



Department  
for Environment  
Food & Rural Affairs

Tel: xxxx  
xxxx  
[www.defra.gov.uk](http://www.defra.gov.uk)

xxx  
xxx  
xxx

**Your ref:**  
**Our ref:** xxx  
**Date:** 12 December 2013

Dear xxx

**REQUEST FOR INFORMATION: ENFORCEMENT OF LEGISLATION REGARDING  
WASTE CARRIER REGISTRATION**

Thank you for your request for information about the enforcement of legislation relating to waste carrier registration, which we received on 15 November. As you know, we have handled your request under the Environmental Information Regulations 2004 (EIRs).

I enclose a copy of the information you requested where we hold this e.g. certain guidance documents and Defra documents that acknowledge the protocol agreement between the Environment Agency and the Local Government Association covering responsibilities in relation to waste enforcement. However, following a search of our paper and electronic records, I have established that some of the other information that you have requested does not exist, and some information is not held by Defra i.e. prosecution data, but is held by another Department. I have provided details against each of your questions.

The information not held by Defra is exempt under regulation 12(4)(a) of the EIRs, which relates to information which is not held at the time when an applicant's request is received. Regulation 12(4)(a) is a qualified exception, which usually means that a public authority is required to conduct a public interest test to determine whether or not information should be disclosed or withheld. However, the Information Commissioner, who is the independent regulator for requests made under the EIRs, takes the view that a public interest test in cases where the information is not held would serve no useful purpose. Therefore, in line with the Information Commissioner's view, Defra has not conducted a public interest test in this case.



*1. Details of and electronic copies of all relevant DEFRA documents that provide confirmation &/or guidance of/for waste collection authority (local council) powers under Control of Pollution (amendment) Act 1989 & Waste (England & Wales) Regulations 2011.*

The powers of waste collection authorities are set out in the legislation you refer to. General guidance on the registration of carriers of controlled waste, further to the Control of Pollution (Amendment) Act 1989, was provided in the Department of Environment Circular 11/91. This document is no longer in print and is not available online. A hard copy of the document is being sent to you by post today. In addition there is some information in the Waste Management Duty of Care Code of Practice, published in 1996. The Code of Practice is now slightly out of date and is in the process of being revised. We expect to consult on an updated document next year. The existing Code of Practice is available at <http://archive.defra.gov.uk/environment/waste/controls/documents/waste-man-duty-code.pdf>

Guidance on waste legislation including aspects of the Waste (England and Wales) Regulations 2011 (the 2011 Regulations) e.g. the waste hierarchy guidance is available on the Gov.uk website at <https://www.gov.uk/waste-legislation-and-regulations>. In addition there is guidance for businesses on the 2011 Regulations on the Environment Agency website at <http://www.environment-agency.gov.uk/business/topics/waste/128153.aspx> and on waste registration at <http://www.environment-agency.gov.uk/business/sectors/wastecarriers.aspx>

*2. Details of and electronic copies of all relevant DEFRA documents that specifically confirm waste collection authorities can institute criminal proceedings for unlicensed waste carriers using section 1 Control of Pollution (amendment) Act 1989.*

There is no separate Defra guidance, or Defra documents, on this. The powers of waste collection authorities are set out in the legislation. (See also answer to question 3).

*3. Details of and electronic copies of any and all relevant DEFRA documents that confirm section 1 Control of Pollution (amendment) Act 1989 is actually a common reporting offence prosecutable by any authority or individual.*

There is no separate Defra guidance, or Defra documents, on this. However, anyone can bring a prosecution under section 1 of the Control of Pollution (Amendment) Act 1989 (the 1989 Act). The right to bring a private prosecution is preserved by section 6(1) of the Prosecution of Offences Act 1985. The Director of Public Prosecutions has the power to take over the prosecution and in some cases, the private prosecutor must obtain the prior consent of the Attorney General or the Director of Public Prosecutions.

4. *Details of and electronic copies of all relevant DEFRA documents that specifically confirm waste collection authorities can issue stop & compliance notices under the Waste (England & Wales) Regulations 2011 in relation to section 1 Control of Pollution (amendment) Act 1989 offences (as a regulation authority).*

The powers of waste collection authorities are set out in the legislation. See Section 9 of Control of Pollution (Amendment) Act 1989 and 'Interpretation' in Regulation 36 of the 2011 Regulations for the meaning of "regulation authority" plus footnote (c). There is no separate Defra guidance, or Defra documents, on this.

5. *Details of and electronic copies of all relevant DEFRA documents that explain the difference between the 'Environment Agency' and 'Regulation Authority' for the purposes of regulations 38 & 39 of the Waste (England & Wales) regulations 2011, which both stipulate a difference in the powers of the two entities.*

The definition of "regulation authority" is included within the legislation (see answer to question 4). Regulations 38(2) and 39(2) provide powers for the Environment Agency to serve Compliance and Stop notices in respect of specific contraventions of the Waste Regulations. Regulations 38(3) and 39(3) confer powers on regulation authorities to serve Compliance and Stop notices for contraventions of Section 1 of the Control of Pollution (Amendment) Act 1989. There is no separate Defra guidance, or Defra documents, on this.

6. *Details of and electronic copies of all relevant DEFRA documents that acknowledge the protocol agreement between the Environment Agency and the Local Government Association, which covers who does what in relation to waste offences.*

The National Fly-Tipping Prevention Group, currently chaired by Defra, has published a guidance booklet 'Tackling Fly-tipping - A guide for landowners and land managers' which refers to the Protocol. The document is published at [http://www.tacklingflytipping.com/landowners/downloads/Main\\_doc\\_landowner.pdf](http://www.tacklingflytipping.com/landowners/downloads/Main_doc_landowner.pdf)

The *Draft Fly-tipping Partnership Framework* was produced by Defra in association with the National Fly-Tipping Prevention Group in 2012 and published on Gov.uk. It does not mention the Protocol by name but does refer to the roles and responsibilities of local authorities and the Environment Agency in relation to fly-tipping which are set out in the Protocol. The draft *Framework* is published at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218808/fly-tipping-partnership-framework-discussion-20120822.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218808/fly-tipping-partnership-framework-discussion-20120822.pdf) The document is currently being finalised for publication.

*7. Full details of the figures held by DEFRA in relation to waste collection authority (local council) prosecutions for section 1 Control of Pollution (amendment) Act 1989 offences going back the last three financial years.*

Defra does not hold information on prosecutions taken under the Control of Pollution (Amendment) Act (COP(A)A) 1989. I can confirm that the Ministry of Justice has information on prosecutions under Section 1 of COP(A)A, however, we have been advised that it may be grouped with other data so the specific information you seek may not be separately identifiable. For more information please contact the Ministry of Justice direct by e-mailing [data.access@justice.gsi.gov.uk](mailto:data.access@justice.gsi.gov.uk) or by post to:

Data Access and Compliance Unit (10.33),  
Information & Communications Directorate,  
Ministry of Justice,  
102 Petty France,  
London  
SW1H 9AJ

The interpretation of legislation is ultimately a matter for the courts. The advice on legislation provided in this letter is our interpretation and not definitive guidance. For detailed advice on any legislation it is advisable to seek your own legal guidance.

In keeping with the spirit and effect of the EIRs, and in keeping with the government's Transparency Agenda, all information provided is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on [www.gov.uk](http://www.gov.uk) together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

I attach Annex A, which explains the copyright that applies to the information being released to you.

I also attach Annex B giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact me.

Yours sincerely

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## Annex A

### Copyright

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs or logos) can be also used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder.

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Copyright in other documents may rest with a third party. For information about obtaining permission from a third party see the [Intellectual Property Office's website](#).

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## Annex B

### Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: [requestforinfo@defra.gsi.gov.uk](mailto:requestforinfo@defra.gsi.gov.uk)) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF