland.

In an emergency only, that is where there is a threat of pollution, please call 0800 807060. For routine reports of fly tipping call 0645 333111.

SECTION THREE: LEGAL POWERS AND DUTIES IN RELATION TO FLY TIPPING

FLY TIPPING – THE LEGAL FRAMEWORK

This section provides a general guide to the legislation surrounding fly tipping. Obviously the law is extensive and as such this section is not an authoritative statement of the law.

Part 1 – The Offences

The **main** offences relevant to cases of fly tipping are as follows:

Section 33 Environmental Protection Act 1990 (EPA)

An offence is committed if:

- a person has deposited/knowingly caused/knowingly permitted the deposit of controlled waste in or on land and either:
 - that land does not have a waste management licence in force in relation to it; OR
 - the deposit is not in accordance with a waste management licence.

- a person has treated, kept or disposed of controlled waste or knowingly caused or knowingly permitted the treatment, keeping or disposal of controlled waste in or on land and either:
 - that land does not have a waste management licence in force in relation to it; OR
 - the treatment, keeping or disposal is not in accordance with the licence.

- a person has treated, kept or disposed of controlled waste in a manner likely to cause pollution of the environment or harm to human health

NOTE

'Controlled waste' means household, industrial or commercial waste.

'Disposal' includes deposit in or on land as a means of disposal.

Household waste from a domestic property is exempted from the requirements for a licence as long as it is treated, kept or disposed of within the curtilage of the dwelling by or with the permission of the owner (except where that waste is asbestos, chemical or mineral oils).

Further, if the waste was carried in and deposited from a motor vehicle, the person controlling the use of the vehicle, or who is in a position to do so, is treated as knowingly causing the waste to be deposited, whether or not any instructions were given to that effect.

Section 34 Environmental Protection Act 1990 (EPA)

- A waste holder (any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste) is under a 'duty of care' with regard to that waste and it is an offence if he fails to take all measures applicable to him in that capacity as are reasonable in the circumstances to:
 - prevent another person from committing an offence under section 33 EPA
 - prevent the escape of the waste from his or another person's control; and
 - to transfer the waste to an authorised person or to any person for authorised transport purposes and to provide that person with a written description of the waste.

NOTE

An occupier of domestic property, dealing with household waste from that property is exempted from this duty.

Refuse Disposal (Amenity) Act 1978 – section 2

- The deliberate abandonment of any matter on land in the open air or on any other land forming part of a highway is an offence, punishable by fine and/or imprisonment.

Highways – including footpaths, bridleways and byways

Highways Act 1980 – section 148

(This Act is not applicable in Scotland. However Scotland has similar legislation containing similar provisions).

- It is an offence to deposit dung, compost or other material for dressing land or any rubbish either on or within 15 feet from the centre of a made-up carriageway.
- It is an offence to deposit anything on a highway to the interruption of any user of the highway.

Part 2 – Fly Tipped Material – Who deals with it? – The relevant duties and powers

Vehicles

Refuse Disposal (Amenity) Act 1978 – sections 3-5

Local Authorities are under a **DUTY** to remove motor vehicles unlawfully **abandoned ON ANY LAND IN THE OPEN AIR** and can recover their charges from either:

- the owner, unless he can show that he was not concerned in and did not know of its being abandoned; OR
- the person who abandoned it.

NOTE

'Local Authority' means:

- England - a district council, London borough council or the Common Council
- Wales – county council or county borough council
- Scotland – unitary council

'motor vehicle' includes:

- a trailer for use as an attachment to a vehicle;
- any chassis or body with or without wheels appearing to have formed part of a vehicle or trailer.

Articles other than vehicles

Environmental Protection Act 1990 – section 59

- This provision applies where there has been a breach of section 33. The Environment Agency/Scottish Environment Protection Agency or the waste collection authority (WCA – the Local Authority) may serve a notice on the occupier requiring him to remove the waste and/or eliminate or reduce the consequences of the deposit.

NOTE

- It is an offence to fail to comply with such a notice;
- the occupier may appeal within 21 days from service of the notice to the magistrates' court on the basis that:
 - he neither deposited nor knowingly caused nor knowingly permitted the deposit of the waste; or
 - there is a material defect in the notice.
- Where the occupier fails to adhere to the notice provisions (and has not appealed), the WRA or WCA may fulfil the notice requirements and recover their reasonable costs from the occupier;
- The waste may be removed by the WRA or WCA or steps taken to eliminate or reduce the consequences of the deposit without serving a notice:
 - in order to prevent pollution of land, water or air or harm to human health it is necessary that the waste be removed/steps taken to eliminate or reduce the consequences of the deposit; or
 - if there is no occupier of the land; or
 - if the occupier neither made nor knowingly permitted the deposit of the waste.

NOTE

The necessary costs can be recovered from the occupier, unless the occupier neither made nor knowingly caused/permitted the deposit.

Refuse Disposal (Amenity) Act 1978 – section 6

- Local authorities have a POWER to remove articles other than vehicles abandoned without lawful authority on any land in the open air.

NOTE

- If the land is occupied the authority is required to serve notice of its intention on the occupier;
- There is an appeals procedure;
- Costs are recoverable from the person who deposited the articles.

Public Health Act 1961 – section 34

(This Act is not applicable in Scotland. However Scotland has similar legislation containing similar provisions).

The Local Authority has POWER to deal with any rubbish which is in the open air and which is seriously detrimental to the amenities of the neighbourhood.

NOTE

- The power is effective 28 days after serving a notice on the owner;
- There is no power for the authority to recover their costs from the owner;
- Rubbish means rubble, waste paper, crockery, metal and other refuse (inc. organic matter) but NOT material accumulated in relation to business.

Town & Country Planning Act 1990 – sections 215-9

(This Act is not applicable in Scotland. However Scotland has similar legislation containing similar provisions).

- If it appears to a local planning authority that the amenity of part of their area or an adjoining one is adversely affected by the condition of land in their area they MAY serve a notice on the owner and occupier requiring them to remedy its condition within a certain time.

NOTE

- There is an appeals procedure;
- The owner or occupier may recover any expenses incurred in complying with the notice from anyone who caused or permitted the land to be in the condition that caused service of the notice.

Highways – including footpaths, bridleways and byways

(This Act is not applicable in Scotland. However Scotland has similar legislation containing similar provisions).

Highways Act 1980 – section 149

- If anything is deposited on the highway as to constitute a nuisance, the highway authority can serve a notice on the person responsible for the deposit requiring its removal.
- If the deposit is a danger, the highway authority may remove the deposit forthwith or apply to the magistrates' court for a disposal order;

- The highway authority may recover its reasonable expenses from the person who deposited the material or the person claiming to be entitled to it.

NOTE

- The highway normally includes the verge.

Highways Act 1980 - section 130

(This Act is not applicable in Scotland. However Scotland has similar legislation containing similar provisions).

- It is the duty of the highway authority to prevent, as far as possible, the stopping up or obstruction of the highways for which they are highway authority AND other highways if in their opinion, the stopping up or obstruction of the highway would be prejudicial to the interests of their area;
- It is the duty of a highway authority to prevent any unlawful encroachment on any roadside waste comprised in a highway for which they are highway authority.

SECTION FOUR

CONTACT ADDRESSES AND TELEPHONE NUMBERS

DO NOT USE THESE NUMBERS TO REPORT FLY TIPPING. USE THEM ONLY TO DISCUSS EITHER THIS DOCUMENT OR THE WORK OF THE FORUM.

Environment Agency

Contact: Cormac Quigley
Address: Olton Court, 10 Warwick Road, Olton, Solihull, West Midlands, B92 7HX
Telephone 0121 711 5938 Web page: www.environment-agency.gov.uk
For copies of this guidance please phone - 0645 333111

Federation of Small Businesses Association

Contact: David Brown
Address: 2 Catherine Place, Westminster, London, SW1E 6HF
Telephone: 0171 233 7900 Web page: www.fsb.org.uk

Railtrack

Contact: Lisa Dixon
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ANNEX 1: LOCAL GOVERNMENT ASSOCIATION/ENVIRONMENT AGENCY PROTOCOL

On 11 August 1998 the Local Government Association and the Environment Agency signed an agreement ("The Fly tipping protocol") which detailed the situations where the public could expect the Environment Agency to respond and Local Authorities to respond to incidents of fly tipping.

This agreement is embodied in the following table. This table lists a variety of fly tipping incidents according to the types and quantities of waste and the potential risk those fly tipping incidents have on the environment. For each category of fly tipping in that table a suggested Local Authority response and an Environment Agency response is listed e.g. response level A.

Please note that this protocol only applies in England and Wales.

FLY TIPPING RESPONSE MATRIX

W A S T E	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>
Sensitivity	Litter	A "bin- bag" of non hazardous waste (less than 100 litres)	Larger amounts of non-hazardous waste (up to 500 litres /0.5 m ³)	0.5 m ³ inert waste to 50 m ³	>0.5 m ³ Bio-degradable waste > 50 m ³ inert waste, all sheet asbestos	Clinical, oil, drums of chemicals	Leaking Drums of chemicals , fibrous asbestos
> 10 m from water courses /occupied buildings	A	A	B	C	C ²	D ²	E*
< 10 m from water courses /occupied buildings	A	A	B	C	D ²	E*	E*
In Water Course ¹	A	A ¹	B ¹	C ¹	D ^{1&2}	E*	E*
Response Level	Agency Responsibility			Local Authority Responsibility			
A	Refer incident to LA			Remove waste if on public land: investigate possible offences			
B	Refer incident to LA: Serve Duty of Care notice (where appropriate) if LA request it			Remove waste if on public land: investigate possible offences			
C	Refer incident to LA. If LA discover evidence Agency has responsibility to investigate: inform LA of investigation outcome			Remove waste if on public land: pass evidence (if any) to Agency			
D	Investigate. Inform LA to facilitate possible removal.			Remove waste if on public land: refer incident to Agency to facilitate investigation			
E	Agency emergency response. Investigate			Refer incident to Agency (nothing should prevent a LA from acting to prevent/ameliorate harm to the public/pollution).			
1	It should be noted that in incidents where waste is deposited in water (excluding drains) and there is a risk of water pollution or obstruction of the watercourse then there will be a presumption that the Agency will arrange the removal of the waste unless it considers it inappropriate/unnecessary. Refer to LA if Agency declines to remove.						
2	There are occasions when Local Authorities discover/have reported to them fly-tipping incidents containing potentially hazardous wastes and it is reasonable for Local Authorities to ask for and receive advice on the disposal of this material. If the Agency considers that the incident would be categorised as a major/significant incident it will treat the fly-tipping incident as an E* and respond accordingly.						
*	Where a response is annotated with an * the Agency should arrange for the waste to be removed.						
Nothing in this table should prevent either LA/Agency from taking immediate enforcement action where it has the evidence readily available and there is no need for an in depth investigation, for example where a member of the public has witnessed the deposit: that person's evidence being sufficient to convict without the need for detailed investigation. If it is marginal that the fly-tipped waste falls within a particular category or a "higher" category it should be taken as falling into the higher category.							

GUIDANCE ON FLYTIPPING CATEGORIES

Category	Guidance
1	This category relates to "littering". It relates specifically to "non-hazardous waste". For the purposes of this matrix non-hazardous waste includes all types of waste (including biodegradable waste) with the exception of hazardous waste (see below for definition of hazardous waste). Any deposits of non-hazardous waste up to a bin bag in volume would be included in this category.
2	This category relates to small-scale fly-tipping. It relates to "bin-bags" of "non-hazardous waste", for example a bag of garden waste. For the purposes of this matrix non-hazardous waste includes all types of waste (including biodegradable waste) with the exception of hazardous waste (see below for definition of hazardous waste). This category is designed to relate to fly-tipping by householders.
3	This category relates to larger amount of fly-tipping. It is meant to cover deposits of "non-hazardous waste" ranging from a more than a bin bag (approximately 100 litres) to volumes of waste less than 500 litres/0.5 m ³ ("a car boot"). For the purposes of this matrix non-hazardous waste includes all types of waste (including biodegradable waste) with the exception of hazardous waste (see below for definition of hazardous waste). This category is designed to relate to fly-tipping by householders and small scale commercial fly-tipping.
4	This category relates to the fly-tipping of up to 50 m ³ of "inert waste". For the purposes of this matrix inert waste includes all types of waste with the exception of biodegradable waste and hazardous waste (see below for definition of hazardous waste). Any deposits of less than 500 litres/0.5 m ³ of biodegradable waste are covered by category 3. If there is more than 500 litres/0.5 m ³ biodegradable waste the deposit falls in category 5 of the matrix. If there is more than 50 m ³ of inert waste the deposit falls in category 5 of the matrix. It is meant to cover more significant deposits of fly-tipping (van load to skip loads) which suggests commercial fly-tipping.
5	This category relates to large scale tipping of non-hazardous waste (greater than 50 m ³) or any deposits of biodegradable waste above 500 litres/0.5 m ³ . Also all deposits of sheet asbestos fall within this category. It is meant to include large accumulations of tyres, market waste, commercial fly-tipping of tree loppings. It is designed to relate to large-scale commercial fly-tipping.
6	This category relates to potentially hazardous material that is not, in the position or condition it is in, giving rise to any environmental impact. Examples would include drums of chemical that are not leaking, containers of oil not leaking.
7	This category relates to hazardous material that are more likely to give rise to environmental impact due to their condition or nature. Examples would include uncontained fibrous asbestos and leaking drums.

Definitions

These definitions relate solely to this matrix.

"Inert waste":- Waste which is not biodegradable or hazardous

"Non-hazardous waste":-Waste (other than hazardous waste) which is biodegradable or inert

"Hazardous waste":- Clinical waste and waste which may be special by virtue of The Special Waste Regulations 1996 and its subsequent amendments (note this would include a lot of chemical waste, asbestos board and oil. The definition states "may be" because waste that appears to be special should be treated as special until it is proved otherwise)

"Environmental impact":- an impact on the environment that is likely to cause harm to the health of plants or animals (including man), or pollution of water land or air excluding harm to the amenity of an area (this definition excludes impacts on the amenity of area. It is meant to relate to impacts that are likely to cause harm to ecosystems and the organisms that comprise those ecosystems)

"occupied buildings":- includes occupied land but not public open space.

ANNEX 2 – FORM FOR RELEVANT DETAILS ON FLY TIPPING

DETAILS ON FLY TIPPING

Day:	Name: Address:
Date:	
Time you first saw the tipping:	
Time tipping stopped:	
Was anybody with you? YES/NO*	
If YES, who?	Telephone no:

Where were you at the time of the tipping?

Location – did you have a good view of the incident?

How far away from the incident were you?

What was the weather like (e.g. clear/cloudy/dark)?

What did the waste look like?

How much waste was there?

(e.g. number of bin bags, barrels etc)

How many people did you see tipping waste?

Was there a vehicle involved? YES/NO*

If YES: Make of vehicle:

Colour:

Registration:

* Please circle