

A Guide to the Environmental Protection Act 1990

Business Information Factsheet
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Introduction

The Environmental Protection Act 1990 makes provision for the improved control of pollution to the air, water and land by regulating the management of waste and the control of emissions. Key provisions of the Act impose a duty of care on any business or person who produces, carries, keeps, treats, disposes of or imports controlled waste to do so safely. The Act also contains provisions addressing statutory nuisances, litter and the control of genetically modified organisms and certain other substances.

Since the Act was passed, several provisions have been replaced or repealed by subsequent environmental legislation, which should therefore be considered in conjunction with the Act. The Act applies in England, Scotland and Wales. In Northern Ireland, the main provisions of the Act are contained in the Waste and Contaminated Land (Northern Ireland) Order 1997, although there is additional legislation which also needs to be considered.

This factsheet explains what the Act covers, who it applies to, what obligations it imposes on business owners and how those obligations can be met. It also provides hints and tips and sources of further information.

What does the Act cover?

The Act originally had nine parts, but Part I (pollution control), Part IIA (contaminated land), Part V (radioactive substances) and Part VII (nature conservation) have been replaced by later legislation.

Of the remaining parts of the Act, Part II (waste on land) and Part III (statutory nuisances and clean air) are the most likely to be relevant to small firms, but business owners should familiarise themselves with all parts of the Act to ensure that they are aware of their responsibilities and obligations:

- Part II: Waste on land. This section introduces various offences in relation to controlled waste, and imposes a duty of care on any business or person who produces, carries, keeps, treats, disposes of or imports controlled waste.
- Part III: Statutory Nuisances and Clean Air. This section defines statutory nuisances and sets out procedures for dealing with them.
- Part IV: Litter. This section amends litter laws and gives local authorities powers to keep public highways clear.
- Part VI: Genetically Modified Substances. This section places controls on the release of genetically modified substances.

- Part VIII: Miscellaneous. This section places controls on certain dangerous substances and other miscellaneous dangers. It covers pollution at sea, control of dogs, and straw and stubble burning. It gives the Secretary of State the power to make regulations prohibiting or restricting the import, use, supply or storage of dangerous substances. It also empowers the Secretary of State to make regulations requiring manufacturers, importers or suppliers to provide information about dangerous substances for the purpose of assessing their potential for causing pollution of the environment or harm to human health.
- Part IX: General. This section empowers the Secretary of State to make regulations giving effect to European legislation and other international obligations.

Who does the Act apply to?

The Act applies to every business and individual in England, Scotland and Wales. It is of particular relevance for organisations involved in producing, importing, carrying, keeping, treating or disposing of controlled waste and where an organisation's activities could be regarded by another party as causing a statutory nuisance.

What obligations are imposed under the Act?

Waste

The Act prohibits business owners and other individuals from treating, depositing or disposing of 'controlled waste' in any manner that is likely to cause pollution to the environment or represent a hazard to human health. Controlled waste is defined broadly as any 'household, industrial or commercial waste'.

Under the Act, a business that carries out any of the following activities must have a waste management licence:

- Operating a landfill.
- Storing waste belonging to another party.
- Treating waste or carrying out recycling.
- Carrying out final disposal of waste.

In order to obtain a waste management licence, a business owner must register with their national environmental regulator. In England, the regulator is the Environment Agency. In Wales, Natural Resources Wales is the regulator, in Scotland it is the Scottish Environment Protection Agency (SEPA), and in Northern Ireland it is the Northern Ireland Environment Agency (NIEA).

The regulators can set specific conditions that business owners and individuals must adhere to and usually charge an annual fee. If a business handles only a very small amount of waste, or stores it for a short time, then the business may qualify for an exemption.

If a business carries or handles controlled waste within England, Scotland and Wales, they must register as a waste carrier or broker. See BIF 487, A Guide to Registering as a Waste Carrier, for further information. Go to www.gov.uk/waste-carrier-or-broker-registration or www.sepa.org.uk/regulations/waste/waste-carriers-and-brokers for application forms.

The Act makes it an offence to:

- Deposit controlled waste in or on any land, or knowingly cause or allow any such deposit, unless a waste management licence authorising the deposit is in force.
- Submit controlled waste to an unlicensed facility for any process that requires a waste management licence, or knowingly cause or allow this to happen.
- Treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

The Act places a duty of care on business owners and individuals who produce, carry, keep, treat, dispose of or import controlled waste to take all reasonable steps to:

- Prevent any other party who has contact with the controlled waste committing one of the above offences.
- Prevent the waste from causing environmental pollution or harm.
- Prevent the waste escaping from control.
- Ensure that waste transfers are made only to an authorised person or for authorised transport purposes.
- Ensure that all transfers of waste are accompanied by a written transfer note, copies of which must be kept for two years.

Authorised persons include any person who holds a waste management or carrier licence and also includes waste collection authorities in England and Wales and waste disposal authorities in Scotland. Go to www.wastedirectory.org.uk to search for licence holders.

Statutory nuisance

The term 'statutory nuisance' refers to business activities that persistently or repeatedly pose a threat to health or have a significant effect on another person at their premises.

The Act stipulates that the following are statutory nuisances:

- Any premises in a state that could present a health risk or nuisance.
- Smoke, fumes or gas emissions.
- Dust, steam, smells or other discharges from industrial, trade or business premises.
- Accumulations or deposits.
- Animals kept in a place or manner that might represent a health risk or nuisance.
- Insects originating from industrial, trade or business premises.
- Artificial light emitted from premises.
- Noise emitted from premises.
- Noise caused by vehicles, machinery or equipment in a street or road.
- Any other matter which can be rightfully classified a statutory nuisance.

In order to reduce the likelihood of causing a statutory nuisance, it is good practice for business owners and individuals to:

- Keep the business premises clean and tidy to help prevent odour and vermin.
- Check the premises regularly for evidence of noise, odour, other emissions or vermin.
- Ensure that staff working on the premises are aware of the need to avoid creating a nuisance.

Where a statutory nuisance is identified, reasonable steps should be taken to eliminate or reduce it. Local authorities have a responsibility to investigate complaints of nuisance, and can issue an abatement order. If an order is issued against a business owner or individual, they will have 21 days to appeal. If an appeal is not made and reasonable steps to eliminate the nuisance are not taken, then a further offence of failure to comply may have been committed.

In some cases, it will be a necessary part of the planning process to complete a nuisance assessment before a business activity begins. Some business owners and individuals may need to analyse noise generated by their activities in order to demonstrate that this is lower than the existing background noise level and will not affect the existing noise climate.

Litter

The Act makes it a criminal offence to leave litter, and those who leave litter can be served with litter abatement and litter-clearing notices. Local authorities can issue street litter control notices to certain types of business, for example takeaway restaurants, obliging them to keep streets and public areas around their premises clear. Local authorities can also prevent the distribution of printed material, such as advertising flyers, in order to keep areas free from litter.

Genetically modified materials

The legislation also applies to genetically modified materials. Under the Act, business owners and individuals are prohibited from importing, acquiring, keeping, releasing or marketing any genetically modified organism (for example, genetically modified crop seeds) without first carrying out a risk assessment of potential damage to the environment and, in some cases, giving notice to the Secretary of State. Go to www.gov.uk/government/collections/genetically-modified-organisms-applications-and-consents for further information about genetically modified organism regulation.

To obtain further information about the obligations imposed by the Act, go to www.legislation.gov.uk/ukpga/1990/43.

Who enforces the Act and what are the penalties for non-compliance?

Regulation is the responsibility of the Environment Agency in England, Natural Resources Wales in Wales and SEPA in Scotland. Enforcement is carried out by the environmental protection departments of local authorities.

Penalties vary according to the part of the Act that has been breached and the severity of the breach. For example, unauthorised treatment, storage or disposal of controlled waste, or failure to maintain a duty of care, is a criminal offence for which a business owner or individual could be liable for an unlimited fine and imprisonment, in addition to reparation costs. Organisations, business owners or individuals that cause a statutory nuisance can be served with an abatement order that can prevent or restrict business activities and require the business owner to take steps

to reduce or remove the nuisance. Failure to comply with an abatement notice is a criminal offence and penalties can include a fine of up to £5,000, with a further fine of up to £500 for every day the nuisance continues.

What other legislation applies?

There is a wide range of environmental legislation in addition to the Environmental Protection Act 1990 which affects organisations, business owners and individuals.

Pollution prevention control in England and Wales is now governed by the Environmental Permitting (England and Wales) Regulations 2016. In Scotland, the Pollution Prevention and Control (Scotland) Regulations 2000 apply, and Northern Ireland is governed by the Pollution Prevention and Control Regulations (Northern Ireland) 2003. Part IIA of the Environmental Protection Act 1990 has been replaced by the Contaminated Land (England) Regulations 2006 in England, the Contaminated Land (Scotland) Regulations 2000 in Scotland, the Contaminated Land (Wales) Regulations 2006 in Wales, and the Waste and Contaminated Land (Northern Ireland) Order 1997 in Northern Ireland.

Part V of the Environmental Protection Act 1990, which dealt with radioactive substances, was replaced by the Hazardous Waste (England and Wales) Regulations 2005, as amended by the 2009 amendment regulations and the Waste (England and Wales) Regulations 2011. For Scotland, the relevant legislation is the Special Waste Amendment (Scotland) Regulations 2004, and in Northern Ireland, the Hazardous Waste (Northern Ireland) Regulations 2005 (as amended).

The Environment Act 1995 established the Environment Agency and SEPA as the regulatory bodies for this area. Natural Resources Wales was created in 2013 by merging the Countryside Council for Wales, Environment Agency Wales and the Forestry Commission Wales.

In Northern Ireland, waste licensing is governed by the Waste Management Licensing Regulations (Northern Ireland) 2003.

Hints and tips

- Business owners and individuals should minimise the risk of causing statutory nuisances by maintaining business premises in a clean and tidy condition. This will help prevent problems such as odour and vermin.
- If a business activity creates a noise louder than normal background noise, business owners should consider ways of preventing noise nuisance, for example by keeping doors and windows closed or fitting soundproofing.
- Business owners should ensure that all workers are aware of the rules regarding environmental protection and the need to avoid creating a nuisance. This should be incorporated into staff induction training.

Further information

BIF 100 An Introduction to Environmental Regulations
BIF 487 A Guide to Registering as a Waste Carrier

Useful contacts

The Environment Agency is the main environmental regulator for England.

Tel: 0370 850 6506

Website: www.gov.uk/government/organisations/environment-agency

Natural Resources Wales is the main environmental regulator for Wales.

Tel: 0300 065 3000

Website: <http://naturalresources.wales/?lang=en>

The Scottish Environment Protection Agency (SEPA) is the main environmental regulator for Scotland.

Tel: 0300 099 6699

Website: www.sepa.org.uk

The Northern Ireland Environment Agency (NIEA) is the main environmental regulator for Northern Ireland.

Tel: 0300 200 7856

Website: www.daera-ni.gov.uk/northern-ireland-environment-agency

NetRegs is a partnership between the Scottish and Northern Irish environmental regulators that provides free guidance on environmental regulations for small businesses.

Website: www.netregs.gov.uk

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