

OPERATIONAL ARRANGEMENTS ON FLY-TIPPING -

PROTOCOL AGREEMENT BETWEEN

NORTHERN IRELAND ENVIRONMENT AGENCY

AND

_____ COUNCIL

DRAFT

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1. Background

The fly-tipping of waste remains a high profile environmental issue. It is a criminal activity that can blight communities and reduces the quality of life for residents. It can often begin a spiral of decline and has the potential to cause serious pollution to the environment. In some cases, it may also be a risk to human health as well as causing harm to the environment. The incidence of fly-tipping is a further demand on the revenue budgets of Local Councils and the NIEA which needs to be addressed collaboratively across the region

‘Fly-tipping primarily arises from household and or commercial sources and both have specific legal duties known as the waste *‘Duty of Care’*. This duty applies to anyone, including householders who dispose or transfer their waste (except household waste transferred to the local Council). It applies at all times throughout the year and includes the transfer of waste, for example, to:

- Private companies or individuals (e.g. skip hire operators);
- Private individuals who may offer to take waste for profit (i.e. on payment); and
- Private individuals who offer to take or dispose of waste.

In addition, the legal ‘duty of care’ means that everyone must:

- Only transfer waste to a person authorised to receive it.
- Take all reasonable steps to ensure responsible disposal and prevent fly-tipping/illegal disposal by someone else; and
- Prevent the escape of waste or it causing pollution or harm.

Whatever the source, fly-tipping constitutes illegal waste disposal. It is a criminal offence attracting significant penalties. Unscrupulous individuals use fly-tipping as a way of avoiding costs of the proper management of waste. It also undermines the legitimate waste industry.’

Both the NIEA and local Councils have powers and responsibilities to deal with fly-tipping. However clarity of working arrangements is vital to efficient and effective services for the public. This agreement defines the agreed roles and responsibilities of the NIEA and Local Councils in dealing with fly-tipping and illegal waste disposal.

2. Definition and roles

Fly-tipping *“is the illegal disposal of household, industrial, commercial or other controlled waste without a waste management licence. The waste can be liquid or solid. Fly tipping is not the same as littering ⁽¹⁾”* Unlike litter – which is often dropped habitually, sometimes accidentally, and usually involves only single, small waste items – fly tipping is larger in scale and usually considered a premeditated, wilful act.

Fly-tipping poses a threat to humans and wildlife, it has a negative impact on our environment, and spoils our enjoyment of our towns and countryside. It also undermines

legitimate waste businesses where illegal operators undercut those operating within the law. At the same time, the reputation of legal operators is undermined by rogue traders.

The motivation of the perpetrators is largely driven by financial gain or financial saving although other factors such as laziness, proximity to local amenities and simple disregards for the environment play a part.

Both the Local Council and the NIEA have powers to deal with fly-tipped waste (see appendix 1). Accordingly fly tipping incidents need to be treated on a case-by-case basis in determining the most appropriate authority to deal with the incident.

Within this agreement the general approach taken will see the NIEA deal with waste disposal incidents concerning larger quantities of waste, which have a greater environmental risk and may have commercial involvement and/or involve organised criminality. Local Councils will deal with smaller scale incidents in terms of quantity, environmental risk and commercial involvement.

(1) House of Commons Briefing Paper (CBP05672) dated 25th June 2018

3. Remit

The criteria for the division of responsibility for waste crime incidents between the NIEA and the Local Council are as follows:

(i) Volume of waste deposited

- Local Councils will have responsibility for all non-hazardous waste deposits under 20 cubic metres in volume or accumulations of several small scale fly-tipping incidents.
- The NIEA will have responsibility for all waste deposits over 20 cubic metres in volume regardless of the waste classification.

In summary, 20 cubic metres generally relates to less than a single small lorry load.

(See Appendix 1 regarding estimation of waste volumes)

(ii) Classification of the waste deposited

- Local Councils will have responsibility for all hazardous waste of a type and volume that could be accepted at an appropriately authorised Council operated civic amenity or waste recycling centre up to 2m³ or 2000 litres including all Waste Electronic and Electrical Equipment (WEEE) but excluding asbestos
- The NIEA will have responsibility of all other hazardous waste of a type and volume which would not normally be accepted at a Council operated civic amenity or waste recycling centre.

(See Appendix 2 regarding hazardous wastes acceptable at Council civic amenity/recycling centres)

(iii) Location of the waste deposited

- Land in Council Ownership

Where waste is flytipped on land owned by a council, that council will be responsible for clean up, regardless of volume.

- Land owned by NIEA

Where waste is flytipped on land owned by NIEA, the Agency should be responsible for clean up regardless of volume.

- Land owned by a Public Sector body

Where waste is flytipped on land owned by, or which is the responsibility of, another Government Department or public sector body, that Department/public body should be responsible for clean up, regardless of volume.

- Private Land

The 20m³ quantitative threshold should also apply in relation to private land - but with the crucial difference that neither councils nor NIEA should be held responsible for cleaning up illegally deposited waste on privately owned land.

4. Incident management and reporting methods

Reports on waste crime incidents are received from a range of sources by both the NIEA and the Local Council and both have systems and procedures in place for incident recording, assessment and handling.

As part of that assessment and with regard to the criteria in Section 2, the receiving body may refer the incident to the partner agency for consideration and action. Any referrals between the NIEA/Local Council should be made using the 'Incident Referral Form' as shown in Appendix 3.

Completed referral forms should be forwarded to the following email address:

(i) NIEA – EnvironmentalCrime@daera-ni.gov.uk

(ii) [insert Name of Local Council] [insert Email address]

Upon receipt the NIEA/Local Council will assess the referral and if content will confirm receipt by return on the email address above. Responsibility for the incident management will rest with the accepting Local Council/NIEA who may engage with relevant third parties.

5. Hazardous waste

It is agreed that hazardous waste would normally be identified by simple checks at the site (form, colour, smell) and a precautionary principle would apply. Waste sampling and testing will not normally be employed but may be considered in exceptional circumstances.

Mixtures of waste containing hazardous material that cannot be safely removed will be treated as hazardous in their entirety. However, if possible any hazardous waste from the waste pile (e.g. fridge) should be safely removed to reduce potential removal costs.

6. Resolution of disputes

The Local Council and the NIEA will take a pragmatic approach in applying the criteria for determining thresholds and responsibilities as part of this agreement and it is envisaged that most disputes may be resolved through joint on-site visits attended by operational staff from the Local Council and NIEA.

However if agreement cannot be reached at an operational level then the persons nominated below will jointly agree whether the Local Council or NIEA will accept responsibility for any disputed incidents

NIEA nominee: Derek Williamson, Assistant Director, Enforcement Branch, NIEA

Local Council nominee: [insert name or position]

7. Joint working

It is recognised that in dealing with the problem of fly-tipping and illegal waste disposal a collaborative approach may be prove more resource efficient and effective in combating such criminal activity.

Therefore, when appropriate Local Councils may request that the NIEA consider the provision of support and assistance in providing a more robust response to matters such as repeat and persistent offenders, waste crime hotspots and incidents involving commercial operators. Each such case will be considered on its own merits on a case by case basis and any disputes resolved in accordance with paragraph 6.

8. Information sharing

The routine sharing of data and information between parties to this agreement does not engage the Data Protection Act 2018 insofar as 'personal' data¹ is not processed. Otherwise, any personal data sharing will comply with the requirements of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018. A Data Protection Act (DPA) request should be made in each individual case between the parties to this agreement when it is considered necessary to share personal data.

9. Data collection

_____ [INSERT] Council shall provide the NIEA with a quarterly report on 'fly-tipping' INCIDENTCES to include the following information:

- (i) location of clear-up (postal address including postcode)
- (ii) Type of waste (e.g. describe the main type of waste – by EWC Code)
- (iii) Describe the volume of waste
- (iv) Cost of clean-up and (collection and disposal costs only)

This information will be collated and used by NIEA for the purposes of:

- (a) Informing and educating the public about the incidence of fly tipping and the costs associated
- (b) Assessment of fly tipping hotspots
- (c) Assessment of fly tipping waste streams
- (d) Assessment of fly tipping volumes

10. Management and review

This operational agreement should be reviewed by the Fly-tipping sub group of the Joint Central & Local Government Waste Working Group 12 months after implementation.

Signed on behalf of
Northern Ireland Environment Agency

Date:

Signed on behalf of
[Insert relevant Council]

Date:

¹ Section 3 (2) of the data protection Act 2018 defines personal data as, "Personal data means any information relating to an identified or identifiable living individual (subject to subsection (14 (c))).

Appendix 1

Legislation	NIEA	Local Council
Waste & Contaminated Land (NI) Order 1997	ART 4,5,38, 27	ART 28
The Litter (NI) Order 1994	ART 7	ART 3, 7
The Public Health (Ireland) Act 1878		?
Clean Neighbourhoods and Environment Act 2011		?

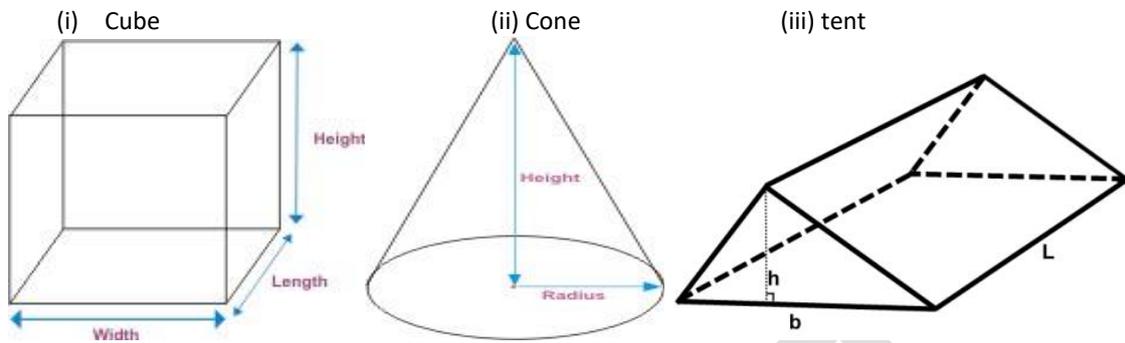
Appendix 2

Information to assist NIEA and Council officers in estimating waste volumes

E.g. photo of waste emptied from bin lorry = 18.5 m³

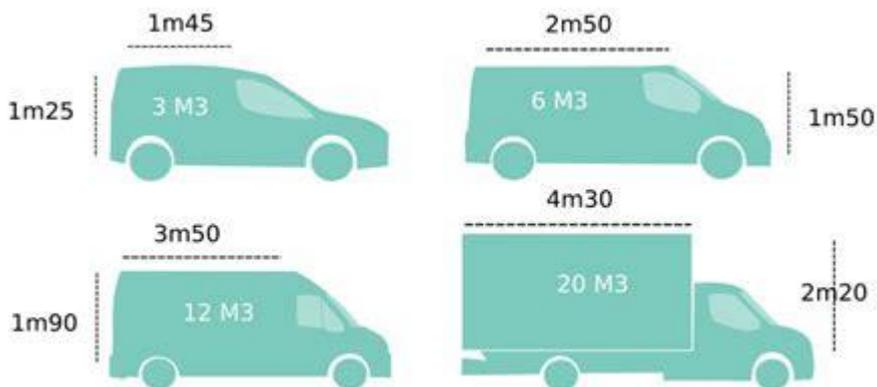


How to estimate volumes of waste:



- (i) Calculating a cube shape deposit – length x breadth x height
- (ii) Calculating a cone shape deposit – $\frac{1}{3} \times \pi \times \text{radius}^2 \times \text{height}$
- (iii) Calculating a tent shape deposit – $\frac{1}{2} \times \text{base} \times \text{length} \times \text{height}$

VISUAL REPRESENTATION OF THE VOLUMES (IN CUBIC METRES) OF VEHICLES



Appendix 3

The list below provides a broad directory of the range of hazardous materials (including relevant EWC Code) which may be acceptable at an appropriately authorised Local Civic Amenity/Recycling centres. It is recognised that the wastes acceptable vary on a site by site basis and reference should be made to the site specific license conditions for confirmation that the site is authorised to accept such wastes.

<u>EWC Code</u>	<u>Waste Description</u>
03 01 04*	sawdust, shavings, cuttings, wood, particle board and veneer containing dangerous substances
13 01 01*	hydraulic oils, containing PCBs [Note A]
13 01 04*	chlorinated emulsions
13 01 05*	non-chlorinated emulsions
13 01 09*	mineral-based chlorinated hydraulic oils
13 01 10*	mineral based non-chlorinated hydraulic oils
13 01 11*	synthetic hydraulic oils
13 01 12*	readily biodegradable hydraulic oils
13 01 13*	other hydraulic oils

13 02 04*	mineral-based chlorinated engine, gear and lubricating oils
13 02 05*	mineral-based non-chlorinated engine, gear and lubricating oils
13 02 06*	synthetic engine, gear and lubricating oils
13 02 07*	readily biodegradable engine, gear and lubricating oils
13 02 08*	other engine, gear and lubricating oils
14 06 01*	chlorofluorocarbons, HCFC, HFC
14 06 02*	other halogenated solvents and solvent mixtures
14 06 03*	other solvents and solvent mixtures
14 06 04*	sludges or solid wastes containing halogenated solvents
14 06 05*	sludges or solid wastes containing other solvents
15 01 10*	packaging containing residues of or contaminated by dangerous substances
15 02 02*	absorbents, filter materials (including oil filters not otherwise specified), wiping cloths, protective clothing contaminated by dangerous substances
16 01 07*	oil filters
16 01 08*	components containing mercury
16 01 09*	components containing PCBs [Note A]
16 01 13*	brake fluids
16 02 09*	transformers and capacitors containing PCBs [Note A]
16 02 10*	discarded equipment containing or contaminated by PCBs other than those mentioned in 16 02 09 [Note A]
16 02 11*	discarded equipment containing chlorofluorocarbons, HCFC, HFC
16 02 12*	discarded equipment containing free asbestos
16 02 13*	discarded equipment containing hazardous components other than those mentioned in 16 02 09 to 16 02 12 [Note B]
16 02 14	discarded equipment other than those mentioned in 16 02 09 to 16 02 13
16 02 15*	hazardous components removed from discarded equipment [Note B]
16 03 03*	inorganic wastes containing dangerous substances
16 03 05*	organic wastes containing dangerous substances
16 05 04*	gases in pressure containers (including halons) containing dangerous substances
16 06 01*	lead batteries
16 06 02*	Ni-Cd batteries
16 06 03*	mercury-containing batteries
16 06 06*	separately collected electrolyte from batteries and accumulators
17 02 04*	glass, plastic and wood containing or contaminated with dangerous substances
17 03 01*	bituminous mixtures containing coal tar
17 03 03*	coal tar and tarred products
17 08 01*	gypsum-based construction materials contaminated with dangerous substances
17 09 02*	construction and demolition wastes containing PCB (for example PCB-containing sealants, PCB-containing resin-based floorings, PCB-containing sealed glazing units, PCB-containing capacitors) [Note A]
20 01 13*	solvents

20 01 14*	acids
20 01 15*	alkalines
20 01 17*	pesticides
20 01 21*	fluorescent tubes and other mercury-containing waste
20 01 23*	discarded equipment containing chlorofluorocarbons
20 01 26*	oil and fat other than those mentioned in 20 01 25
20 01 27*	paint, inks, adhesives and resins containing dangerous substances
20 01 29*	detergents containing dangerous substances
20 01 31*	cytotoxic and cytostatic medicines
20 01 33*	batteries and accumulators included in 16 06 01, 16 06 02 or 16 06 03 and unsorted batteries and accumulators containing these batteries
20 01 35*	discarded electrical and electronic equipment other than those mentioned in 20 01 21 and 20 01 23 containing hazardous components [Note B]
20 01 37*	wood containing dangerous substances

Notes

Note A For the purposes of this list of wastes, PCBs will be defined as in Directive 96/59/EC

Note B Hazardous components from electrical and electronic equipment may include accumulators and batteries mentioned in 16 06 and marked as hazardous; mercury switches, glass from cathode ray tubes and other activated glass, and other similar items.