

# **Flytipping in Scotland: A Guide to Prevention and Enforcement**

## **Scottish Flytipping Forum**

**December 2010**

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## 1. Introduction

This Guidance has been produced by the Scottish Flytipping Forum on behalf of the Forum members, to provide information for enforcement officers dealing with the illegal disposal of waste in Scotland.

It is principally for local authority and Scottish Environment Protection Agency (SEPA) officers with waste enforcement responsibilities. However, it will also be of value in providing information for members of the public and land managers on the roles and responsibilities of the regulators.

The Guidance is concerned with ensuring the issue of illegal waste disposal is dealt with holistically. It describes the processes for the prevention of flytipping and, if required, the enforcement options that are available.

### Definition of Flytipping

Flytipping is the 'illegal deposit of waste onto land that has no license to accept it.' In other words, it is the act or process of dumping waste illegally.

The definition of flytipping is deliberately wide. This is because there is a general recognition that flytipping, whether a dumped washing machine, a pile of used



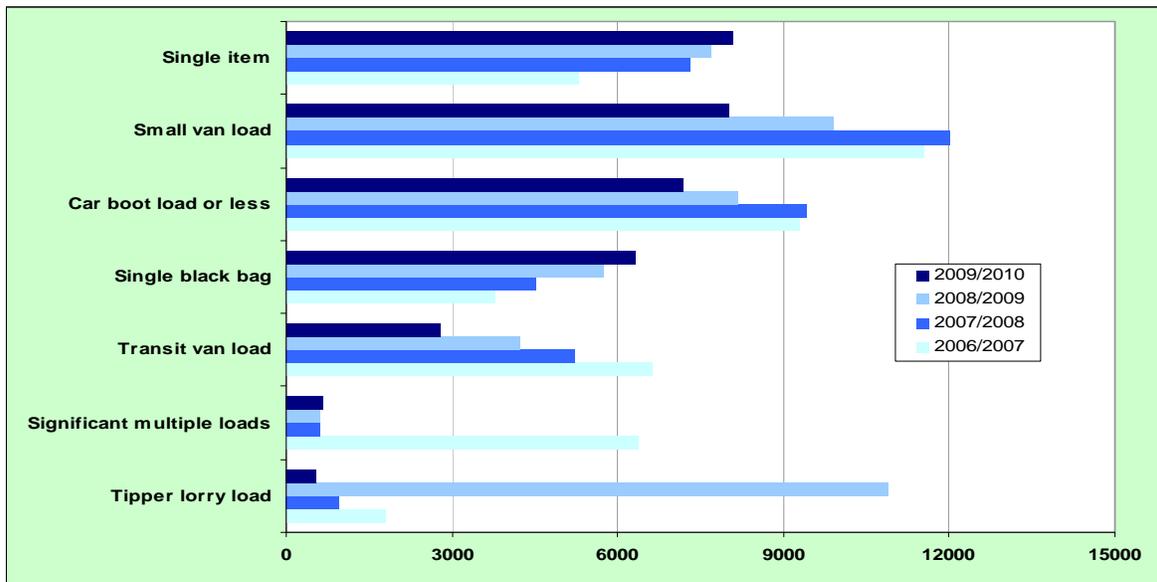
tyres, or a lorry load of demolition waste, can be linked to antisocial behaviour and the fear of crime in our communities.

### The Scale of Flytipping in Scotland

There is currently no definitive measure of the scale of flytipping across the country. However, the data that is available, through local authority reports to the Flycapture database, suggests that:

- Mixed urban and rural local authorities (as defined by Audit Scotland) accounted for just over three quarters of the reported flytipping incidents in 2009/2010.
- Roads and council land had the majority of reported flytipping incidents in 2009/2010 (41% each).

- Household waste (black bags and other household waste combined) accounted for 70% of the waste reported in 2009/2010.
- Single items and small van load sizes of flytipping were the highest recorded in 2009/2010 (24% each).



- An estimated £334,422 was spent on enforcement action in 2009/2010, with investigating flytipping incidents making up the majority of the cost (£231,759).
- 374 fixed penalty notices were issued in 2009/2010.
- Only two prosecution outcomes were recorded in 2009/2010, both of these were fines totalling £100.

These figures are provided by some of the Scottish local authorities but there is currently no mechanism for collecting data from owners and managers of private land.

### Reasons for Flytipping

The reasons given for flytipping waste are almost as wide as the variety of materials dumped.

In relation to business waste, it is most often the avoidance of waste management charges which drives flytipping. However, ignorance of the options available to businesses may contribute to business owners failing to meet their duty of care. In particular there are issues for small businesses, operating from domestic premises with no provision for business waste, who may illegally deposit business waste in a domestic waste bin at their home, for example, self employed tradesmen.

### **Case Study**

#### **Fife Council Small Trader Scheme**

- Two tier Annual Recycling Season Ticket for vehicles up to and including 3.5 tonnes GVW.
- £63 Standard Ticket allows disposal of recyclables, incl. paper, cardboard, cans, scrap metal
- £210 Construction and Green Waste Ticket includes the above plus green waste, wood, soil, rubble.
- £30 admin fee for processing the application
- To the end of 2007, 407 Season Tickets were bought in 8 months – an income of £100,000

#### Benefits to Traders

- Provides access to 7 Recycling Centres in Fife which are licensed and capable of taking Commercial/Business Waste.
- The ticket cost equates to the cost of a couple of skips, and traders can access Recycling Centres as often as they wish without the stress of being challenged.
- Applications can be made by post or in person at the local depot, so no queues.
- Helps traders budget for their waste disposal costs.
- Allows purchase of Fife Council commercial waste sacks to dispose of small amounts of non-recyclable waste.
- Significant cost savings – it is cheaper for the trader to recycle than to landfill (a general mixed waste permit is £78 per consignment).
- Helps businesses with poor storage facilities.
- Easier to meet Duty of Care requirements (the ticket is also a Waste Transfer Note).

#### Benefits to Fife Council

- Satisfies requirements of Waste Transfer Notes so reduces burden on site attendants and allows Fife Council to comply with their duty of care obligations.
- Waste that may previously have been landfilled is now recycled.
- Flytipping should gradually reduce, resulting in savings to the Council in clean up costs and reduced complaints.
- Satisfies the 'proximity principle' by enabling businesses to dispose of waste at their nearest Recycling Centre.
- Reduces cost of waste previously processed as domestic waste.
- Helps meet landfill diversion target.
- Information and intelligence is held on over 400 Fife businesses which the Council did not previously have access to – process of elimination to then find out which businesses are not using the scheme.

Scotland is fortunate in having an excellent domestic waste infrastructure, with domestic waste collection, special or bulky uplift systems and civic amenity/recycling site provision. The flytipping of domestic waste is therefore more difficult to understand. However, again, ignorance of the disposal options available may be a contributing factor.

In both cases there are a variety of options for the prevention of flytipping.

### Prevention of Flytipping

Adequate service provision is a key factor in the prevention of flytipping. This is applicable to waste collection services including special uplift arrangements, and



to civic amenity/recycling site facilities. These will be suitable for local requirements in terms of capacity and accessibility and will be based entirely on local needs.

Services should then be well-publicised to ensure they are utilised. Local authorities have well developed communication channels with their residents. However, direct

marketing in the local area may be complemented by the use of web based information provision, for example, through the [Dumb Dumpers](#) or [Sort-it](#) websites.

There will, however, always be those who fail to use the facilities available and in this case well publicised prosecution may be the only deterrent. This option is discussed later in this Guidance.

The Dumb Dumpers campaign is administered on behalf of the Scottish Flytipping Forum by Keep Scotland Beautiful.

The term Dumb Dumpers was first adopted by the Scottish Flytipping Forum in 2004 to promote



its anti-flytipping campaign and it continues to be used in ongoing efforts to tackle the problem on a national scale.

Dumb Dumpers is a nation-wide advertising campaign, which uses various media to promote the anti-flytipping message. Its' primary aims are to:

- Raise awareness that flytipping is unacceptable.
- Warn flytippers that they run the risk of being caught and fined.
- Provide simple means for incidences of flytipping to be reported by members of the public and passed to the appropriate enforcing authority.
- Provide information for anyone affected by flytipping.

The campaign has targeted both householders and small businesses, using radio and television advertising supported by other media more locally.

Media statistics produced for the campaign established that, using all media, the creative message was seen/heard by at least 90% of Scottish adults.

75% would have seen and/or heard it, four times or more.

Physical prevention of flytipping may be a measure of last resort by local authorities and land managers aiming to protect their land. However, Scotland has a large number of examples where physical barriers have been highly successful in preventing flytipping in specific areas.

**Balancing access needs with barriers – Forestry Commission (Scotland)**

It is important to ensure that barriers and other types of physical installations do not restrict those with a right of access. One particular gateway was a hotspot for flytipping but a right of access was required to be maintained for horses. A metal barrier was installed with the centre section low enough to allow horses to step over but which prevented vehicular access. The cost of the barrier was £350, and flytipping incidents have reduced. At another location where the Forestry Commission in Scotland has had a regular flytipping problem, there was a need to allow ample space for a lorry to pull safely off the carriageway, whilst, at the same time, blocking access to a site off a main road that was a flytipping hotspot. To achieve this, the Commission installed two sets of gates, one near the roadside edge that is kept locked at all times except when large vehicles need to enter for specific operations. When access is required, the outer gates are left open whilst the inner gates are locked.

It was identified that many local authorities had used variations of "No Dumping" signs in areas where regular flytipping occurred. These signs were seen as less successful than they might have been in that there was no alternative being offered to the prospective flytipper. The Dumb Dumpers dual signs shown addressed the warning aspects and also provided local advice as an alternative to dumping. The signs linked to the national campaign and Stop-line number and helped to promote a unified approach to the problem. Over 500 signs were provided free of charge to the local authorities, and the artwork is available from Keep Scotland Beautiful for local authorities and other land managers.



**Evaluation**

The first step in dealing with the issue of flytipping is to quantify the problem to be addressed. Collection of data is in everyone’s interest and data is used to assist in



assessing the cost and extent of flytipping to help develop future national and local policies. The data will be evidence of the extent and cost of the flytipping problem across Scotland. This is vital information for Government, which it needs to ensure that local

authorities and SEPA have the powers and the resources to win the battle against flytipping.

The national flytipping database, Flycapture, is available free of charge to Scottish local authorities and SEPA. Flycapture is a web-based, flytipping database for the UK which is helping local authorities and the environment agencies tackle flytipping. In 2009/2010, the cost of clearing flytipping in Scotland, reported to Flycapture, was £1,743,914. However, over this period, not all of the Scottish local authorities were able to input data to the system so this figure is not completely representative of the scale of the problem nationwide.

Managed by the Environment Agency for the whole of the UK, Flycapture, however, provides much more than just a database - it is a strategic tool that helps authorities improve intelligence on flytipping and to focus resources on hot spots. All contributors to Flycapture are able to access standard reports and

compare figures at local, regional and national level. Flycapture also contains provision for the recording of specific vehicle details where a local authority believes the vehicle has been involved in flytipping. Properly used, this will facilitate cross boundary working between local authorities and SEPA.

On a local level it is useful to periodically arrange a physical survey to assess the extent of flytipping. Surveys are particularly useful when assessing the impact of anti-flytipping campaigns or service changes on the amount of material dumped and the location of hotspots. The Flytipping Survey Module provided by Keep Scotland Beautiful is an example of the type of survey that could be carried out and the information collected. The survey shows the amount of flytipping and the sites where the items are being dumped illegally. If an area is identified as a regular site for this practice then measures can be put in place to prevent it. The survey also provides information useful to the provision of civic amenity sites and their opening times.

Flytipping is recorded as part of both Local Environmental Audit Management System and Cleanliness Index Monitoring System surveys, but the flytipping survey is a specific tool that is used to try to better understand the problem and the measures required to combat it. The survey takes the form of a 10% random selection of streets in a given area and includes adjacent areas such as river embankments, vacant sites, wooded areas and agricultural land, etc. The information from the survey is the basis of a report which is produced for the local



authority/duty body for use in forming the basis of future actions to address flytipping in a particular area.

## 2. Scottish Government Priorities and Zero Waste

The Scottish Government's stated priority is to create a more successful country where all of Scotland can flourish through increasing sustainable economic growth.

There are five Strategic Objectives which describe the key areas in which action will be focussed. These are: health and wellbeing; justice and communities; the environment; the economy; and education and skills. Of these, only education and skills are unaffected by the flytipping of waste.



The Scottish Government has identified fifteen National Outcomes to describe the results that the Government will achieve specifically as a means of meeting the Strategic Objectives. The National Outcomes are part of the Scottish Government's National Performance Framework, but they also reflect established corporate and community plan commitments across Scotland's councils and Community Planning Partnerships.

The impact of flytipping on the National Outcomes cannot be ignored or



underestimated. Flytipping and other forms of antisocial behaviour are often linked to the fear of crime in communities and a percentage of the waste that is disposed of illegally is dangerous. Additionally, local landowners and land managers who have material flytipped on their land are

the victims of crime and will face potentially significant clear-up costs.

## 15 National Outcomes

1. We live in a Scotland that is the most attractive place for doing business in Europe.
2. We live our lives safe from crime, disorder and danger.
3. We realise our full economic potential with more and better employment opportunities for our people.
4. We live in well-designed, sustainable places where we are able to access the amenities and services we need.
5. We are better educated, more skilled and more successful, renowned for our research and innovation.
6. We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.
7. Our young people are successful learners, confident individuals, effective contributors and responsible citizens.
8. We value and enjoy our built and natural environment and protect it and enhance it for future generations.
9. Our children have the best start in life and are ready to succeed.
10. We take pride in a strong, fair and inclusive national identity.
11. We live longer, healthier lives.
12. We reduce the local and global environmental impact of our consumption and production.
13. We have tackled the significant inequalities in Scottish society.
14. Our public services are high quality, continually improving, efficient and responsive to local people's needs.
15. We have improved the life chances for children, young people and families at risk.

Flytipping impacts directly on National Outcomes 1, 2, 6, 7, 8, 12, and 13, and indirectly on outcomes 3, 4 and 11.

In addition to being a social issue, flytipping is clearly a waste management concern, and must be addressed in terms of the Scottish Government Zero Waste Plan which sets out the vision for the country. The vision includes a Scotland which:

- Promotes sustainable design.
- Prevents waste.
- Has high levels of recycling and composting.
- Seizes the economic, environmental and job opportunities arising from Zero Waste.
- Reduces landfill to a minimum.
- Has effective, efficient and co-ordinated delivery.

The illegal disposal of waste is a barrier to Scotland meeting the majority of goals in the government vision.

Flytipped waste will inevitably be landfilled, with the cost being met by the local



authorities. There is no segregation and often, by the time the waste is uplifted, it will be severely contaminated to the point where recovery of recyclable or compostable elements is impossible. This will become more significant as zero waste measures, including landfill restrictions, are introduced.

The use of flytipping as a disposal method removes the incentive to address waste prevention or any other positive behaviour by waste producers. It may also result in the recording of a false reduction in the waste produced in Scotland, as waste disposed of illegally is outwith the data collected by SEPA on waste arisings. This will therefore distort the figures available in terms of reaching targets relating to the waste hierarchy.

### 3. Unlawful Deposit of Waste

This section provides information about the legislation available to local authority and SEPA officers to deal with flytipping. It is, however, a guide and does not constitute legal advice. If any action is to be taken, the full text of the relevant legislation should be consulted at [www.opsi.gov.uk](http://www.opsi.gov.uk).

#### **Section 33 Environmental Protection Act 1990**

It is an offence for any person to deposit controlled waste, or knowingly to cause or knowingly to permit controlled waste to be deposited, in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence (section 33(1a)).

It is an offence for any person to treat, keep, or dispose of controlled waste, or knowingly to cause or knowingly permit controlled waste to be treated, kept or disposed of, in or on any land or by means of any mobile plant except under or in accordance with a waste management licence (section 33(1b)).

In relation to the first part of these offences, the mere act of deposit, treatment, keeping or disposal is sufficient to attract criminal liability. However, in relation to the second part a test of knowledge must also be satisfied.

In the case of the second part of the first offence, where controlled waste is carried in and deposited from a motor vehicle, constructive knowledge is attributed to the person who controls the motor vehicle or is in a position to control the vehicle.

In this case the person is treated as knowingly causing the waste to be deposited, whether or not he gave instructions for that to be done.

This in effect reverses the normal onus of proof but it should be noted that apart from this the knowledge of an employee has in some circumstances been imputed to the employer. However, in Scots law in general the knowledge of an employee who has sole charge of operations will not normally be imputed to the employer.

Knowledge relates to knowledge of fact, not law. If there is a *bona fide* (good faith) belief that there was an appropriate waste management licence in force, it is likely that the courts would hold that an accused did not knowingly cause or knowingly permit the deposit etc. of the controlled waste to take place at an unlicensed site or an inappropriate licensed site. However, knowledge may be imputed from wilful ignorance. The onus rests on the prosecution to establish “knowledge”.

To “cause” means to give an express or positive order. However, if the accused does something which sets off the natural chain of events this may be sufficient.

To “permit” means to give a general or particular licence or authorisation but permission may be inferred from the conduct.

Other important offences created by section 33 relate to the breach of waste management licence conditions, which in itself is an offence, and to the treatment, keeping or deposit of waste in such a manner as to be a danger to the environment or to human health.

## **Penalties**

The penalties for these offences are:

- Summary conviction: imprisonment for a term not exceeding six months or a fine not exceeding £40,000 or both, and
- On conviction on Indictment: imprisonment for a term not exceeding two years or a fine or both.

## **Guidance**

Directors, officers and senior employees can be imprisoned, and there is the possibility of licences being revoked if the person in question is not regarded as a ‘fit and proper person’ following conviction. There is also the effect of adverse publicity that may follow prosecution and/or conviction.

In any case where assistance is sought, the police can use their powers under Section 14 of the Criminal Procedure (Scotland) Act 1995 – Detention for Further Enquiry, where the offence is punishable by imprisonment.

## **Defences**

If it is established that there has been made a *prima facie* breach of section 33 it is open to the accused to avoid criminal liability if he can claim one of the three defences open to him under section 33 (7), namely:

- That all reasonable precautions were taken and all due diligence was exercised to avoid the commission of the offence; or
- That the acts were done under instruction from his employer and he did not know, and had no reason to suppose, that the acts done by him constituted a section 33 (1) offence; or

- The acts were done in an emergency in order to avoid danger to the public and' that as soon as reasonably practicable, particulars of the acts were reported to the relevant Waste Regulation Authority.

## **Guidance**

In common use "all reasonable precautions" means setting up a system to ensure that things will not go wrong whereas "all due diligence" means seeing that the system works properly.

All reasonable precautions will obviously call for the accused to show that he made all relevant investigations to ascertain whether a waste management licence was in force, whether the deposit was in accordance with the licence, and to ascertain the exact nature of the accordance with the licence, and the exact nature of the waste to be deposited. It will also include ensuring that detailed written instructions were given to employees and contractors about the deposit of waste. The test cannot be satisfied by documentation alone.

The exercise of due diligence to avoid a section 33(1) offence being committed, places a positive duty on the person to ensure that an offence is not committed. This will involve the appropriate systems for monitoring, sampling and checking. Again, it will not be enough simply to rely on paper documentation to establish this defence.

## **Fixed Penalty Notice - Antisocial Behaviour etc. (Scotland) Act 2004**

Section 55 of the Antisocial Behaviour etc. (Scotland) Act 2004, which inserted section 33A into the 1990 Act, makes provision for the payment of a fixed penalty fine as an alternative to prosecution for flytipping offences.

Under subsection (1) of section 33A an authorised officer of a local authority, a police constable or an officer of SEPA (as the waste regulation authority), on having reason to believe that a flytipping offence has been committed has the power to give the offender a notice inviting him to pay a fixed penalty.

Subsections (4) to (7) of section 33A set out the procedure for issuing a fixed penalty notice. Where a fixed penalty notice is given by a police constable or an officer of SEPA, a copy of the notice must be given to the local authority in whose area the offence occurred. It is the local authority that is responsible for the further administration of it, such as collection of the fixed penalty.

Subsections (6) and (7) set out the content of the notice.

Subsection (8) permits the Scottish Ministers to prescribe by order the form of fixed penalty notices (see The Controlled Waste (Fixed Penalty Notices) (Scotland) Order 2004). The effect of subsection (12) is that the local authority keeps the proceeds of fixed penalties, as occurs at present in the case of fines imposed by the district courts.

If payment is made within 14 days then, in terms of subsection (5), no further action will be taken.

If the fixed penalty is not paid, the alleged offender will be reported to the procurator fiscal for consideration for prosecution. Subsection (11) establishes that a certificate signed by the proper officer concerning the payment or non-payment of a fixed penalty shall satisfy the relevant evidential requirements in any proceedings, which would include a prosecution for a flytipping offence where the opportunity to pay a fixed penalty fine had not been taken.

In terms of subsection (9) of section 33A, the level of fixed penalty will initially be £50. However, the Scottish Ministers have the power, under subsection (10), to vary this amount by Order, up to level 2 on the standard scale (currently £500).

The "proper officer" in terms of the Local Government (Scotland) Act 1973 is the individual who has financial oversight of the relevant local authority's affairs.

### **Clean-up Powers for Local Authority and SEPA**

Section 59 of the Environmental Protection Act grants powers to a local authority as the waste collection authority and SEPA as the waste regulation authority, to serve a notice on an occupier of land requiring the removal of waste that has been deposited in contravention of Section 33. The notice may also require the elimination or reduction of the consequences of the deposit.

Failure to comply with the notice may result in summary conviction, and the local authority or SEPA may remove the waste and recover the cost from the occupier. SEPA and local authorities can also remove the waste and recover costs in cases where urgent action is required to prevent pollution or harm to human health.

Land managers can appeal to a Sheriff against a notice to remove waste under Section 59, or against recovery of costs for its removal, on the grounds that they did not deposit the waste or knowingly permit or cause its deposit. If an appeal is lodged, the notice is suspended.

The Sheriff may quash the notice, if the landowner did not deposit or knowingly cause or knowingly permit the waste to be deposited, or modify the requirements or dismiss the appeal.

Subject to any appeal, a person who fails to comply with a notice is liable on summary conviction to a fine not exceeding the statutory maximum (currently £5,000), plus a daily fine of £500 for each day the offence continues.

In the event that the occupier did not deposit the waste or knowingly permit or cause its deposit, or where no occupier can be found, SEPA or the local authority may take the necessary measures to remove the waste and may recover the cost from any person who did deposit or knowingly permit or cause the deposit.

An example of a notice under section 59 is included in Appendix 1.

## 4. The Duty of Care

The duty of care is designed to be a self regulating system which is based on good business practice. It places a duty on anyone who in any way has a responsibility for controlled waste to ensure that it is managed properly and recovered and disposed of appropriately.

The guidance in this document is aimed at assisting enforcement

**The Duty of Care – Code of Practice  
(ISBN 0-11-753210)**

officers by summarising aspects of the code of practice which may be relevant to their daily duties and to highlight what is required for a waste operator to comply with the duty of care. It is in no way intended to replace the code of practice which gives a much more detailed and in depth account of what is required to enable individuals in the waste industry to comply with the relevant legislation. As such the code of practice will provide a more comprehensive account of all aspects of duty of care and should be taken into account by anyone with an interest in this aspect of waste management.

At the time of writing of this Guidance document, the duty of care is under review and therefore officers are advised to ensure they act only on current information. This Guidance will be updated as information becomes available.

Briefly, all holders must act to keep waste safe against:

- Corrosion or wear of waste containers.
- Accidental spilling or leaking or inadvertent leaching from waste unprotected from rainfall.
- Accident or weather breaking contained waste open and allowing it to escape.
- Waste blowing away or falling whilst stored or transported.
- Scavenging of waste by vandals, thieves, children, trespassers or animals.

### **Containers**

Waste transferred to another person should be in a container, which might include a skip.

Loose material loaded into a vehicle should be adequately covered to prevent escape before being moved.

Waste containers should be suitable for the material they will contain. It is good practice to label drums and, to avoid confusion, old labels should be removed from drums which are reused.

### **Waste Left for Collection**

Waste left for collection outside premises should be in containers that are strong and secure enough to resist not only wind and rain, but also animal disturbance, especially in the case of food waste.

All containers left outside for collection will therefore need to be secured or sealed.

Waste should not be left outside for collection longer than is necessary and should only be put out for collection on or near the advertised collection times.



### **Using a Waste Carrier**

A waste holder or broker may transfer waste to someone who transports it - a waste carrier - who may or may not also be a waste manager. Subject to certain exemptions, anyone carrying waste in the course of their business, or in any other way for profit, must be registered with SEPA. The register of carriers is open to public inspection and is available online. For the purpose of the duty of care, holders may use these registers as a reference list of carriers who are authorised to transport waste. However, inclusion on the SEPA register is *not* a recommendation or guarantee of a carrier's suitability to accept any particular type of waste. The holder or broker should remain alert to any sign that the waste may not be legally dealt with by a carrier.

In all cases other than those involving repeated transfers of waste, the holder should ask to see, and should check the details of, the carrier's certificate or copy certificate of registration. In addition, before using any carrier for the first time, the holder should check with SEPA that the carrier's registration is still valid, even if his certificate appears to be current.

Charities and voluntary organisations, waste collection and disposal authorities, SEPA and British Rail subsidiaries among others, need to be registered as exempt carriers in the register of professional collectors and transporters of waste.

Before using a carrier who claims to be exempt for the first time, the holder should ask the carrier to provide evidence that the exemption which he claims is valid.

### **Sending Waste for Disposal, Treatment or Recovery**

A waste manager is anyone who:

- Stores or processes waste in some intermediate way short of final disposal.
- Carries out a waste recovery operation.
- Carries out a waste disposal operation.

All of these activities are subject to the waste management licensing requirements (Part II Environmental Protection Act 1990).

### **Causes for Concern**

Every waste holder should be alert for evidence that suggests that the duty of care is not being complied with:

- Waste that is wrongly or inadequately described being delivered to a waste management site.
- Waste being delivered or taken away without prior packing so that it is likely to escape.
- Failure of the person delivering or uplifting waste to complete a transfer note properly, or an apparent falsehood on the transfer note.
- An unsupported claim of exemption from licensing or registration as a carrier.
- Failure of waste consigned via a carrier to arrive at a destination with whom the transferring holder has an arrangement.
- Damage to or interference with containers.

### **Action to take with Other Holders**

Holders who suspect that their waste is not being properly dealt with should check the facts with the next or previous holder.

If a holder is not satisfied with the information or is certain that the waste he handles is being wrongly managed by another person then his first action should normally be to refuse to transfer or accept further consignments to or from that person, unless and until the problem is remedied.

Such steps may be not practicable in all cases. For example, contract conditions or where there is no other outlet immediately available for the waste.

### **Reporting to the Scottish Environment Protection Agency**

SEPA do not have a specific duty to enforce duty of care, however, they have a major interest in breaches of the duty, which might contribute to illegal waste management.

Holders should contact SEPA where they know or suspect that:

- There is a breach of the duty of care.
- Waste is carried by an unregistered carrier not entitled to exemption.
- Waste is stored, disposed of, treated or recovered;
- Without a licence or in any way not permitted by the licence.
- Contrary to the terms or conditions of a licence or exemption.
- In Scotland, contrary to the terms and conditions of an authority's resolution.

### **Documenting the waste – The Waste Transfer Note**

The duty of care applies to anyone who is the holder of controlled waste. The only exception to this is for the occupiers of domestic property for the household waste which comes from their home. Anyone subject to the duty of care who has some "controlled waste" must identify and describe the kind of waste it is.

"Controlled waste" means waste from households, commerce or industry.

Waste cannot be simply divided between safe and harmful. There are safe ways of dealing with any waste. Equally, any waste can be hazardous to human health or the environment if it is wrongly managed. Deciding whether any waste poses a problem requires consideration not only of its composition but of what will happen to it. For most waste it is not necessary to know more than what it is in very general terms. But subsequent holders must be provided with a description of the waste that is full enough to enable them to manage the waste properly. Even everyday items may cause problems in handling or treatment.

It may sometimes be enough to describe the source of the waste by referring either to the use of the premises where the waste is produced or to the occupation of the waste producer. Such a "source of waste" description is recommended as the commonsense simple description where businesses produce a mixture of wastes none of which has special handling or disposal requirements; or where

there are no special handling or disposal requirements which cannot be identified from such a simple description. The description of waste must include the appropriate European Waste Code.

In Scotland the Integrated Pollution control authority is the Scottish Environment Protection Agency. This information is required on the Transfer Note and should be included in the description.

The waste may be described by saying what it is made of. This may be in physical and chemical terms or by the common name of the waste where this is equally helpful. Such a description by name is recommended for waste composed of a single simple material or a simple mixture.

The waste may be described by saying how it was produced. Such a description would include details of materials used or processed, the equipment used and the treatment and changes that produced the waste. If necessary this would include information obtained from the supplier of the materials and equipment.

This should form part of the description for most industrial wastes and some commercial wastes.

A description based on the process producing the waste will not go far enough where the holder does not know enough about the source of the waste. It will often not be adequate where:

- wastes, especially industrial wastes, from different activities or processes are mixed; or
- the activity or process alters the properties or composition of the materials put in.

### **The Environmental Protection (Duty of Care) Regulations 1991**

These regulations are made under Section 34(1) of the Environmental Protection Act 1990, which imposes a duty of care on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste. The duty requires such persons to ensure that there is no unauthorised or harmful deposit, treatment or disposal of the waste, to prevent the escape of the waste from their control or that of any other person, and on the transfer of the waste to ensure that the transfer is only to an authorised person or to a person for authorised transport purposes and that a written description of the waste is also transferred.

These Regulations impose requirements under section 34(5) of the 1990 Act on any person who is subject to the duty of care as respects the making and retention of documents and the furnishing of copies of them.

Breach of the duty of care or of these Regulations is a criminal offence. The duty of care and these Regulations do not apply to an occupier of domestic property as respects the household waste produced on the property.

Regulation 2 requires the transferor and the transferee to complete and sign a transfer note at the same time as the written description of the waste is transferred. The transfer note must identify the waste in question and state its quantity, how it is stored, the time and place of transfer, the name and address of the transferor and the transferee, whether the transferor is the producer or importer of the waste, which (if any) authorised transport purpose applies, in which category of person the transferor and the transferee are and certain additional information.

Regulation 3 requires the transferor and the transferee to keep the written description of the waste and the transfer note or copies of them for two years from the transfer.

Regulation 4 imposes a duty on a person who is under a duty to keep any document by virtue of regulation 3 to furnish a copy of that document to a waste regulation authority if he is required to do so by the authority.

### **The Environmental Protection (Duty of Care) Amendment (Scotland) Regulations 2003**

These Regulations amend the Environmental Protection (Duty of Care) Regulations 1991 (S.I. 1991/2839) (“the principal Regulations”) to provide for local authorities in Scotland, acting in their capacities as waste collection authority and waste disposal authority to serve notices on persons who are required to keep written descriptions of transfer notes under the principal Regulations. Further, these regulations have the effect of providing for local authorities to require those persons to furnish such documents to them at their offices within a specified period of time. These powers are available to the Scottish Environment Protection Agency (SEPA) in Scotland, and these Regulations have the effect of giving local authorities the same powers.

## 5. Collection of Controlled waste

### Receptacles for household waste

Section 46 of the Environmental Protection Act 1990 deals with the collection of household waste and provides powers for the waste collection authority to serve notice on an occupier requiring them to place household waste for collection in receptacles of the type and number specified. The Notice may be served where the waste is not in a receptacle, and is judged likely to cause a nuisance or be detrimental to the amenity of an area. This may also include a requirement to separate waste which is to be recycled from non-recyclable waste.



An example of a Notice is included as Appendix 2.

The content of the notice may relate to

- the size, construction and maintenance of receptacles,
- definition of a location where the receptacle is to be placed for emptying,
- ensuring access is provided to the receptacle,
- specifying what waste material can and cannot be placed in the receptacle, and
- detailing any precautions to be taken where particular substances are put in receptacles.

It is an offence, under Section 46(6), to fail to comply, without reasonable excuse, with any requirements imposed under subsections (1), (3) (c) or (d), or (4) for which the maximum penalty on conviction is a fine not exceeding level 3 on the standard scale (currently £1,000)

If required by Notice under Section 46(1) to provide receptacles, the occupier has a right of appeal to the Sheriff within 21 days against any requirement imposed on the grounds that the requirement is unreasonable or that the receptacles in which the household waste is placed are adequate.

Some examples of issues which can be dealt with under this section include requiring bins not to be put out before a specific day and time, requiring specific types of waste to be placed in separate bins for recycling and ensuring that the bins are located for collection where access will be available.

**Guidance:**

- *Wheeled bins left out on the pavement and not returned to their correct storage locations do not only present a problem to the public using the pavement but it also detracts from the amenity of the area. However, there is nothing specified in the legislation regarding taking emptied bins off the street.*
- *Common practice is to provide a specified receptacle (e.g. a wheeled bin) to the householder and to refuse to collect any surplus waste left outside the bin – commonly referred to as side waste. Section 45(1) of the Environmental Protection Act 1990 places a general duty on waste collection authorities to arrange for the collection of household waste in their area and this duty is discharged when an authority prescribes receptacles under Section 46 and makes arrangements for the collection of waste from these receptacles. There is therefore no further duty on the authority to collect household waste deposited in breach of the requirements of such a notice.*
- *Any formal action taken against a householder for inappropriate use of recycling bins must include evidence that the contamination was caused by the accused (Exeter City Council v Chalice 2006)*

**Receptacles for commercial or industrial waste.**

Section 47 of the Environmental Protection Act 1990 enables a waste authority, following a request, to provide receptacles for the collection of commercial or industrial waste. A reasonable charge may be applied for each receptacle. This section also enables a waste authority to provide receptacles for the collection of commercial waste without making a charge.

If a waste authority considers it likely that there may be commercial or industrial waste which may be stored in a manner which is likely to cause a nuisance or to be detrimental to the amenities of the area the authority may, by notice, require

the occupier to provide suitable receptacles. The numbers and type specified have to be reasonable. An example of a Notice is included as Appendix 3.

The content of the notice may relate to

- the size, construction and maintenance of receptacles,
- definition of a location where the receptacle is to be placed for emptying,
- ensuring access is provided to the receptacle,
- receptacles on roads,
- specifying what waste material can and cannot be placed in the receptacle,
- detailing any precautions to be taken where particular substances are put in receptacles,
- steps to be taken to facilitate collection of waste.

The requirements in the Notice cannot include positioning the receptacles on the road unless consent has been received from the Roads Authority and arrangements are in place regarding who would be responsible for liability to any damage caused.

It is an offence, under Section 47(6), to fail to comply, without reasonable excuse, with any requirements imposed under subsections (1) or (4) for which the maximum penalty on conviction is a fine not exceeding level 3 on the standard scale (currently £1,000)

If required by Notice under Section 47(2) to provide receptacles, the occupier has a right of appeal to the Sheriff within 21 days against any requirement imposed on the grounds that the

requirement is unreasonable or the waste is not likely to cause a nuisance or be detrimental to the amenities of the locality.



The following are some examples of what can be incorporated in a notice:

- Containers to be constructed of non-porous and fire resistant material, fitted with a lockable lid.
- Number of waste containers to be sufficient to contain all waste produced.

- Frequency of collection to be adequate to prevent waste volumes exceeding the capacity of the containers
- Containers to be kept clean and in good order
- Waste must not be placed on the ground, or otherwise allowed to escape from control
- Requirement specifying times when containers may be presented for collection.
- Location of storage point

**Guidance:**

- *The power to provide receptacles for the collection of commercial waste can be used to encourage recycling by permitting only the deposit of specific types of waste such as glass, cardboard, etc.*
- *Subsection 4(c) relating to the placing of receptacles on roads can enable storage of these bins on this type of location as an option however any requirement incorporating this section should be designed to minimise the time that any receptacle is on the road and to prevent access issues or hazards to pedestrians or other road users.*
- *Service of a Notice under this section can be made “in perpetuity” meaning that it remains in force for the period that the business occupier remains at the premises. A notice will end when the occupier vacates the premises and will not be transferred to new occupiers.*

## 6. Other Legislative Provisions

The Environmental Protection Act is not the only legislation available to local authority enforcement officers. This section highlights some of the alternatives that are available to local authorities to deal with flytipping.

### Refuse Disposal (Amenity) Act 1978

Section 2(1) of the Refuse Disposal (Amenity) Act 1978 makes it an offence to abandon on any land in the open air or on any other land forming part of a highway, anything which has been brought to the land for the purpose of abandoning it there. Section 6(1) makes provisions for the local authority to remove the thing and in accordance with Section 6(4), the local authority is



entitled to recover the cost of removing and disposing of the thing either from any person by whom it was put in place or any person convicted of an offence under Section 2(1). Although this legislation is primarily used for the removal of abandoned vehicles there is no reason why it cannot be used to ensure the

removal of refuse from areas of relevant land. Although the term “open air” is not defined in the legislation many local authorities assume this to be any land which has at least one side open to the air. This is the same definition as used within the Environmental Protection Act. Accordingly this procedure may be used to remove refuse from derelict lock-ups etc. An example of a notice under the Refuse Disposal (Amenity) Act is included as Appendix 4.

### Town and Country Planning (Scotland) Act 1997 – Section 179

If it appears to a planning authority that the amenity of any 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 or occupier requiring them to remedy its condition within a certain time. The owner or occupier is required to be given 28 days notice by the planning authority and has the right to appeal to Scottish Ministers.

## **Roads (Scotland) Act 1984 – Section 87**

Where any object capable of causing an obstruction has been erected, deposited or placed on a road, the local authority, as the roads authority, has the power to serve a Notice on the owner for its removal. The Notice period is 28 days after which the roads authority has the power to remove the obstruction.

## **Environmental Protection Act – Section 80**

Section 79(1) of the Environmental Protection Act defines statutory nuisance and includes:

- any premises in such a state as to be prejudicial to health or a nuisance; and
- any accumulation or deposit which is prejudicial to health or a nuisance.

The option is therefore available to use the above definitions to clear any land and/or premises which are subject to flytipping or possibly even substantial accumulations of litter. Where a local authority is satisfied that such a nuisance condition exists, or is likely to occur or recur, it may, under Section 80 of the Environmental Protection Act, serve an abatement notice on the person responsible for the nuisance or, if that person cannot be found, on the owner or occupier of the premises. The Notice should impose all or any of the following requirements:

- the abatement of the nuisance, or prohibiting or restricting its occurrence or recurrence;
- the carrying out of such works and other steps necessary to abate the nuisance.

It could be argued that the above legislation could be used to ensure landowners introduce measures to prevent further flytipping on a specific piece of land e.g. fences, gates etc.

The notice should specify the time or times within which the requirements of the notice must be complied with. There is a right of appeal against the notice and this must be made within 21 days from the date of the notice. Failure to comply with the terms of the notice is an offence and the local authority then has the ability to abate and/or prevent recurrence of the nuisance and recover all reasonable costs incurred in doing so.

An example of a Section 80 Notice is included as Appendix 5.

Section 113 of the Public Health etc (Scotland) Act 2008 introduced a fixed penalty notice for statutory nuisance. It inserted subsection 4(A) which allows a local authority to give a person a fixed penalty notice where the local authority has reason to believe that the person has committed an offence under section 80. The amount of the fixed penalty is (a) in the case of a nuisance relating to industrial, trade or business premises, £400, and (b) in any other case, £150. The period for payment is 14 days, but the local authority has discretion to extend this period in particular cases. An example of a fixed penalty notice is included as Appendix 6.

### **Environmental Protection Act – Section 157**

This section allows the individual prosecution of any director, manager, secretary or any other similar officer of a corporate body if it can be shown that they consented, were aware of or contributed to the offence of flytipping. This can be in addition to prosecution of the corporate body.

### **Environmental Protection Act – Section 158**

Section 158 allows the prosecution of a person who, by their act or default, causes an offence to be committed by another person. This can be in addition to the prosecution of the second person.

### **Local Government in Scotland Act 2003**

Section 20 of this Act is entitled “Power to Advance Well-Being” and essentially gives a local authority power to do anything which it considers is likely to promote or improve the well-being of its area and/or persons within that area. This is a wide ranging and diverse power and not exclusively directed towards any specific subject, however the potential to use it in order to address problems of fly tipping or litter is an option. Any action undertaken using this legislation must first of all receive committee approval within the local authority and it is likely therefore that this power would only be used when relatively contentious or expensive options are being considered to mitigate the effects of flytipping etc. There are obviously restrictions on its use, but none that should prevent beneficial works from being undertaken.

## **Prevention of Damage by Pests Act 1949**

Under the Prevention of Damage by Pests Act 1949, local authorities are responsible for ensuring that their districts are kept, as far as is practicable, free of rodents. This includes the responsibility to periodically inspect their area.

In addition, the Act requires that occupiers of non-agricultural land must notify the local authority if "substantial numbers" of rodents are living on, or resorting to, the land. Any person who fails to give a notice which he is required to give under this section shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

There is no requirement, however, for occupiers of agricultural land to notify the local authority of the presence of rodents.

The Act gives local authorities the duty to require landowners and occupiers to control rodent infestations on their land. If in the case of any land it appears to the local authority . . . 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, they may serve on the owner or occupier of the land a notice requiring him to take, within such reasonable period as may be specified in the notice, such reasonable steps for the purpose aforesaid as may be so specified; and where the owner of any land is not also the occupier thereof separate notices may be served under section 4 on the owner and on the occupier. Any such notice may in particular require;

- the application to the land of any form of treatment specified in the notice,
- the carrying out on the land of any structural repairs or other works so specified, and
- may prescribe the times at which any treatment required by the notice is to be carried out.

A person who fails to take any steps specified in the notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding in the case of a first offence level 3 on the standard scale, and in the case of a second or any subsequent offence level 3 on the standard scale.

Any person served with a notice requiring structural work to be carried out has the right of appeal to the sheriff.

Local authorities may also, where necessary, carry out the control work, including clearing flytipping, in default and recover the cost of such action from the landowner or occupier.

### **Civic Government (Scotland) Act 1982**

Section 95 of the Civic Government (Scotland) Act 1982 enables local authorities to require the owner of an open space in a populous space and set apart for use by the owners or occupiers of two or more separate properties, such as back court areas, to maintain the open space and any boundary walls or fences so as to prevent danger or nuisance to the public. The owner of the open space shall be entitled to recover an equal portion of the expense from each person entitled to use the open space for any work carried out in complying with the notice.

## **7. Working Together**

Clarity of roles and responsibilities locally is important to ensure effective working arrangements and best value for money. This guidance sets out suggestions for local authorities and SEPA in tackling the investigation and enforcement of flytipping together. However, actual local arrangements will be based on the objectives of authorities' enforcement strategies and local priorities.

Working arrangements to achieve the goals of the guidance are suggested in the table that follows in Appendix 7.

### **Good Practice Advice**

- Local Authority Officers and/or SEPA Officers should endeavour to ensure that flytipping on public and private land is investigated.
- SEPA officers will focus their resources on investigating and taking appropriate enforcement action against large-scale illegal dumping of waste (see Appendix 7), and the dumping of certain special wastes. In doing so, it may also seek to recover costs associated with the removal of the waste. SEPA may co-ordinate action where there is an indication that there are cross border issues which a single local authority would have difficulty investigating. SEPA officers work on intelligence led investigations, which lead to the detection and reporting of organised flytippers.
- It is recommended that local multi-agency forums be established, to include the local authority, SEPA, police and relevant major land owners, to ensure that satisfactory outcomes can be reached on dealing with difficult incidents. Local partnership arrangements may cover training, enforcement, identifying and tackling problem areas and sharing resources such as surveillance equipment. Reviews of local working arrangements may need to take account of fluctuations in workload and the availability of resources in partner organisations.

- Officers of all agencies should take the opportunity when investigating flytipping on private land to advise the landowner or their representative of suitable measures to deter further flytipping and may get involved in the investigation of repeated incidents of flytipping to prevent further occurrences - possibly through partnership working. Although landowners are responsible for the removal of waste from their land it should be remembered that they are the victims of crime and assistance may be offered to them to prevent excessive financial burdens where this is possible. This assistance may be in the form of prevention advice or help in uplifting or disposing of waste if local circumstances allow.

### **Further Information**

Training and advice for officers of both the local authorities and SEPA are available through Keep Scotland Beautiful.

## **8. Surveillance**

### **Background**

Flytipping can occur in any location where the offender thinks that he/she will not be observed. However it is unlikely that a flytipper will dispose of their waste if there are other people present. It is also a fact that some areas become “flytipping hot spots” due to the amount and regularity of waste being dumped and these are likely to be well known by local authority and SEPA officers. It is in these areas that some form of covert surveillance may be useful. Covert surveillance is defined as being that which is undertaken in a manner calculated to ensure that the person subjected to it is not aware that it is taking place. More detailed advice and guidance on the use of surveillance is available in Appendix 8.

It must be emphasised that surveillance is a specialist field and therefore anyone carrying out, managing or authorising surveillance must be suitably trained and experienced for their particular role. Operations must be adequately resourced and the risks fully assessed.

### **Equipment**

There are many different companies in the market supplying a wide range of different surveillance equipment. Several local authorities have experience in the purchase and operation of this type of equipment and may be contacted, through Keep Scotland Beautiful for advice. Specialist advice may also be available from Police Force Technical Support Units and the Home Office Scientific Branch.

## Appendix 1

### **ENVIRONMENTAL PROTECTION ACT 1990** **NOTICE UNDER SECTION 59 REQUIRING REMOVAL OF CONTROLLED** **WASTE FROM LAND**

**(Council / Agency details)**

**TO:** *(occupier) of (address)*

(Insert name) COUNCIL in exercise of the powers conferred on them by Section 59 of The Environmental Protection Act 1990 hereby require you as occupier of land situated at *(address or description of land)* [shown edged red on the attached plan] to remove from the land within 21 days beginning with the date of service of this notice the waste specified in the Schedule [and] *or* to take such [further] steps as are specified in the Schedule with a view to eliminating *or* reducing the consequences of the deposit of [such waste *or* the waste specified in the Schedule].

You have the right of appeal against the terms of this notice to the Sheriff within 21 days of the date of service upon you of this notice.

Subject to your right of appeal, if you fail to comply with the terms of this notice within the period specified above then:

- (a) you will be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and a further fine for each day on which the failure continues after conviction for the offence and before the Authority has begun to exercise its powers under The Environmental Protection Act 1990 Section 59 (6): and
- (b) the Authority may do what you are required by this notice to do and may recover from you any expenses reasonably incurred by it in so doing.

#### **SCHEDULE**

*(Specify details of the waste and any steps to be taken by the occupier to eliminate or reduce the consequences of the deposit of the waste).*

**Date:** *(date)*

*(Signature of the proper officer of the Authority).*

## Appendix 2

### **EXAMPLE NOTICE REQUIRING AN OCCUPIER OF PREMISES TO PROVIDE SPECIFIED WASTE FOR COLLECTION IN SPECIFIED RECEPTACLES**

ISSUED BY *(name)* Council

#### **ENVIRONMENTAL PROTECTION ACT 1990 SECTION 46**

To *(occupier)* of *(address)*

##### **1. Notice**

**THIS IS A NOTICE** issued by *(name)* Council (the ‘Council’) pursuant to the Environmental Protection Act 1990, Section 46(1) requiring you as occupier of premises known as *(describe premises)* [shown edged in red on the attached plan] in the Council’s area to place any household waste for collection from those premises in the receptacle[s] described in [and in accordance with the conditions specified in] the Schedule.

##### **2. Your right of Appeal**

If you are aggrieved by any of the requirements of this notice, you may appeal to the Sheriff within 21 days of the service upon you of this notice.

##### **3. What Happens if you Fail to Comply**

Subject to your right of appeal, if you fail to comply with any of the requirements specified in this notice, you will be liable on summary conviction to a fine not exceeding Level 3 on the standard scale.

#### SCHEDULE

*(Specify the receptacle(s) and any conditions)*

Dated

*(Signature of proper Officer of Authority)*

## Appendix 3

### EXAMPLE NOTICE REQUIRING AN OCCUPIER OF PREMISES TO PROVIDE SPECIFIED RECEPTACLES FOR STORAGE OF COMMERCIAL OR INDUSTRIAL WASTE

ISSUED BY (name) Council

#### ENVIRONMENTAL PROTECTION ACT 1990 SECTION 47

To: (occupier) of (address)

#### 1. Notice

THIS IS A NOTICE issued by (*name*) Council (the ‘Council’) pursuant to the Environmental Protection ACT 1990, Section 47(2) requiring you as occupier of the premises known as (*describe premises*) [shown edged in red on the attached plan] in the Council’s area to place any commercial waste for collection from those premises in the receptacle[s] described in [and on accordance with the conditions specified in] the schedule.

#### 2. Your right to Appeal

If you are aggrieved by any of the requirements of this notice, you may appeal to the Sheriff within 21 days of the [service upon you of this notice *or* expiry of the period for compliance with condition (*number*)].

#### 3. What Happens if you fail to Comply

Subject to your right of appeal, if you fail to comply with requirements specified in this notice, you will be liable on summary conviction to a fine not exceeding Level 3 on the standard scale.

#### SCHEDULE

(Specify the receptacle(s) and any conditions)

Dated (*date*)

(Signature of proper Officer of Authority)

## Appendix 4

### EXAMPLE OF NOTICE SERVED UNDER SECTION 6 REFUSE DISPOSAL AMENITY ACT 1978

*(Name)* COUNCIL

#### REFUSE DISPOSAL (AMENITY) ACT 1978 SECTION 6

**To:** *(occupier of the land)* of *(address)*

*(name)* Council ('the Council') believes that you are the occupier of the land described in Schedule 1.

The Council believes that the things described in Schedule 2 have been abandoned without lawful authority.

The Council, acting under **The Refuse Disposal (Amenity) Act 1978 Section 6 (1)** **GIVES YOU NOTICE** that it proposes to remove the things described in Schedule 2 from the land described in Schedule 1 unless you object to this proposal. Any objection by you must be made in writing addressed to *(name)* within 15 days from the day when this notice is served on you.

#### **SCHEDULE 1**

*(give details of the land on which things abandoned)*

#### **SCHEDULE 2**

*(describe things abandoned)*

**DATE:** *(date)*

*(signature of proper officer of Authority)*

**Appendix 5**

**EXAMPLE NOTICE IN RESPECT OF STATUTORY NUISANCE**

**(Insert Name) COUNCIL  
ENVIRONMENTAL PROTECTION ACT 1990, Section 80**

**To:-**.....  
.....  
.....  
.....  
.....

**TAKE NOTICE** that under the provisions of the Environmental Protection Act 1990 the *(Insert name)* Council being satisfied of the (existence) (likely [occurrence] [recurrence]) of a Statutory Nuisance within the meaning of Part III of the Act, within or near the premises situated at:

(within the district of the said Council) arising from:

**(HEREBY REQUIRE YOU** as the (person responsible for the said nuisance) ([owner][occupier] of the premises)(immediately) (within.....days) from the service of this Notice, (to abate the same) (and also)

**(HEREBY [PROHIBIT][RESTRICT]** the [occurrence] recurrence of the same)(and for that purpose require you to:)

[IN the event of an appeal this Notice shall **NOT** be suspended until the appeal has been abandoned or decided by the Court, as, in the opinion of the Council, (the Nuisance to which this Notice relates is [injurious to health] [likely to be of a limited duration such that suspension would render the Notice of no practical effect]) (the expenditure which would be incurred by any person in carrying out works in compliance with this Notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance)]

**IF** without reasonable excuse you contravene or fail to comply with any requirement of this Notice you will be guilty of an offence under section 80(4) of the Environmental Protection Act 1990 and on summary conviction will be liable to a fine not exceeding level 5 on the Standard Scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after conviction. A person who commits an offence on industrial, trade or business premises will be liable on summary conviction to a fine not exceeding £40,000.

In addition the Council may also take proceedings for securing the abatement, prohibition or restriction of the Nuisance. Further, if you fail to execute all or any of the works in accordance with this Notice, the Council may execute the works and recover from you the necessary expenditure incurred.

**DATED**

drawn to The Statutory Nuisance (Appeals)(Scotland) Regulations, 1996.

**All communications in connection with this Notice should be sent to:**

*(Name and address of council)*

**INFORMATION NOTES ATTACHED TO ABATEMENT NOTICE IN TERMS OF THE ENVIRONMENTAL PROTECTION ACT 1990.**

1. A person who commits an offence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, together with a fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

A person who commits an offence on industrial, trade or business premises shall be liable on conviction to a fine not exceeding £40,000.

2. Section 80 provides for the person(s) served with a Notice to appeal to the Sheriff, within 21 days, against the requirement(s) of the said Notice. Your attention, in this regard is drawn to The Statutory Nuisance (Appeals) (Scotland) Regulations 1996 and in particular Regulation 3.

3. In the event of an appeal this Notice shall NOT be suspended until the appeal has been abandoned or decided by the Court as, in the opinion of the Council the expenditure which would be incurred by any person in carrying out works in compliance with the Notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period of time from such compliance.

4. Please address all correspondence on this matter to:

*(Name and address of council)*

**Appendix 6**

*(Insert name)* Council

**STATUTORY NUISANCE OFFENCE  
NOTICE OF OPPORTUNITY TO PAY FIXED PENALTY  
ENVIRONMENTAL PROTECTION ACT 1990 AS AMENDED BY PUBLIC  
HEALTH ETC (SCOTLAND) ACT 2008**

<b>Alleged Offender:</b>	<b>Date of Birth:</b>
<b>Address:</b>	

I, ..... an authorised Officer of *(Insert name)* Council, hereby give you notice, in terms of Section 80(4A) of the above Act that at (insert locus of nuisance)

.....  
.....

a statutory nuisance, as defined in Section 79(1)..... of the said Act, exists and is likely to recur, arising from

.....  
.....  
.....

..... at (time)..... on (date)..... in contravention of the Abatement Notice Reference ..... dated .....

This notice offers you the opportunity of discharging any liability to conviction for the offence by paying a fixed penalty of :  
**£400** (industrial, trade or business premises) / **£150** (all other cases) (delete as appropriate)

Payment of the Notice can be made in any of the following ways:

**Payment by Telephone**

Payment by credit or debit card may be made by contacting *(Insert details)*. Please quote the reference number given at the top right of this Notice.

**Payment by Post or in Person**

You may pay by cheque or postal order, crossed and made payable to *(Insert name)* Council. Cash should be sent registered post. All payments should be addressed to *(Insert name and address)* and accompanied by a contact telephone number, details of your name and address and either the completed Fixed Penalty Notice return or the Fixed Penalty Notice number. Payments by post should be accompanied by a stamped address envelope for return of receipt. Alternatively payment by cheque, postal order, credit card, debit card or cash may be made in person at *(insert details)*.

Failure to pay the fixed penalty fee within **14 days** from the day after the date of service of this Fixed Penalty Notice will result in the case being referred to the Procurator Fiscal seeking prosecution. Failure to comply with an abatement notice is an offence under Section 80(4) of the Act and liable on summary conviction to a fine not exceeding level 5 of the standard scale of fines to in Section 225 of the Criminal Procedure (Scotland) Act 1995, together with a further fine of one tenth of that level for each day on which the offences continues after conviction.

Failure to abate the nuisance will result in either the local authority carrying out the necessary works in accordance with section 81(3) and recovering all reasonably incurred expenses in accordance with section 81(4) or the service of a further abatement notice.

If you are not sure of your rights or the implications of this Notice, you may want to seek legal advice.

**Signed:** .....

**Date of Issue:** .....

**TO BE COMPLETED BY RECIPIENT OF FIXED PENALTY NOTICE**

**(Insert name) Council  
Environmental Services**

**Notice Ref: FPN**

**STATUTORY NUISANCE OFFENCE  
NOTICE OF OPPORTUNITY TO PAY FIXED PENALTY  
ENVIRONMENTAL PROTECTION ACT 1990 AS AMENDED BY PUBLIC  
HEALTH ETC (SCOTLAND) ACT 2008**

Name: .....

Address .....

Date of Birth (optional).....

I enclose payment of the appropriate fixed penalty

**Signed:** .....**Date:** .....

**Payment by Telephone**

Payment by credit or debit card may be made by contacting *(Insert name and number)*. Please quote the reference number given at the top right of this Notice.

**Payment by Post or in Person**

You may pay by cheque or postal order, crossed and made payable to *(Insert name) Council*. Cash should be sent registered post. All payments should be addressed to *(Insert name and address)* and accompanied by a contact telephone number, details of your name and address and either the completed Fixed Penalty Notice return or the Fixed Penalty Notice number. Payments by post should be accompanied by a stamped address envelope for return of receipt. Alternatively payment by cheque, postal order, credit card, debit card or cash may be made in person at *(Insert details)*.

## Appendix 7 Suggested Good Practice

Incident Type	SEPA	Local Authority
General Litter up to a 'bin bag' of waste	Refer incident to LA	Investigate possible offences and take enforcement action in line local authority procedures.  Removal costs will be recovered from the individual responsible where possible.
Waste up to one standard waste skip load (6 m <sup>3</sup> )	Refer incident to LA:	Investigate possible offences and take enforcement action in line local authority procedures.  Should investigation not be possible due to limitation of investigatory powers liaise with SEPA to establish if further investigation possible/worthwhile.  Removal costs will be recovered from the individual responsible where possible.
Waste greater than standard waste skip load (6 m <sup>3</sup> ) and/or incidents involving organised criminal activity or cross border incidents	Investigate deposit, take action in accordance with SEPA's enforcement policy, if supportable by the evidence.  Removal costs will be recovered from the individual responsible where possible.	Refer incident to SEPA.
Clinical, oil, drums of chemicals, hazardous waste, asbestos, hazardous waste etc. <sup>1</sup>	SEPA emergency response. Investigate immediately.  Removal costs will be recovered from the individual responsible where possible.	Refer incident to SEPA (nothing should prevent a LA from acting to prevent/ameliorate harm to the public/pollution)

<sup>1</sup>For deposits of chemical drums or containers into any watercourse then SEPA should be notified immediately (24hr) and it should be noted that councils' Emergency Planning Services have call out contracts with contractors who are able to carry out pollution prevention interventions. Scottish Water should also be advised through their 24 hour help line to allow them to initiate procedures to protect water supply and drainage systems.

## **Appendix 8**

### **SURVEILLANCE**

#### **REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000**

##### **Introduction**

Before conducting surveillance using staff to conduct observations or installing remote surveillance cameras, it is necessary to obtain authorisation to comply with the appropriate legislation.

All local authorities and SEPA will have developed and implemented their own procedures and guidance with regard to surveillance and the use of covert human intelligence sources. Each authority must keep a Central Register of Authorisations and will have a secure system to administer the authorisation, review, renewal and cancellation forms that form part of the process. Any officer considering utilising powers conferred under RIP(S)A must follow their organisation's guidance and procedures.

The purpose of this short guidance is not to go through the authorisation process but to briefly highlight some issues regarding the use of surveillance in flytipping cases. Detailed information and definitions of the terms used can be found in the legislation, the codes of practice, Office of Surveillance Commissions (OCS) Procedures and Guidance and organisational guidance and procedures.

##### **Legislation**

The Regulation of Investigatory Powers (Scotland) Act 2000 (known as RIP(S)A) came into effect in Scotland on 2 October 2000. It deals with covert (intrusive and directed) surveillance issues and the use and conduct of covert human intelligence sources (more recognisable as agents, informants or undercover officers).

RIP(S)A creates a system of authorisations for various types of surveillance and the conduct and use of covert human intelligence sources. RIP(S)A applies to relevant public authorities, and under RIP(S)A, all local authorities and SEPA are listed as a relevant public authority.

The Scottish Executive has produced two Codes of Practice, one in respect of Covert Surveillance and the other in respect of Covert Human Intelligence Sources; the codes are referred to in this guidance document and can be found at ([www.scotland.gov.uk/Topics/Justice/Police/17206/7789](http://www.scotland.gov.uk/Topics/Justice/Police/17206/7789)).

## **Why do we need RIP(S)A?**

The provisions within the legislation are not mandatory and do not impose any obligation upon relevant public authorities to seek or obtain authorisation where the circumstances would indicate that one is available in terms of RIP(S)A. However failure to obtain such an authorisation could result in a successful challenge being made under the Human Rights Act 1998 that there has been interference by a public authority with Article 8 rights (the right to protection of private and family life) and that such action is unlawful. By obtaining an authorisation under RIP(S)A, the relevant public authority is therefore provided with a defence against any potential challenge under Article 8.

## **Can Local Authorities or SEPA utilise all powers under RIP(S)A?**

At present, local authorities and SEPA are only authorised to carry out Directed Surveillance and utilise Covert Human Intelligence Sources, and are not authorised to carry out Intrusive Covert Surveillance. Accordingly, an authorising officer can authorise the use of directed surveillance and the use of a covert human intelligence source only.

## **Covert Surveillance**

Covert Surveillance is defined as surveillance that is carried out in a manner that is calculated to ensure that persons who are subject to it are unaware that it is or may be taking place. Two types of covert surveillance are identified.

### **(a) Directed Surveillance**

RIP(S)A defines this as covert surveillance that is not intrusive and meets the under noted criteria:

- it is undertaken for the purpose of a specific investigation or a specific operation
- it is undertaken in such a manner as is likely to result in the obtaining of private information about a person a person (whether or not one specifically identified for the purpose of the investigation or operation) and
- it is undertaken otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under RIP(S)A to be sought for the carrying out of the surveillance.

This means that immediate response scenarios do not require RIP(S)A authorisation.

### **(b) Intrusive Surveillance**

Local authority and SEPA Officers cannot be authorised to carry out intrusive surveillance but it is important that staff are aware of what such activity is.

RIP(S)A defines this as covert surveillance, which meets the under noted criteria:

- It is carried out in relation to anything taking place on any residential premises or in any private vehicle.
- It involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device. If the surveillance device is designed or adapted principally for the purpose of providing information

## **Surveillance considerations**

This guidance note will not go through the authorisation procedure. The overarching principles for consideration by the investigating and authorising officer cover necessity, proportionality, collateral intrusion and local sensitivities.

### **Necessity**

The authorising officer must be satisfied that there is a necessity to use covert surveillance in the proposed operation. In order to be satisfied, there must be an identifiable offence to prevent or detect before an authorisation can be granted on the grounds falling within RIP(S)A such as to prevention or detection of crime.

*(Office of Surveillance Commissioner (OSC) – Procedures & Guidance 2008 (102))*

### **Proportionality**

Proportionality is a key concept of RIP(S)A. An authorisation should demonstrate how an authorising officer has reached the conclusion that the activity is proportionate to what it seeks to achieve; including an explanation of the reasons why the method, tactic or technique proposed is not disproportionate (the proverbial 'sledgehammer to crack a nut'). Proportionality is not only about balancing the effectiveness of covert methods over overt methods but it involves explaining why the particular covert method, technique or tactic is the least intrusive. It is insufficient to make a simple assertion or to say that the 'seriousness' of the crime justifies any or every method available. It is equally unacceptable to consider lack of resources or a potential cost saving as sufficient ground to use technological solutions which are often capable of being more intrusive than a human being.

This critical judgement can only properly be reached once all other aspects of an authorisation have been fully considered. A potential model answer would make clear that the four elements of proportionality had been fully considered:

- Balancing the size and scope of the operation against the gravity and extent of the perceived mischief,
- Explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others,
- That the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result, and
- Evidencing what other methods had been considered and why they were not implemented.

*(OSC – Procedures & Guidance 2008 (103 - 104))*

### **Collateral Intrusion**

Before authorising surveillance the authorising officer should also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation (collateral intrusion). Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the lives of those not directly connected with the investigation or operation.

An application for an authorisation should include an assessment of the risk of any collateral intrusion. The authorising officer should take this into account, when considering the proportionality of the surveillance.

*(Scottish Executive – Covert Surveillance – Code of Practice (3.6 – 3.7))*

For example, if a business property is being surveilled and it is situated adjacent to a school playground, it is reasonable to expect that children at play may be caught on camera. A method of minimising the extent of collateral intrusion could be to adjust the camera angle as far as possible to obscure the playground area and in the event that some children are caught on camera, their faces could be mosaiced/pixellated to protect their identity.

For an authorisation for directed surveillance involving a risk of collateral intrusion to be lawful, an assessment of that risk must be carried out by the investigating officer, considered by the authorising officer, and properly recorded. If during the authorised surveillance the operation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation then the authorising officer must be informed and it may be necessary to obtain a new authorisation.

### **Sensitivities**

Any person granting or applying for an authorisation will also need to be aware of particular sensitivities in the local community where the surveillance is taking place and of similar activities being undertaken by other public authorities which could impact on the deployment of surveillance. In this regard, it is recommended that where authorising officers consider that conflicts might arise they should consult a senior officer within the police force area in which the investigation or operation takes place.

*(Scottish Executive – Covert Surveillance – Code of Practice (3.9))*

## **Operational considerations**

### **Pre planning**

Before submitting an application for directed surveillance it is vital to plan ahead and consider health and safety issues. A careful inspection of the area where directed surveillance is to take place will assist in identifying

- whether or not directed surveillance can be safely carried out,

- risks to staff and equipment,
- the type of equipment required to be used to obtain the best results,
- location for deployment of equipment/personnel.

### **Equipment**

In order to give proper consideration to collateral intrusion, and to comply with *R v Sutherland*, the authorising officer must fully understand the capabilities and sensitivity levels of technical equipment intended to be used, and where and how it is to be deployed.

*(OSC – Procedures & Guidance 2008 (146))*

All surveillance equipment owned by the public authority should be under central management, since, whatever the object, covert use could be made of most devices. It is considered best practice to cross-reference equipment deployment records with the Unique Reference Number of the relevant authorisation. Where surveillance equipment is shared (e.g. partnership arrangements) there should be auditable processes to prevent unauthorised use of surveillance equipment.

*(OSC – Procedures & Guidance 2008 (290))*

Where officers are required to conduct directed surveillance they should see a copy of the authorisation to ensure that they only carry out authorised activity and use authorised equipment.

*(OSC – Procedures & Guidance 2008 (148))*

If binoculars or cameras are used in relation to anything taking place on any residential premises or in any private vehicle the surveillance can be intrusive even if the use is only fleeting. It will be intrusive “if it consistently provides information of the same quality as might be expected to be obtained from a device actually present on the premises or in the vehicle”. The quality of the image obtained rather than the duration of the observation is what is determinative.

*(OSC – Procedures & Guidance 2008 (234))*

### **Operational Orders/Risk assessments**

Best practice encourages the production of an operational order prior to the commencement of directed surveillance. An order will assist with briefings and allow participants and supervisors to be aware exactly what the operation aims to achieve and the roles of participants. An order should set out the following

- Operation name
- Time date and location of briefing
- Background information/intelligence
- Aims and objectives
- Method
- List of personnel/Roles
- List of Equipment
- List of personal protective equipment
- Health and Safety/Risk assessments
- Contact Details

- Emergency contact details
- Debrief arrangements
- Follow up enquiries

## **CCTV**

Although the provisions of the RIP(S)A or of the code do not normally cover the use of overt CCTV surveillance systems, since members of the public are aware that such systems are in use, there may be occasions when public authorities use overt CCTV systems for the purposes of a specific investigation or operation. In such cases, authorisation for intrusive or directed surveillance may be necessary. (*Scottish Executive – Covert Surveillance – Code of Practice (1.4)*)

It is recommended that a law enforcement agency should obtain a written protocol with a local authority if the latter's CCTV system is to be used for Directed Surveillance. Any such protocol should be drawn up centrally in order to ensure a unified approach. The protocol should include a requirement that the local authority should see the authorisation (redacted if necessary to prevent the disclosure of sensitive information) and only allow its equipment to be used in accordance with it.

(*Office of Surveillance Commissioner – Procedures & Guidance 2008 (279)*)

It should be noted however that whilst there is a role for covert surveillance, there are overt techniques that can be used to prevent flytipping. Although covert surveillance may be necessary in some instances, it is also good practice to actively advertise that CCTV surveillance is being undertaken within the area. This may be means of simple signage displayed within the area affected. The level of signage should be sufficient so as to warn any potential fly tippers of the recordings being undertaken. There are a number of advantages to adopting this approach:

- By advertising that surveillance is being undertaken it is therefore not covert and RIPSA authorisation is therefore not necessary;
- The warning will dissuade the casual fly tipper from fly tipping;
- Simply because the signage is present does not require the use of CCTV equipment. Several sites could be subject to the signage with perhaps only one fitted with CCTV equipment. This will then permit enforcement agencies to address a number of potential sites with the minimum of equipment.
- Other members of the public will witness the proactive action being undertaken by the enforcement agency to address the fly tipping problem; and
- By forcing the professional fly tipper away from such sites the number of potential sites left will reduce and these could then be subject to covert surveillance

### **Retention and destruction of the product**

Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained for a suitable further period and its retention reviewed at a future date.

There is nothing in RIP(S)A which prevents material obtained from properly authorised surveillance from being used in other investigations. Each public authority must ensure that arrangements are in place for the handling, storage and destruction of material obtained through the use of covert surveillance.

Access to recordings made during surveillance investigations should be restricted to those with a requirement to view the images. If copies are taken of the images one copy should be regarded as the master recording and should be sealed, labelled and retained in a secure location. Other copies can be used for investigation purposes.

### **Security**

When conducting surveillance work it is vital that an operation is not compromised in order to protect the safety of members of staff involved and the security of the equipment deployed.

Information, documentation, photographs, video and operation orders etc. should be kept under confidentially cover and held securely. It is important that details of surveillance activity are restricted to only those persons who require to know for operational and safety reasons.

**This document can only serve as a guide to the law relating to flytipping. It does not constitute legal advice and may be misleading if relied upon as a complete explanation of the legal issues involved. If any matter is to be acted upon, the full text of the relevant statutory instruments must be consulted.**

