

The National Fly-Tipping Prevention Group

Fly-tipping responsibilities: Guide for local authorities and land managers



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Introduction to this document

This document sets out local authority and the Environment Agency’s responsibilities for dealing with fly-tipping.

For the purposes of this document the term ‘fly-tipping’ covers both fly-tipping dealt with by local authorities and illegal dumping dealt with by the Environment Agency.

This document comprises two sections: Part 1 – Who does what – explains the roles, responsibilities and supporting legislation for stopping illegal waste activities and fly-tipping.

Part 2 – The local agreement– explains the roles and responsibilities of the Environment Agency and local councils that may be subject to local agreements.

Fly-tipping is just one of four main types of illegal waste disposal. Whilst the focus of this document is on fly-tipping and illegal dumping, to put this into context we also need to explain a little about littering and illegal waste sites. The diagram below shows the escalation of illegal waste activity.

What is fly-tipping?

Fly-tipping is the illegal deposit of (liquid or solid) waste on land contrary to Section 33 of the Environmental Protection Act 1990.

What are the relevant offences?

Fly-tipping, illegal dumping and illegal waste sites can be dealt with under section 33 of the Environmental Protection Act 1990 (EPA 90) or regulations 12 and 38 of the Environmental Permitting (England and Wales) Regulations 2010 (EPR 10). The terms fly-tipping and illegal dumping are used to differentiate between the roles of the local council and the Environment Agency.

Environmental Protection Act 1990 (EPA 90)

The offence of fly-tipping and of “knowingly causing” or “knowingly permitting” fly-tipping are set out in section 33 EPA 90, in particular section 33(1)(a).



Section 33(5) EPA 90 sets out an aspect of the offence under section 33(1)(a) where there is the unlawful carrying and deposit of waste from a motor vehicle. This means that the person who controls or is in a position to control the vehicle will be treated as “knowingly causing” the waste to be deposited whether or not he or she gave instructions for this to be done.

Under section 33(8) EPA 90, any person/company or other legal entity who is found guilty of an offence under section 33 may be liable on summary conviction to a custodial sentence of up to 12 months or an unlimited fine¹ or both, and on conviction on indictment a custodial sentence for a term up to five years and/or a fine².

Environmental Permitting (England and Wales) Regulations 2010 (EPR 10)

Similar to the provisions under section 33 EPA 90, regulation 38 of EPR 10 sets out the offences of operating, or knowingly causing or knowingly permitting the operation of, a regulated facility without an environmental permit. A regulated facility includes an installation or mobile plant which carries on a waste operation, mining waste operation, radioactive substances activity, water discharge activity or groundwater activity. The courts also have the power to impose a regulation 44 order upon a person convicted of an offence under regulation 38 to take steps to remedy the matter.

This offence also includes the carrying out of any exempt waste operation that does not comply with the criteria of a relevant exemption (including not satisfying Article 13 of Directive 2008/98/EC of the European Parliament and of the Council on waste³ or not being registered etc. (see regulation 5 and Schedules 2 and 3 EPR 10)).

Enforcement undertakings are available in relation to offences committed after 6 April 2015.

Part 1 – Who does what

Both the Environment Agency and local councils have powers and duties to deal with fly-tipping.

For the purposes of this document, ‘local council’ refers to a ‘waste collection authority’, although other local council departments (e.g. Environmental Health) or other local councils (e.g. waste disposal authorities) also have a role. In England, county councils can be responsible for co-ordinating action in relation to tackling and preventing fly-tipping, as well as providing waste disposal facilities.

It is important to remember that both the Environment Agency and local councils have limited

resources available for this work. Clarity of working arrangements, especially at the local level, is important to ensure partnership approaches lead to efficient, effective working.

The reduction of fly-tipping and other waste crimes will, over time, reduce the costs borne by local councils of clearing fly-tipped materials. Eradication of fly-tipping and improved compliance with legislative requirements are likely to require high-profile campaigns promoting the need for householders and businesses to take full responsibility for the waste that they produce and publicising the enforcement work undertaken, including naming and shaming where appropriate.

As with all waste crime, fly-tipping undermines the legitimate waste industry by undercutting those operating within the law. Fly-tipping affects quality of life and enjoyment of the environment. It can begin a spiral of decline within a local environment through pollution, thereby increasing the risk of harm to human health, wildlife and farm animals.

Who does what, when?

The decision trees below give specific examples of who does what. The fly-tipping examples illustrate the sharing of responsibility between the Environment Agency and local councils.

Scope for flexibility in local agreements is also indicated. The Environment Agency and local councils will seek to recover any costs associated with enforcement activities from the polluter, occupier of land or other person or organisation that is deemed responsible for meeting such costs.

Before using the following as a guide, ensure that you gather as much information as possible on the circumstances, land type, extent, nature and potential impact of the waste.

Who is responsible for dealing with fly-tipping or illegal dumping?

Local councils

Local councils are responsible for the clearing of all waste illegally dumped on relevant land and for the investigation of fly-tipping deposits less than 20m³, or accumulations of several small-scale tipping incidents.

Local councils can investigate the larger incidents (more than 20 tonnes, 20m³ or a tipper load), organized (linked to criminal business practices), or hazardous (waste over 75l which have the potential to damage the environment) incidents of illegal dumping if there is a local agreement in place.

Fly-tipping on land

A bag of waste	Report to the local council who may investigate as a littering offence and (if on relevant land) arrange for the removal and disposal of the waste.
A bin bag or several bin bags of household or commercial waste	Report to the local council who may investigate and (if on relevant land) arrange for the removal and disposal of the waste.
A pile of waste about the size of a large car boot (up to 0.5 m ³)	Report to the local council who may investigate and (if on relevant land) arrange for the removal and disposal of the waste.
A pile of waste about the size of a small van up to 7.5 tonne tipper truck (0.5 to 10 m ³)	Report to the local council who may investigate and (if on relevant land) arrange for the removal and disposal of the waste. Local councils to advise the Environment Agency of any successful prosecutions so that it can review any registrations or permits.
A pile of waste from a single large tipper truck (20 m ³ / approximately 18 tonnes)	Where agreed locally, the Environment Agency may carry out enforcement where it is a frequently repeated offence or organised crime is suspected.
< 5 m ³ fibrous asbestos	The Environment Agency will only arrange removal where there is no adequate response from a responsible party and there is actual or imminent threat to the environment, human health or flooding.
Clinical waste or bonded asbestos	Where asbestos is present, notify the Health and Safety Executive (HSE) .
Drums / containers totalling < 75 litres of potentially hazardous waste	Report to the local council who (if on relevant land) arrange for the removal and disposal of the waste.
A pile of waste from several large tipper trucks (each > 20 m ³ , approximately 18 tonnes)	The Environment Agency may investigate and take enforcement action.
> 5 m ³ fibrous asbestos	The Environment Agency will only arrange removal where there is no adequate response from a responsible party and there is actual or imminent threat to the environment, human health.
Drums / containers > 75 litres of potentially hazardous waste (for example in a lay-by)	Where asbestos is present, notify the Health and Safety Executive (HSE) .
Reports of illegal waste sites – a site operating without a permit, where multiple loads of waste are deposited in an organised manner. The activities at the site will generally be known to the landowner / occupier and run as a business. Permit breaches and fly-tipping are not considered illegal waste sites, however, exempt sites operating outside their conditions and permitted sites are operating outside of their permitted boundaries are considered as such.	The Environment Agency will log the incident, may investigate and take enforcement action in conjunction with the local council (including planning department). If reported to the local council it will inform the Planning Department and the Environment Agency and agree the best approach to enforcement.

Fly-tipping in Water⁴

Amenity issues only (ordinary watercourse and main river)	<p>Report to the local council to investigate, enforce and arrange for removal and disposal of the waste (by polluter, owner/occupier or local council).</p> <p>The Environment agency may carry out enforcement where it is a frequently repeated offence or organised crime is suspected.</p> <p>The Environment Agency will arrange for removal.</p> <p>The Environment Agency may carry out investigation and enforcement action.</p>
Significant flood risk on an ordinary watercourse	
Risk of pollution to non-controlled water	
Significant flood risk on main river or critical ordinary watercourse	
Risk of pollution to controlled waters	

Local councils should agree removal and disposal arrangements with the Environment Agency if the illegally dumped waste is more than 5m³ of fibrous asbestos or 75l of potentially hazardous waste in drums or containers.

If a local council has brought a successful prosecution under section 33 EPA 90, then the local council should notify the Environment Agency, so they can consider revoking associated waste carriers' licences.

The Environment Agency

The Environment Agency responds to the most serious incidents reported to the Incident Communications Service via the 0800 80 70 60 telephone number (24/7). Any non-serious incidents reported to the Environment Agency are forwarded to the appropriate local council the following working day.

The Environment Agency may investigate the larger (more than 20 tonnes, 20m³ or a tipper load), organized (linked to criminal business practices), or hazardous (waste over 75l which have the potential to damage the environment) incidents of illegal dumping. The Environment Agency also has the powers to investigate illegal waste sites.

To stop illegal waste activity, the Environment Agency has powers to take appropriate enforcement action against large-scale illegal dumping, organised criminal involvement in waste crime and the dumping of certain hazardous wastes.

The provision of an adequate network of waste management facilities is important to help prevent illegal waste activities and fly-tipping. The Environment Agency provides advice and guidance on the relevant legislation and requirements imposed by any authorisation to those operating or seeking to operate waste management facilities – but ultimately it is for the operator to fulfil their legal obligations by obtaining and relying on their own independent advice.

The Environment Agency regulates much of the waste management industry and major waste producing industries, through permits and exemptions, and keeps a register of waste management activities that are exempt from requiring a permit. It maintains a register of a range of waste managers, including carriers and brokers of waste and those whose business it is to recycle or dispose of waste.

As a regulator the Environment Agency engages with business to:

- educate and enable compliance
- promote the Duty of Care with waste producers, carriers, brokers and those that that keep, treat or dispose of controlled waste
- offer information and advice to those it regulates
- seek to avoid bureaucracy or excessive cost
- encourage individuals and businesses to put the environment first and to integrate good environmental practices into normal working methods
- carry out enforcement action against both permit breaches and illegal activities in line with the Enforcement and Sanctions Statement.⁵

The Environment Agency follows the principles of firm but fair regulation:

- proportionality in the application of the law and in securing compliance – to prevent harm to people and the environment from occurring or continuing. Any enforcement action it takes will be proportionate to the risks posed to people and the environment and also to the seriousness of the breach of the law and its impact on legitimate business;

- consistency of approach – taking a similar approach in similar circumstances to achieve similar ends, using discretion where appropriate;
- transparency about how it operates and what those it regulates may expect from the Environment Agency – the Enforcement and Sanctions Guidance⁶ provides transparency on how it will approach and deal with offences;
- targeting of enforcement action – making sure that regulatory effort is directed primarily towards those whose activities give rise to or create the risk of serious environmental damage, where the risks are least well controlled, or against deliberate or organised crime; and
- accountability for the enforcement action – the Environment Agency takes responsibility for its decisions, and will justify them where appropriate.

The Environment Agency may seek to recover any costs associated with tackling illegal waste activities and fly-tipping, including any costs associated with ‘clean-up’. Ideally, this will be from the polluter but may also include recovery from the occupier or those responsible for the affected land.

The Environment Agency may investigate and take appropriate enforcement action against the following waste crimes which could have a link to fly-tipping:

- illegal waste activities such as illegal transfer stations and unpermitted landfill sites
- illegal dumping (large-scale fly-tipping more than 20m³; more than 75l of hazardous waste in drums or containers)
- unregistered waste carriers and brokers including those identified through national and local stop exercises
- registered waste carriers and brokers that commit a relevant offence (e.g. those specified in the Control of Pollution (Amendment) Act 1989 (CPAA 89)).

The Environment Agency has the powers to investigate, arrange for the removal of and take appropriate enforcement action with regard to:

- waste (including animal carcasses or remains) dumped in controlled waters⁷ that is giving rise to an actual or an imminent threat of water pollution
- waste (including animal carcasses or remains) that is impeding the flow of water such as to give rise to an actual or imminent threat of a significant flood risk in a main river

- any waste described above that is dumped in a way as to give rise to an imminent threat to human health or serious harm to the environment.

Where the problems identified are not ‘actual or imminent’ the Environment Agency may intervene where this will have significant benefits such as preventing future problems arising.

The Environment Agency will continue to provide guidance, training and sharing knowledge and expertise to local councils and other organisations affected by or with responsibility for tackling fly-tipping and other forms of illegal waste activity.

Landowners – fly-tipping on private land

If waste is fly-tipped on private land, then the landowner will decide how to deal with the waste and may pay for the cost of disposal. Landowners can pass details of fly-tipping on their land to their local council to input for recording purposes.

Local councils have the discretion to choose whether to investigate such incidents on private land, but have no obligation to clear fly-tipped waste. It is unlikely that the Environment Agency will clear the waste, although it may provide other assistance or advice if the environment or human health is under threat.

Recent case law has shown that in some circumstances, landowners may become liable for “knowingly permitting” unlawful waste activities if they fail to address them.

The National Fly-tipping Prevention Group

The National Fly-Tipping Prevention Group (NFTPG)⁸ includes a range of representatives of landowners; businesses; English, Northern Irish and Welsh national and local governments; the Scottish Environmental Protection Agency; Natural Resources Wales; and the Environment Agency. It seeks to identify good practice in preventing and tackling fly-tipping and to advise government as to the problems and potential solutions with regard to fly-tipped wastes.

The Environment Agency and local councils both support the work of the NFTPG to assist landowners and their representatives to identify and share good practice to prevent fly-tipping. See Part 2 – The local agreement below for more information.

The NFTPG have published a Fly-tipping Partnership Framework⁹ which provides practical advice on how to prevent and tackle fly-tipping.

Case studies on how to prevent fly-tipping and other guides for landowners, businesses and householders, are available on NFTPG website.¹⁰

The legislation

These powers and duties are a summary of applicable legislation and are correct as at 1st December 2015.

The following sets out the powers and duties of the Environment Agency and local councils in respect of fly-tipping.

With regard to duties and powers relating to fly-tipping and illegal dumping, the sections are ordered as:

- a. The duties of both the Environment Agency and local councils
- b. The duties of the Environment Agency
- c. The duties of local councils
- d. The powers of both local councils and the Environment Agency
- e. Additional powers of the Environment Agency
- f. Additional powers of local councils.

a. The duties of both the Environment Agency and local councils

Environmental Protection Act 1990 (EPA 90) Part 2 – section 59 and 59ZA

In exercising powers under section 59 (and 59ZA) the enforcing authority (the Environment Agency or local council) should exercise them in accordance with the priority set out in any direction from the Secretary of State.

Police and Criminal Evidence Act 1984 (PACE 84)

Anyone undertaking a criminal investigation should ensure that they act in accordance with PACE 84.

Anti-social Behaviour Act 2003(ASBA 03)

Both enforcing authorities must enter details of fly-tipping and illegal dumping incidents onto the database.

Regulatory Investigation Powers Act 2000 (RIPA 00)

Surveillance and investigations must be carried out in accordance with RIPA 00 Parts 1 and 2.

b. The duties of the Environment Agency

The Environment Agency has no specific direct statutory duty requiring it to take action in respect of fly-tipping.

Environment Act 1995 (EA 95)

Under section 4, it is the principal aim of the Environment Agency (taking into account the legislation and any likely costs) to protect and enhance the environment whilst discharging its functions, so as to make a contribution towards attaining the objective of sustainable development. The Environment Agency has been given guidance by the Secretary of State as to its objectives under this provision. The guidance includes the need to take a holistic approach, taking a long-term view and working in partnership with regulated organisations to further improve management techniques. In considering costs, the guidance suggests that the Environment Agency should take a broad view of all costs whether quantifiable or not.

Under section 6, the Environment Agency has a duty (to the extent it considers desirable) generally to promote the conservation and enhancement of the natural beauty, and amenity of inland and coastal waters and associated land, the conservation of flora and fauna dependant on an aquatic environment and the use of such waters and land for recreational purposes.

Under sections 39 and 56, the Environment Agency, in deciding whether and how to exercise its powers, must generally take into account the likely costs and benefits when exercising (or not exercising) its powers, or in deciding the manner of exercising its powers. 'Costs' includes costs to any person as well as costs to the environment.

Waste (England and Wales) Regulations 2011 (WR 11)

The Environment Agency has a duty under regulation 29 to maintain a public register of waste carriers.

Environmental Permitting (England and Wales) Regulations 2010 (EPR 10)

The Environment Agency has a duty to maintain a public register in respect of regulated facilities under regulation 46 and Schedule 24. It also maintains a register of establishments and undertakings carrying out exempt waste disposal and recovery operations. The Environment Agency carries out appropriate periodic inspections of sites registered exempt (Schedules 2 and 3 to EPR 10).

Environmental Information Regulations 2004 (EIR 04)

Where a request is made to the Environment Agency under the EIR 04¹¹, there is a presumption that environmental information must be released unless there are strong public interest considerations to justify withholding it which would outweigh the public interest in release.

c. The duties of local councils

Environmental Protection Act 1990 (EPA 90)

Duties of waste collection / disposal authorities

Section 45 sets out the duties of waste collection and waste disposal authorities.

Clearance of litter and refuse

Under Part 4 of EPA 90 “principal litter authorities” must ensure, so far as is practicable, clearance of litter and refuse from “relevant land” (section 89(1) (c)). The following are “principal litter authorities” - a county council; a county borough council; a district council; a London borough council; the Common Council of the City of London and the Council of the Isles of Scilly (section 86(2)).

“Relevant land” is land that is open to the air (notwithstanding that it is covered if it is open to the air on at least one side), but not a highway, which is under direct control of a principal litter authority and to which the public are entitled or permitted to have access, with or without payment (section 86(4)).

A local council must also ensure that any “relevant highway” for which it is responsible, so far as is practicable, kept clear of litter and refuse (section 89(1) (a)). A “relevant highway” is one that is maintainable at public expense, but not a trunk road which is a special road. A local council is responsible for so much of the highway as falls within its area (section 86(9)).

There is no statutory definition of “litter and refuse”, although section 98(5A) does provide that “litter” includes— a) the discarded ends of cigarettes, cigars and like products, and b) discarded chewing-gum and the discarded remains of other products designed for chewing”.

Code of practice on litter and refuse¹²

This statutory Code of Practice provides practical guidance on the discharge of litter authorities’ duties relating to litter and refuse.

The Code sets out cleanliness standards based on land use and time. In terms of practicality, it states that some “circumstances may render it impracticable for the body under the duty to discharge it”. Examples are given, such as severe weather conditions; special events preventing access and avoiding damage to sensitive habitats.

The duties that apply to principal litter authorities in relation to relevant land also apply to each local highway in respect of relevant highways (highways maintained at public expense apart from trunk roads); statutory undertakers; and governing bodies

of schools as respects their relevant land open to the air and under the governing bodies’ direct control.

The Litter Act 1983 (LA83)

Where a litter authority provides and maintains bins for refuse or litter in streets or public places, it must make arrangements for them to be regularly emptied and cleaned, sufficiently frequently to ensure that no bin or its contents becomes a nuisance or give reasonable ground for complaint (section 5(2) and (3)).

d. The powers of both local councils and the Environment Agency

Part 2 of the Environmental Protection Act 1990 (EPA 90)

Illegal deposit of waste, section 33

Nothing in section 33 defines the authorised enforcing agency, so anyone can prosecute under section 33(1)(a). This section prohibits the deposit of controlled waste (solid and liquid) or extractive waste in or on land except and in accordance with an environmental permit. There is also provision under section 33(5) that allows for charges to be brought against the person who controls, or is in a position to control, the use of a vehicle, if that vehicle has been involved in fly-tipping. There are statutory defences available under section 33(7) to persons charged with offences under this section.

The Clean Neighbourhoods and Environment Act 2005 brought in an amendment to section 33 for section 33 offences by adding sections 33A: investigation and enforcement costs; 33B: clean-up costs and 33C: forfeiture of vehicles. Under these sections an application can be made to the courts following a successful prosecution for a section 33 offence.

Duty of care, section 34

Section 34 covers a range of offences relating to a person’s failure to comply with their duty of care as respects controlled waste. Such a person can be prosecuted by both enforcing authorities¹³.

In respect of non-household waste, both enforcing authorities can serve notice requiring the furnishing of waste information (including waste transfer notes) under the provisions of section 34(5) EPA 90 and regulation 35 WR 11.

Power to search and seize vehicles etc, sections 34B and 34C

Under sections 34B and 34C both the Environment Agency and local councils can seize a vehicle, trailer or mobile plant suspected of being involved in waste crime for further investigation.

Power to remove waste and remediate and serve notice to require removal of waste and remediation, sections 59 and 59ZA

Both enforcing authorities¹⁴ may serve and enforce a notice under section 59 requiring the occupier of land to remove material fly-tipped in contravention of section 33(1) and/or reduce the consequences of the deposit of that fly-tipped material, subject to a right of appeal and/or the occupier establishing a statutory defence. This has been extended to give a supplementary power in relation to issuing notices to the owner of land under section 59ZA.

Under section 59 both enforcing authorities may remove fly-tipped material and can seek to recover the necessary costs of doing so from the occupier of the land or any person who deposited, knowingly caused or knowingly permitted the deposit of the controlled waste.¹⁵

Notice to require information, section 71

Both the Environment Agency and local councils¹⁶ can use section 71 notices for the purpose of the CPAA 89, to require anyone they consider may be able to provide them with the name and address of the person using the vehicle at the time when the offence was committed.¹⁷

Local councils cannot use section 71 notices for any other purpose, whereas the Environment Agency can use section 71 notices to obtain any information it reasonably considers it requires for the purposes of its functions under Part 2 of the EPA 90.

Environmental Permitting (England and Wales) Regulations 2010 (EPR 10)

Unpermitted water discharge activities, Schedule 21 and regulations 12 and 38

Both enforcing authorities¹⁸ can take action for the unpermitted deposit of waste matter in surface waters.

Power of the regulator to prevent or remedy pollution regulation 57

Both enforcing authorities can arrange for steps to be taken to remove the risk of serious pollution which arises as a result of the operation of a regulated facility or an exempt facility.

Environment Act 1995 (EA 95)

Powers of entry, section 108

Both enforcing authorities have powers of entry for their pollution control functions. Section 108(1) provides that a person who appears to be suitable to an enforcing authority may be authorised to carry

out any of the powers specified in section 108(4). Section 108(15) states that an enforcing authority means (amongst others) – (ba) a waste collection authority and (d) a local enforcing authority. A waste collection authority is not restricted in its use of the powers. Section 108(15)(ba) was inserted by the ASBA 03. In terms of a local enforcing authority, this is then further defined and means a local enforcing authority within the meaning of Part 1 of the EPA 90, a local council within the meaning of Part 2A of the EPA 90, a local council for the purposes of Part 4 of the EA 95 and a local council under section 2 of the Pollution Prevention and Control Act 1999.

Powers to seize or render harmless any article or substance that is a cause of imminent danger of serious pollution of the environment or serious harm to human health, section 109

Both enforcing authorities have powers under section 109 for their pollution control functions.

Control of Pollution (Amendment) Act 1989 (CPAA 89)

Seizure of vehicles, section 5 CPAA 89

Under section 5, both the Environment Agency and local councils can seize a vehicle, trailer or mobile plant suspected of being involved in waste crime for further investigation.

Powers to obtain injunctions

In some cases both the Environment Agency and local councils may be able to obtain an injunction against a person to prevent further offending or requiring remedial steps to be taken. This is implicit in section 5 EA 95, but restricted to the most serious cases.

Powers of Criminal Courts (Sentencing) Act 2000 (PCCSA 00)

Powers to require forfeiture of items - Section 143

As the name suggests, this is a power that can be used by either party but belongs to the courts. Either enforcing authority can apply for items used in the commission of an offence to be forfeit. In most cases the item should be in the custody of the police to prevent disposal by the defendant before sentencing. It is unlikely the court would agree to invoke section 143 prior to sentence.

Disqualification from driving - Section 146

Either enforcing authority can apply to the courts for an order under section 146 for the defendant to be disqualified from driving a vehicle for a period of

time. Like section 143, it is unlikely the court would agree to invoke section 146 prior to sentence.

The Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015 (CW DSP 15)

These Regulations provide for how seized property must be dealt with in England (and Wales), where property is seized under section 5 CPAA 89 (power to require production of authority, stop and search etc.) or section 34B and 34C EPA 90 (power to search and seize vehicles, supplementary provisions etc.). The Environment Agency and a waste collection authority can seize vehicles and their contents under these powers.

e. Additional powers of the Environment Agency

Waste (England and Wales) Regulations 2011 (WR 11)

The Environment Agency can refuse to register a person as a carrier of controlled waste where that person, or another relevant person, has been convicted of a prescribed offence. Regulation 29(5) registration may be refused if, in the opinion of the appropriate body, it is undesirable for the applicant to be authorised to transport controlled waste or to act as a broker or dealer of controlled waste (as the case may be); and the applicant or another relevant person has been convicted of a relevant offence.

Under regulation 32, registration may be revoked if the registered person or any other relevant person has been convicted of a relevant offence or, in the opinion of the appropriate body it is undesirable for the registered carrier, broker or dealer to continue to be authorised to act as a carrier or broker of, or a dealer in, controlled waste (as the case may be).

Environmental Permitting (England and Wales) Regulations 2010 (EPR 10)

Under paragraph 12 of Schedule 5, the Environment Agency must refuse an application for the grant of an environmental permit if it considers that, if the permit is granted, the following requirements will not be satisfied: that the applicant is the operator of the regulated facility; or that the applicant will operate the regulated facility in accordance with the environmental permit.

Regulation 22 provides powers for the revocation of an environmental permit in whole or in part.

Regulation 23 empowers the courts to stipulate appropriate steps to be taken after the revocation takes place.

Regulation 57 provides powers to prevent or remedy pollution where:

- there is a risk of serious pollution as a result of the operation of a regulated facility or an exempt facility, it can arrange for steps to be taken to remove the risk under regulation 57(1) EPR 10 and recover the costs from the operator or person carrying on the operation or activity.
- an offence has been committed or is suspected and pollution has been caused as a result, it can arrange for steps to be taken under regulation 57(2) EPR 10 and recover the costs from the operator.

Water Resources Act 1991(WRA 91) and Land Drainage Act 1991 (LDA 91)

Under section 211 and Schedule 25 WRA 91 and section 23 LDA 91, the Environment Agency may make and enforce bye-laws in respect of obstructions within rivers. Main rivers are generally covered by WRA 91 (Environment Agency) and ordinary watercourses by LDA 91 (local councils).

Under section 107 WRA 91 and section 25 LDA 91, the Environment Agency may serve a notice on any person who caused an obstruction (so as to impede the flow) within a main river or, in restricted circumstances, on the landowner to remove the obstruction and enforce that notice.

Under section 109 WRA 91, the Environment Agency may remove obstructions within main rivers.

Under section 161A WRA 91, the Environment Agency can serve a notice (an "Anti-Pollution Works notice") on a person who has caused or knowingly permitted poisonous, noxious or polluting matter or any waste matter to enter, be likely to enter, or be present in controlled waters, requiring them to remove that material and enforce that notice.

Under section 161 WRA 91, the Environment Agency may take action to prevent from entering, or remove from, controlled waters, any poisonous, noxious or polluting matter or solid waste matter and seek to recover the costs from any person who caused or knowingly permitted the matter to enter, be likely to enter, or be present in the controlled waters.

Environment Agency powers to prosecute

The Environment Agency can undertake prosecutions under regulation 38 EPR 10. Decisions to institute prosecution proceedings are taken in accordance with the Enforcement and Sanctions Statement.

f. Additional powers of local councils

Fixed penalty notices for fly-tipping

Local authorities have powers under section 33ZA EPA 90 to issue fixed penalty notices for fly-tipping.

The offence of leaving litter - Part 4 of the EPA 90

Under section 87, it is an offence to throw down, drop or otherwise deposit litter in a public open place and leave it so as to cause defacement by litter. A local authority can take proceedings for breach of this section. It also has powers under section 88 EPA 90 to issue fixed penalty notices.

Litter Act 1983 (LA83)

A litter authority can provide and maintain, in any street or public place, litter bins for refuse or litter under section 5(1).

Prevention of Damage by Pests Act 1949 (PDPA49)

Under section 4, a local council can serve a notice on an occupier and/or owner of land, but not agricultural land, in its area, if it appears to the local council that steps should be taken for the destruction of rats or mice on the land or otherwise for keeping the land free from rats and mice. The notice can include the application to the land of any form of treatment and/or the carrying out on the land of any structural repairs or other works.

Anti-social Behaviour, Crime and Policing Act 2014 (ASBA 14)

Section 43 gives local authorities, the police or a social landlord the power to issue community protection notices, if the conduct of a person/body is having detrimental effect on quality of life of those in the locality, is persistent/continuing in nature and is unreasonable. The notice will direct the individual, business or organisation responsible to stop causing the problem and it could also require the person responsible to take reasonable steps to ensure that it does not occur again.

Section 59 gives local authorities the power to make public spaces protection orders to deal with particular, ongoing problems or nuisances which negatively affect the community's quality of life by targeting the person responsible. The power to issue a notice is available to police officers (and police community support officers (PCSOs) if designated by the chief constable).

These notices replace current measures such as litter clearing notices, defacement removal notices and street litter control notices. It is not meant to replace the statutory nuisance regime.

Town & Country Planning Act 1990 (TCPA 90)

Under section 215, if it appears to a local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, it can serve on the owner and occupier of land a notice requiring steps to remedy the condition of the land within a certain time.

Control of Pollution Act 1974 (CPA 74)

Under section 22(3), a district council or London borough council and the Common Council of the City of London or a local council in Wales can arrange for any land in the open air to which members of the public have access, either as of right or otherwise (but not the site of a highway for which there are other powers), to be cleaned. Such arrangements must be with the consent of any person who has an interest in or is the occupier of such land and can include an agreement for such persons to pay the charges in respect of the cleaning.

Public Health Act 1936 (PHA 36)

Under section 78, a local council can sweep and clean any court, yard or passage which is used in common by the occupants of two or more buildings, but is not a highway repairable by the inhabitants, if it is not regularly swept and kept clean and free from rubbish or other accumulation to the local council's satisfaction. The local council can recover any expenses reasonably incurred from the occupiers of the buildings which front or about the court or yard, or to which the passage affords access.

Public Health Act 1961 (PHA 61)

Under section 34, a local council can take steps to remove rubbish, as it thinks necessary, in the interests of amenity, if it appears to it that there is rubbish on any land in the open air in their area which is seriously detrimental to the amenities of the neighbourhood. Rubbish means rubble, waste paper, crockery and metal and any other kind of refuse (including organic matter), but it does not include material accumulated for or in the course of any business or waste deposited in accordance with a disposal licence.

Refuse Disposal (Amenity) Act 1978 (RDAA 78)

Under section 6, a local council can, if it thinks fit, remove any item in its area, other than a motor vehicle, which is abandoned without lawful authority on any land in the open air or on any other land forming part of a highway.

Local council's powers to prosecute

Under section 222 of the Local Government Act 1972, a local council may prosecute or defend or appear in any legal proceedings where it considers

it expedient for the promotion or protection of the interests of the inhabitants of their area. This can allow local councils to prosecute persons/bodies outside their area if appropriate to do so (e.g. prosecute for failure to comply with duty of care by a body located in another area, if that failure is impacting on a wider area).

Unless legislation precludes it, a local council may institute criminal proceedings under any legislation.

Part 2 – The local agreement local agreement

Local councils and the Environment Agency are encouraged to agree practical, local approaches for stopping fly-tipping and illegal waste activities, particularly in local hot-spots of illegal activity. There is scope for flexibility as to how the Environment Agency and individual local councils work together, through local agreements to deal with illegal waste activities.

Local agreements should consider:

- The Environment Agency may investigate and take appropriate enforcement action against large-scale illegal dumping of waste, organised criminal involvement in waste crime and the dumping of certain hazardous wastes.

Local councils may investigate and take appropriate enforcement action for all other littering and fly-tipping cases, and clean up wastes on relevant land.

The Environment Agency, local councils and other partners can develop a local agreement where there is a waste crime problem (this can include littering, fly-tipping, illegal dumping and illegal waste sites).

The sign-off of local agreements is a matter for the partners concerned and should be by someone who is in a position to represent that party and ensure that the agreement is adhered to.

Partners

To successfully stop waste crime it is important to engage relevant partners to develop a way forward. Links should be set up with an existing local forum which can consider options to stop waste crime.

Partners could include:

- The Environment Agency/local councils (waste collection authorities; waste disposal authorities; environmental health officers; trading standards officers; planning officers; traveller liaison officers)

- Local police
- Other law enforcement or regulators
- Large landowners (this can include representatives of landowners such as the NFU, CLA or any landowner who is suffering excessive fly-tipping problems e.g. the National Trust, Network Rail, Canal and River Trust)
- Local press/media
- Local waste contractors.

Context

To help partners understand their role, the agreement should set out the background, and provide data relating to the waste crime problem.

Aims

The aims of a local agreement are to:

- identify the waste crime issue and explain how it will be reduced or stopped
- set out the skills required to tackle the problem
- agree the roles and responsibilities, and establish an effective working relationship between partners
- agree metrics and data collection to measure success
- establish the effective sharing of intelligence, information and best practice between partners
- identify training needs and options for how these can be provided
- agree targeted publicity campaigns to discourage offenders and ensure that convicted offenders are named and shamed as appropriate.

Local arrangements

To enable partners to successfully work together, this section should detail the following:

- Resources and working arrangements. This could include response times to investigate incidents and carry out any necessary clean-up; and the responsibilities, resources and standard of response to other waste crimes such as unlicensed waste sites, waste burning, unregistered waste carriers.

- Effective sharing of information between partners is essential. The agreement should set out the working arrangements for how intelligence relating to illegal activity and waste crime should be shared and ideally be agreed in liaison with the local police. This should include formal information-sharing agreements amongst partners and the establishment of secure mechanisms for information/intelligence-sharing. This should also extend to the sharing of information about successful convictions, as the Environment Agency will need to ensure unsuitable (convicted) registered carriers (and those applying to become registered) are removed from the register/their suitability is considered carefully.
- What equipment is available in the area, location, and lead contacts for each partner? Partners should agree on the sharing of equipment, ensuring other parties are informed, when and where any surveillance work will be carried out, and commitment to follow up enforcement work.

This section should also set out additional scenarios which do not have clear national responsibilities but which are of concern in a local area. An example is the identification of any watercourses at risk, the responsibilities of each party and making arrangements for:

- wastes to be removed from watercourses
- removal of fly-tipped wastes (including hazardous wastes) and any agreement for sharing of contracts for removal
- storing of seized vehicles
- Duty of Care checks
- training exercises
- dealing with fly-tipping on private land, which could include identifying hot-spots, targets and setting out roles and responsibilities.

Health and safety

Partners should share appropriate health and safety information and risk assessment information wherever necessary. If a joint exercise is mounted, the lead partner is responsible for ensuring adequate risk assessment and risk control measures are in place. Each partner should have a named individual who will be responsible for ensuring that partners follow any risk management and health and safety procedures. Any known areas of high risk should be flagged up at an early stage by anyone involved in the agreement.

Designing out fly-tipping

Partners should consider how any refurbishment or development features can stop waste crime and produce a list of areas where design features could reduce the problem. Options should be considered to increase signage, improve lighting and install cameras to reduce waste crime and to maximise the detection of offenders.

Enforcement and prosecution policy

Ensure that enforcing authorities have compatible, consistent and transparent enforcement policies.

Publicity campaigns

Publicity can act as a deterrent to others, so the agreement should set out how successful enforcement activity can be publicised and offenders can be 'named and shamed'.

The agreement should consider how partners can use publicity to assist in waste crime prevention. It may be useful for the agreement to set out a documented media plan. Partners could consider the waste types, typical offenders, and hot-spots that are a problem and set out if any resource is available to run targeted campaigns.

It is equally important to promote the legitimate management of waste. This can be achieved through promoting the Duty of Care and also through clearly promoting local arrangements for waste management, such as opening times of civic amenity sites, arrangements for bulky waste collections and any trade waste services that are offered.

Review and evaluation

Partners should agree a number of outcomes with associated success criteria upfront to ensure that fly-tipping incidents are dealt with properly and waste crime is reduced. The agreement is successful when partners continue to participate and remain enthusiastic and effective, so it is useful to circulate regular updates on work carried out and share lessons learned.

It is important to set out that the agreement is a working document and will need to be reviewed regularly to ensure that it remains up to date with any legislative, resources, 'hot-spot' changes etc.

Conclusion

There is no single solution to prevent or reduce fly-tipping - what works in some places may not necessarily work in others. There are a number of reasons for this: the local geography and accessibility of sites; local issues with access to legitimate waste industry facilities; the economic climate and so on.

As discussed in Part 2 – The local agreement, it is important that partners should work together to deal

with fly-tipping. For local fly-tipping strategies to work, partners need to understand the drivers behind the problem, in order to identify what might stop it. This will help partners target the specific local fly-tipping problems. Only after a thorough analysis of the problem should local intervention strategies be adopted.

While enforcement is a valid and legitimate way to reduce fly-tipping, it is not always efficient. If everyone understands their duty of care it will help to ensure waste stays in the legitimate waste stream and reduce the waste crime problem.

Annex A: Water body definitions

Main river

A statutory type of watercourse in England and Wales, usually larger streams and rivers, but also include some smaller watercourses. A main river is defined as a watercourse marked as such on a main river map, and can include any structure or appliance for controlling or regulating the flow of water in, into or out of a main river. The Environment Agency carries out maintenance, improvement or construction work on main rivers to manage flood risk.

Ordinary watercourse

One of the two types of watercourse in statutory language in England and Wales. Ordinary watercourses include every river, stream, ditch, drain, cut, dyke, sluice, sewer (other than a public sewer) and passage through which water flows and which does not form part of a main river. Lead local flood authorities, district councils and internal drainage boards carry out flood risk management work on ordinary watercourses.

Critical ordinary watercourse

A subdivision of ordinary watercourses, certain anti-flooding responsibility for which was assumed by the Environment Agency. They were created following Defra's Flood and Coastal Defence Funding Review published in February 2003. The transfer to EA of approximately 1,800 watercourses has now been completed in three phases (1 November 2004, 1 April 2005, and 1 April 2006).

Non-controlled water

Anything that is not controlled waters, which could be ponds and rivers.

Controlled water

These are fully defined in Section 104 of the Water Resources Act 1991. They include in summary:

- relevant territorial waters which extend out to sea for three miles from the low-tide limit from which the territorial sea adjacent to England and Wales is measured
- coastal waters from the low-tide limit to the high-tide limit or fresh-water limit of a river or watercourse.
- inland freshwaters
- natural and artificial lakes, ponds, reservoirs, rivers or watercourses above the fresh-water limit
- natural and artificial underground rivers and watercourses
- surface water sewers, ditches and soakaways that discharge to surface or groundwater
- it also includes those that may be currently dry.
- groundwaters any waters contained in underground strata.
- It does not include any public sewer or any drain that enters into a public sewer (foul sewer).

Endnotes

1. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015
2. Sentencing Guideline for Environmental Offences
3. EC Directive 98/2008
4. Water body definitions are at Annex A
5. <https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-statement>
6. <https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-statement>
7. The definition of “controlled waters” can be found in the [WRA 91](#), with additional “main river” controls detailed in the [LDA 91](#).
8. Details of Members of the National Fly-Tipping Prevention Group details can be found on the [NFTPG website](#)
9. <http://www.tacklingflytipping.com/Documents/NFTPG-Files/20140410%20Fly-tipping%20framework%20FINAL.pdf>
10. <http://www.tacklingflytipping.com/casestudies/1506>.
11. The [Freedom of Information Act 2000](#) also gives anyone the right to access recorded information held by public sector organizations.
12. [Code of practice on litter and refuse](#)
13. Only waste collection authorities (districts, borough and unitaries) and the Environment Agency can prosecute, not waste disposal authorities.
14. Only waste collection authorities (districts, borough and unitaries) and the Environment Agency can prosecute, not waste disposal authorities.
15. The courts also have the power to impose a regulation 44 order upon a defendant who is found guilty to remediate a site.
16. Only waste collection authorities (districts, borough and unitaries) and the Environment Agency can prosecute, not waste disposal authorities.
17. This was extended to local councils by virtue of S7 of the Control of Pollution (Amendment) Act which resulted in a waste disposal authority being a regulatory authority. Furthermore the Anti Social Behaviour Act 2003 in Section 55 (3) made further amendments to include WCAs within the definition of regulatory authority for the purpose of Sections 5-7 of the CoP(A)A.
18. Only waste collection authorities (districts, borough and unitaries) and the Environment Agency can prosecute, not waste disposal authorities.