



# Your Rubbish and the Law

a guide for businesses

Keep Britain Tidy 



# Contents

- 3** Quick Facts About Litter and Waste
- 6** Responsibilities for Businesses
- 7** Guidelines for Keeping Premises Clear of Litter
- 8** The Environmental Protection Act 1990
- 12** Summary of Powers to Tackle Litter and Refuse on Private Land
- 14** Useful Contacts



## Quick Facts About Litter and Waste

### **The role of Keep Britain Tidy**

ENCAMS (Environmental Campaigns) runs Keep Britain Tidy, a campaign aimed at getting the public to dispose of materials appropriately, so the materials do not become litter. ENCAMS also provides free publications on litter related issues through a telephone ordering line **01942 612639** and its website **[www.encams.org](http://www.encams.org)**.

### **Litter measurements**

ENCAMS carries out surveys across the country measuring different sorts of litter, including: smoking related litter, fast food packaging, confectionery litter and hazardous litter such as broken glass and syringes. The information is used to detect trends in litter deposits, to help local authorities make more efficient use of their resources and to inform ENCAMS future campaigns.

### **Cost of clearing up litter**

The estimated cost of street cleaning was £547 million in 2005-2006.

### **Litter clearance**

Certain bodies have a legal duty to clear litter and refuse from places they are directly responsible for, and which are accessible by the public, such as streets, parks, playgrounds, tourist beaches and pedestrianised areas. Duty bodies include Crown Authorities (royal parks), principal litter authorities (local authorities), governing bodies of designated educational institutions (including schools, colleges and universities), designated statutory undertakers such as transport companies, train and tram operators, airports and port and harbour authorities. This is a statutory duty under s.89 of the Environmental Protection Act (EPA) 1990. A code of practice on Litter and Refuse is also issued under s.89 of the 1990 act to require that the 'cleansing duty' is carried out to certain specified standards.

If a piece of private land is littered, the occupier or owner should accept responsibility for clearing the litter. Local authorities can issue a litter clearing notice to require that an occupier or owner keeps their land clear of litter and refuse. Some local authorities have a dedicated phonenumber for members of the public to report litter and waste. Otherwise it is usually the cleansing, environmental or technical services department that should be contacted.

### **Flyers**

Local authorities have the power to control the distribution of flyers and other free printed matter to prevent it from becoming litter. They are able to designate areas by order where it is an offence for a person to distribute free printed matter without the consent of the authority. Anyone distributing free literature in these areas commits an offence punishable by a fine of up to £2,500 or a fixed penalty notice of £75 where the authority has set no other amount.

### **Schools' litter**

Schools have a legal duty to clear the litter and refuse from their own grounds. However, the school has no responsibility for clearing litter outside its grounds. It is the responsibility of the appropriate duty body to clean streets and other public places.

### **Litter prosecutions**

The total number of fixed penalty notices issued for litter rose by 32% between 2005-2006 and 2006-2007 – from 33,033 to 43,624. Over this period the number of payments arising from fixed penalty notices for litter rose by 49% – from 18,002 in 2005-2006 to 26,818 in 2006-2007.

### **Legal definition of litter**

Litter is most commonly assumed to include materials often associated with smoking, eating and drinking, including chewing gum, that are improperly discarded and left by members of the public; or are spilt during business operations, as well as waste management operations. As a guideline a single plastic sack of rubbish should usually be considered fly-tipping rather than litter.

The offence of Leaving Litter (s.87 of the EPA 1990) is any incident where a person throws down, drops or otherwise deposits any litter in any place in the area of a principal litter authority, to which the public has access, with or without payment, and leaves it.

### **Fly-tipping**

In 2006-2007 2.6 million fly-tipping incidents were dealt with by local authorities in England and they are estimated to cost local authorities alone £76 million a year to clear.

Fly-tipping is a term to describe the act of the illegal dumping of rubbish, or the deposit of waste on any and with no license to accept waste. Favourite hotspots are lay-bys, farmland and public open spaces. Types of waste can range from a single plastic sack, larger items such as furniture, white ware including fridges, tyres, car parts and hazardous wastes such as oil drums, televisions and asbestos. Hazardous or not, the dumping of any waste is illegal and comes with a serious cost for the offender – either 12 months imprisonment and up to £50,000 in a magistrates' court or both; or five years or an unlimited fine in a crown court or both.

## Most prevalent litter

According to ENCAMS' *Local Environmental Quality Survey of England 2006/2007*, the most commonly found types of litter across all sites surveyed were:

- Smoking related litter (78% of all sites)
- Confectionery related litter (67% of all sites)
- Non-alcoholic drinks related litter (52% of all sites)

## Public attitudes to litter

Most of the population voice their disgust at seeing litter in the streets, but research by ENCAMS (2006) showed that nearly half of the general population admitted to dropping litter. Despite the fact that all of the people who took part in this research admitted to dropping litter, they blamed the litter problem on teenagers and school children. People thought that some forms of litter were more acceptable than others – they

said it was okay to drop apple cores because they broke down into the environment. Glass bottles, dog excrement and clinical waste, on the other hand, were considered not okay because they posed a threat to public health.

The research by ENCAMS found that between 2001 and 2006 there had been a significant change in people's attitudes towards litter. In 2001, dog owners did not clean up after their pets fouled in a public place. Six years later not cleaning up after a dog had become socially unacceptable behaviour.

There was also more awareness about litter in 2006 than in 2001. More people felt guilty about dropping litter and were more likely to notice and talk about the two biggest components of litter: smokers' materials and chewing gum. Nevertheless, they were still dropping those items, and car and fast food litter were found to be on the increase.



# Responsibilities for Businesses

## Litter-free areas

Where a litter problem can be clearly traced to certain types of business, such as 'food on the go' establishments, mobile vendors or market stalls, a local authority can issue a street litter control notice. This can be used to compel the occupier, or the owner of business or retail premises, to clear up litter and implement measures to prevent the land from becoming defaced again. Street litter control notices are issued under s.93 and s.94 of the EPA 1990. Local authorities are allowed to issue a fixed penalty notice to any person who has not complied with a street litter control notice.

Defra has produced a voluntary code of practice for reducing litter caused by 'food on the go' which sets out recommendations to help businesses, local authorities and other land owners or occupiers to work together to resolve the problems. See [www.defra.gov.uk/environment/localenv/litter/pdf/fastfoodcop.pdf](http://www.defra.gov.uk/environment/localenv/litter/pdf/fastfoodcop.pdf)

## Pre-treatment of waste

Under the landfill regulations introduced in 2002 certain wastes such as tyres (whole or shredded) and infectious clinical wastes from hospitals, medical or veterinary establishments are banned from landfill. Wastes that are explosive, corrosive, flammable or oxidising are also banned, as are new or unidentified chemical substances whose effects on man and the environment are unknown.

From 30 October 2007 all liquid waste is banned from landfill, and all non-hazardous and inert waste has to be treated before it can be sent there. For general waste this means that a proportion of each waste stream should be separated for recycling or it must go through a sorting facility.

The Environment Agency recommends that you produce a written declaration that states:

- Who has treated the waste
- The type of treatment that has occurred (if any)
- The amount of waste that has been sorted out for recovery or alternative treatment (if relevant)

The Environment Agency also recommends that you should include the declaration with your waste transfer note, and keep a copy with your waste transfer records. At the moment the obligation not to accept untreated waste or questionable loads rests with the landfill operator and it is they who should notify the Environment Agency of businesses who persistently fail to pre-treat their waste. The Environment Agency will not take enforcement action against a business unless there is a risk to the environment or to human health. However, they want businesses to:

- Think about what happens to their waste
- Consider the different treatment and disposal options
- Boost the recovery and recycling of waste

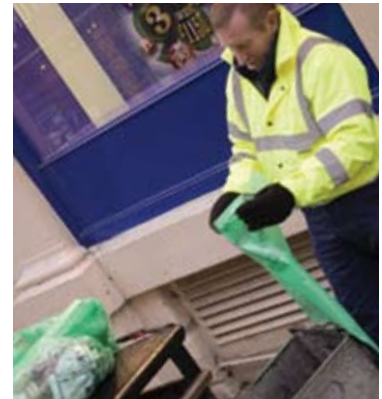
## Removal of shopping trolleys

A local authority can charge the owner of abandoned shopping and luggage trolleys for their removal, storage and disposal. In any court proceedings it is a defence for a person to prove that they were not the owner of the trolley at the time it was removed.

# Guidelines for Keeping Premises Clear of Litter

- **Provide enough litter bins, preferably covered ones. Locate them in the most convenient position in both working and non-working areas of the premises, inside and outside.**
- **Ensure bins are of a sufficient size for the quantity of litter produced.**
- **Empty and clean bins on a regular basis.**
- **Set aside adequate storage space for trade waste, either inside the building or in an enclosed area outside.**
- **To prevent spillage or refuse bags splitting, put refuse out as near as possible to the time of collection.**
- **Refuse containers should be taken back into your premises immediately after they have been emptied to avoid unsightliness and danger to pedestrians.**
- **Trade refuse containers must be of adequate capacity and in good condition.**
- **Place refuse containers in a sheltered place to avoid spillage and exposure to wind. Keep them secure from theft, vandalism, animals or scavengers.**
- **Takeaway food shops should have litter bins outside their premises (by agreement with the council) and display notices encouraging customers to use them.**
- **Carry out regular clean ups, including the rear of premises, car parks and delivery and storage areas.**
- **Encourage a litter-conscious attitude and code of conduct amongst staff at every level. Train new staff to follow these guidelines.**
- **Keep within the law by having a trade refuse collection agreement with either the council, the council's contractor or a private contractor authorised to carry waste.**

Extracts taken from the Environmental Protection Act 1990.



# The Environmental Protection Act (EPA) 1990

The EPA 1990 imposes duties on certain landowners and occupiers to keep specified land clear of litter and refuse, and also upon local authorities and the secretary of state to keep clean public highways. Updates to the act were made in the Clean Neighbourhoods and Environment Act (CNEA) 2005, which generally extended the range of enforcement powers for local authorities to deal with problems affecting the quality and appearance of the local environment.

## **Duty of care on waste for businesses**

The duty of care regulations explain s.34 of the EPA 1990, which imposes a legal duty on businesses to take all reasonable steps to keep waste safe whilst it is in their possession. It also requires businesses to make sure they only pass waste on to an authorised person in order to dispose of it correctly.



## **Duty of care – Section 34 (1)**

It shall be the duty of any person who produces, keeps or disposes of controlled waste:

- a) To prevent any contravention by any other person of s.33
- b) To prevent the escape of waste from their control

Controlled waste includes commercial and industrial waste. You must package the waste in suitable containers so that it cannot fall out, blow away or escape from the receptacle. You must secure the waste against unauthorised removal as far as is reasonably practical. Security should be sufficient to prevent the breaking open of containers and removal of waste by vandals, thieves, animals, accident or weather.

## **Duty of Care – Section 34 (1)(c)**

... It shall be the duty of any person on the transfer of the waste, to secure that the transfer is only to an authorised person.

You must ensure that the person removing your waste is either from a local authority or a licensed waste collection company. You are responsible for ensuring that your waste is disposed of properly and must ask for proof of registration from your waste contractor. If in doubt, check with the Environment Agency or your local authority about licensed waste contractors in your area. (Householders also have a duty of care to ensure that their domestic waste is being collected and disposed of by an authorised person.)

### **Duty of Care – Section 34 (1)(c)**

... It shall be the duty of any person [to ensure] (ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention ... and to comply with the duty ... as respects the escape of waste.

You must provide a written description of your waste to the person who removes it. A transfer note must also be filled in and signed by both persons involved in the transfer. This should indicate the quantity and type of materials in the waste. Offenders can be issued with a fixed penalty notice of £300, or may be required to pay a fine following a court conviction.

The composition of the waste or the activity that produces it may also be necessary as a part of the description. Repeated transfer of the same kind of waste can be covered by one transfer note for up to a year. Any unexpected or unusual additions to the waste must be notified to the waste remover so that they can dispose of it in an appropriate way. For example, office waste would normally consist of paper plus small amounts of food packaging and food remains.

However, if substantial food waste is mixed with the office waste or if the waste includes metal parts, cleaning fluid, etc., the description would need to take this into account.

If you produce waste that may be hazardous, such as chemicals or drugs, you must ensure that the person removing the waste is aware of the potential risks and can dispose of your waste properly. If in doubt, contact your local authority or waste contractor for advice. Householders must also ensure that any waste produced on their own property is passed on to a registered waste carrier for disposal. Householders are not required to provide waste transfer notes.

### **Extended enforcement powers under CNEA 2005**

The Clean Neighbourhoods and Environment Act (CNEA) 2005 provides local authorities, parish and community councils and the Environment Agency with more effective powers to enforce environmental quality regulations, including those outlined in the duty of care regulations.

**Section 35** of the CNEA 2005 ensures that individuals caught transporting controlled waste without a license can no longer avoid liability by claiming they were acting under their employer's instructions.

**Section 37** provides authorised officers with certain powers to stop, search and seize any vehicle believed to be used for the transportation of controlled waste without being registered.

**Section 38** allows authorised officers to issue a fixed penalty notice to individuals who are unable to produce authority for transporting controlled waste.

**Section 40** removes the defence of acting on an employer's instructions for the unauthorised or harmful deposit of waste. Therefore, if your staff improperly dispose of your business waste you can be held liable for their actions if you have failed to take all reasonable and appropriate steps to comply with the regulations.

**Section 46** allows an authorised officer or constable seizing a vehicle to remove the seized property to a place that they consider appropriate.

## **Section 47**

### **Waste containers**

If it appears to a waste collection authority that there is likely to be situated, on any premises in its area, commercial waste or industrial waste of a kind which, if the waste is not stored in receptacles of a particular kind, is likely to cause a nuisance or to be detrimental to the amenities of the locality, the authority may require the occupier of the premises to provide at the premises receptacles for the storage of such waste of kind and number specified.

Your local authority can specify the type and number of waste receptacles needed to contain the waste; where they should be placed to facilitate their emptying; substances or articles which should not be placed in them, as well as the precautions that should be taken where particular substances or articles are placed in them; and the steps you should take to help in the collection of waste from receptacles. Fines for not complying are up to £1,000 on conviction, or a local authority officer may issue a fixed penalty notice of £100 if no amount is specified locally. Householders have a similar responsibility under s.46 to ensure that their domestic waste is stored in a suitable receptacle as specified by the local authority and are also subject to prosecution or a fixed penalty if they fail to do so.

## **Section 93 (1)**

### **Controlling street litter**

A principal litter authority ... may, with a view to the prevention of accumulations of litter or refuse in and around any street or open land adjacent to any street, issue notices [Street Litter Control Notices] imposing requirements on occupiers of premises in relation to such litter or refuse.

If there is a litter problem related to particular kinds of commercial premises, such as takeaway restaurants, cinemas, sports centres, service stations and others, then the local authority has powers to issue Street Litter Control Notices (SLCN).

Under section 21 of the CNEA 2005 the SLCN is now applicable to vehicle stalls and other moveable structures used for street vending, so that mobile vendors can also be required to take steps to minimise and clear up litter and refuse on a street or open adjacent land originating from their commercial activities.

## **Section 94 (4)**

The requirements which may be imposed by a SLCN shall relate to the cleaning of litter or refuse from the specified area and may in particular require:

- (a) The provision or emptying of receptacles for litter or refuse
- (b) The doing within a period specified ... any such thing as may be so specified including the standards to which any such thing must be done
- (c) The doing ... at such times or intervals, or within such periods, of any such thing as may be so specified

A local authority has powers to force businesses to clean the area in front of their premises, provide and empty bins and do anything else which may be necessary to remove litter. It is in your interests to control the rubbish coming from your premises to avoid it becoming litter. It is an offence to fail, without reasonable excuse, to meet the terms of a SLCN and a person could be fined up to £2,500 or receive a fixed penalty of £100 (or any other amount within a range set in regulations) for non-compliance.

## **Section 99**

### **Stray shopping trolleys**

Where any shopping or luggage trolley is found abandoned, the local authority may remove the trolley. Local authorities can collect abandoned shopping (and luggage) trolleys and charge owners for their removal, storage and disposal. If after six weeks the trolley has not been collected, the local authority may either sell or dispose of it. Adopting a deposit system, installing obstacles that prevent trolleys being taken off the site or publicising a trolley collection service will help control this problem and prevent retailers being charged for trolley collections.

### **Littering Section 87 (1)**

#### **Environmental Protection Act 1990**

A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place in the area of a principal litter authority which is open to the air on at least one side and to which the public have access with or without payment. It is immaterial whether the litter is deposited on land or in water.

Littering is not just an offence in public places such as shopping and recreation areas, pavements, public spaces and car parks, but also forms an offence on any private land, as well as land covered by water, as long as it is open to the air. An authorised officer of a local authority can issue a fixed penalty notice for a litter offence as an alternative to prosecution. This will be £75 unless another amount is set locally. Any person found guilty of the litter offence in a court of law may be fined up to £2,500 for each offence.

A summary of the powers local authorities and other waste regulation authorities have for tackling litter and refuse on private land is on pages 12-13 of this guide.

### **Litter bins**

It is unlawful to put trade or commercial waste in litter bins. They are strictly for general litter and refuse.

### **Remember**

Your business must have a trade waste collection agreement with the local authority, the council's contractor or a private contractor authorised to handle waste. Contact your local authority in the first instance to discuss your requirements.

# Summary of Powers to Tackle Litter and Refuse on Private Land

## **Sections 92A-C, including 94A**

### **Environmental Protection Act 1990**

Local authorities have the power to issue a litter clearing notice which requires occupiers or land owners to keep their property clear of litter and refuse. Land must be restored within a minimum of 28 days to a standard specified by the local authority under the terms of the notice. It may also specify requirements to prevent the land from becoming defaced again. Failure to comply with a notice is an offence – the local authority can clean up the land and recharge the costs, and the offender could face a fine of up to level 4 on the standard scale or £2,500.

## **Section 59**

### **Environmental Protection Act 1990**

Provides powers for waste regulation authorities and waste collection authorities to require the removal of waste unlawfully and knowingly deposited. If the occupier or owner fails to comply the authority can enter the land, remove the waste and recover the costs from the occupier.

## **Part III (Statutory Nuisance)**

### **Environmental Protection Act 1990**

District councils can serve an abatement notice if an accumulation or deposit is considered to be prejudicial to health or a nuisance. Reasonable costs can be recovered. Inert material, however, would not be categorised as a statutory nuisance.

## **Section 215**

### **Town and Country Planning Act 1990**

Allows an authority to serve a notice on the owners and occupiers of land, requiring the site to be tidied up if the condition of any land is in such a state as to adversely affect the amenity of the neighbourhood.

## **Section 22 (3)**

### **Control of Pollution Act 1974**

Provides a power to district councils to arrange, with the agreement of the person owning or occupying the land, for the cleaning of land in the open air (other than a highway) to which the public has access. Charges will be paid by the owner or occupier.

## **Section 78**

### **Public Health Act 1936**

Provides powers for district councils to sweep and cleanse any court, yard or passage which is used in common by the occupants of two or more buildings (but is not a highway repairable by the inhabitants at large) and which is not regularly swept and kept clean to the satisfaction of the authority. The council may recover reasonable expenses from the occupiers of the buildings.

## **Section 34**

### **Public Health Act 1961**

Provides a power to remove from any land in the open air any rubbish that is seriously detrimental to the amenity of the neighbourhood. Rubbish is defined as including rubble, waste, paper, crockery and metal.

## **Section 6**

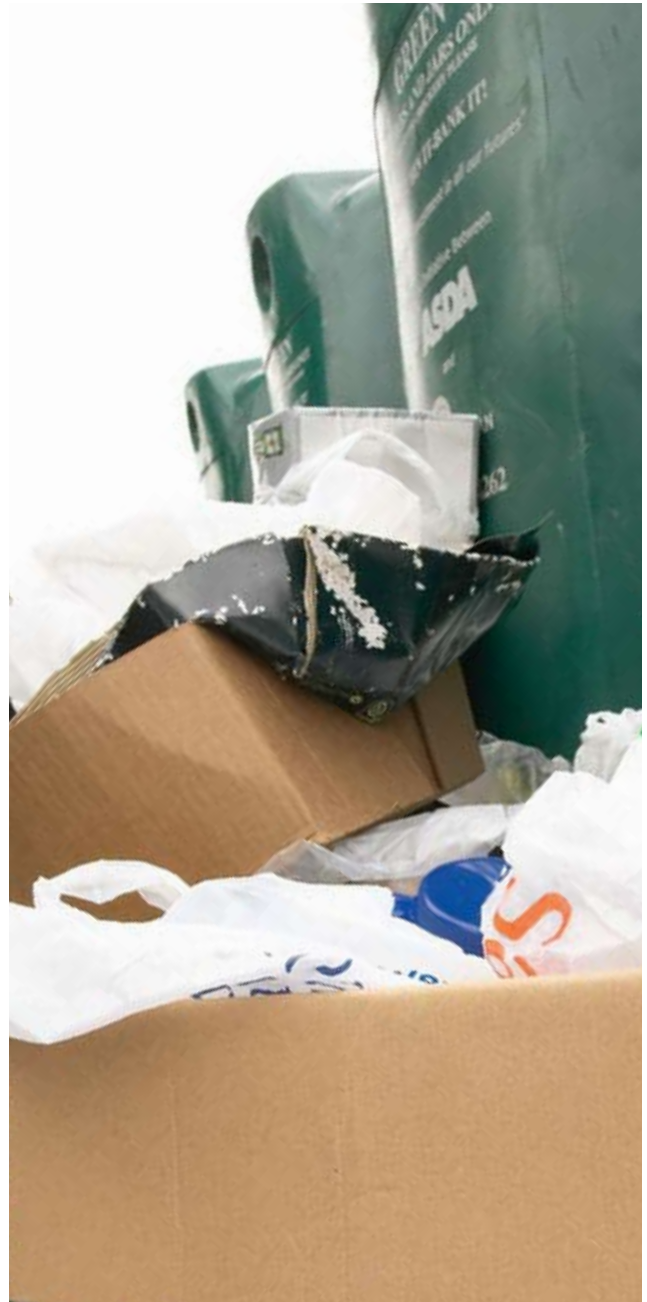
### **Refuse Disposal (Amenity) Act 1978**

Gives district councils the powers to remove from land open to the air or on a highway any thing that has been abandoned without lawful authority. If the land is occupied, the council must give notice of their intention to remove. Costs can be recovered from the person leaving the refuse or a person knowingly permitting it.

## **Section 4**

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

A local authority can serve a notice requiring an owner to remove, at their own expense, accumulated waste where damage by pests is likely to occur. Costs can be recovered should the council have to remove it.



# Useful Contacts

The Environmental Protection Act 1990 and Clean Neighbourhoods and Environment Act 2005 can be downloaded from: [www.opsi.gov.uk](http://www.opsi.gov.uk). Printed copies can also be ordered from The Stationery Office, including full text of the EPA 1990 with section-by-section analysis of the legislation in a book published by Sweet and Maxwell: The Environmental Protection Act 1990 Current Law Statutes Annotated by Stephen Tromans  
**ISBN-10: 0421507802 & ISBN-13: 9780421507807.**

Printed copies of individual sections of the Clean Neighbourhoods and Environment Act 2005 or the complete set of Defra guidance can be ordered from Defra publications, Tel: 08459 556 000. Guidance on individual sections of the Act can also be downloaded from: [www.defra.gov.uk](http://www.defra.gov.uk)

## **Chartered Institution of Wastes Management**

9 Saxon Court, St. Peter's Gardens, Northampton NN1 1SX

**t: 01604 620426**

**w: [www.ciwm.co.uk](http://www.ciwm.co.uk)**

## **Waste Watch** (for information on recycling)

56-64 Leonard Street London EC2A 4LT

**t: 0207 549 0300**

**w: [www.wastewatch.co.uk](http://www.wastewatch.co.uk)**

## **The Environmental Services Association**

154 Buckingham Palace Road, London SW1W 9TR

**t: 0207 824 8882**

**w: [www.esauk.org](http://www.esauk.org)**

ENCAMS runs the Keep Britain Tidy campaign and we have information on our website – [www.encams.org](http://www.encams.org). You can order further copies of this publication free of charge through the 'publications' section on the website, or via a telephone ordering line between 9a.m. and 4p.m. on weekdays on **01942 612639**

## **ENCAMS**

Elizabeth House, The Pier, Wigan WN3 4EX

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## **Disclaimer**

This document can only serve as a guide to and synopsis of the law relating to businesses and their responsibilities with regard to litter and refuse. It does not constitute legal advice. Full legislation is available through [www.opsi.gov.uk](http://www.opsi.gov.uk) and a guide to the local environmental legislation available to local authorities can be found at [www.idea.gov.uk/knowledge](http://www.idea.gov.uk/knowledge). If you wish to take advice or pursue a case, you must seek independent legal advice.





The Keep Britain Tidy Campaign is run by ENCAMS



[www.encams.org](http://www.encams.org)

