



# Environmental Protection Act 1990

## 1990 CHAPTER 43

### PART II

#### WASTE ON LAND

##### *Prohibition on unauthorised or harmful depositing, treatment or disposal of waste*

### 33 Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste. **E+W**

- (1) Subject to <sup>[F1]</sup>subsections (1A), (1B), (2) and (3) below] and, in relation to Scotland, to section 54 below, a person shall not—
- (a) deposit controlled waste <sup>[F2]</sup>or extractive waste], or knowingly cause or knowingly permit controlled waste <sup>[F2]</sup>or extractive waste] to be deposited in or on any land unless <sup>[F3]</sup>an environmental permit] authorising the deposit is in force and the deposit is in accordance with the licence;
  - <sup>[F4]</sup>(b) submit controlled waste, or knowingly cause or knowingly permit controlled waste to be submitted, to any listed operation (other than an operation within subsection (1)(a)) that—
    - (i) is carried out in or on any land, or by means of any mobile plant, and
    - (ii) is not carried out under and in accordance with an environmental permit.]
  - (c) treat, keep or dispose of controlled waste <sup>[F5]</sup>or extractive waste] in a manner likely to cause pollution of the environment or harm to human health.

<sup>[F6]</sup>(1A) Paragraphs (a) and (b) of subsection (1) above do not apply in relation to a waste operation that is an exempt waste operation.

<sup>[F7]</sup>(1B) Subsection (1) does not apply in relation to the carrying on of any waste operation which is or forms part of an operation which—

- (a) is the subject of a licence under Part 2 of the Food and Environment Protection Act 1985; or

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- (b) by virtue of an order under section 7 of that Act, does not require such a licence;]]
- [<sup>F8</sup>(2) Subject to subsection (2A) below, paragraphs (a) and (b) of subsection (1) above do not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the property.
- (2A) Subsection (2) above does not apply to the treatment, keeping or disposal of household waste by an establishment or undertaking.]
- (3) Subsection (1)(a), (b) or (c) above do not apply in cases prescribed in regulations made by the Secretary of State and the regulations may make different exceptions for different areas.
- (4) The Secretary of State, in exercising his power under subsection (3) above, shall have regard in particular to the expediency of excluding from [<sup>F9</sup>the prohibitions in subsection (1)]—
- (a) any deposits which are small enough or of such a temporary nature that they may be so excluded;
  - (b) any means of treatment or disposal which are innocuous enough to be so excluded;
  - (c) cases for which adequate controls are provided by another enactment than this section.
- (5) Where controlled waste is carried in and deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle shall, for the purposes of subsection (1)(a) above, be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.
- (6) A person who contravenes subsection (1) above <sup>F10</sup> . . . commits an offence.
- (7) It shall be a defence for a person charged with an offence under this section to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or
  - (b) <sup>F11</sup> . . . . .
- <sup>F12</sup>[(c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—
- (i) he took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and
  - (ii) particulars of the acts were furnished to the waste regulation authority as soon as reasonably practicable after they were done.]

[<sup>F13</sup>(8) A person who commits an offence under this section is liable—

    - (a) [<sup>F14</sup>Subject to subsection (9) below,] on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 or both;
    - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.]

<sup>F15</sup>[<sup>F16</sup>(9) A person (other than an establishment or undertaking) who commits a relevant offence shall be liable—

      - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
      - (b) on conviction on indictment, to a fine.

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(10) In this section, “relevant offence” means an offence under this section in respect of a contravention of subsection (1)(c) above consisting of the treatment, keeping or disposal within the curtilage of a domestic property of household waste from that property.

[ For the purposes of subsection (1)(a) above, the deposit of waste in or on land includes<sup>F17</sup>(11) any listed operation involving such a deposit.

(12) For the purposes of subsection (1)(c) above, treating, keeping or disposing of controlled waste includes submitting it to any listed operation.

(13) For the purposes of this section, a “listed operation” is an operation listed in [<sup>F18</sup>Annex I or II of Directive 2008/98/EC of the European Parliament and of the Council on waste]]]

#### Extent Information

**E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

#### Textual Amendments

- F1** Words in s. 33(1) substituted (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 73, **Sch. 21 para. 4(2)(a)** (with reg. 72, Sch. 4)
- F2** Words in s. 33(1) inserted (E.W.) (7.7.2009) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations \(S.I. 2009/1799\)](#), reg. 28(1), Sch. 2 para. 1(3) (with reg. 28(2))
- F3** Words in s. 33(1)(a) substituted (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 73, **Sch. 21 para. 4(2)(b)** (with reg. 72, Sch. 4)
- F4** S. 33(1)(b) substituted (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 73, **Sch. 21 para. 4(2)(c)** (with reg. 72, Sch. 4)
- F5** Words in s. 33(1) inserted (E.W.) (7.7.2009) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations \(S.I. 2009/1799\)](#), reg. 28(1), {Sch. 2 para. 1(3)}
- F6** S. 33(1A)(1B) inserted (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 73, **Sch. 21 para. 4(3)** (with reg. 72, Sch. 4)
- F7** S. 33(1B) substituted (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), regs. 1(1)(b), 107, **Sch. 26 para. 5(5)** (with Sch. 4)
- F8** S. 33(2)(2A) substituted (E.W.) (15.5.2006) for s. 33(2) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), **reg. 2(2)(a)**
- F9** Words in s. 33(4) substituted (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 73, **Sch. 21 para. 4(4)** (with reg. 72, Sch. 4)
- F10** Words in s. 33(6) repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), regs. 73, 74(2), Sch. 21 para. 4(5), **Sch. 23** (with reg. 72, Sch. 4)
- F11** S. 33(7)(b) repealed (E.W.) (7.6.2005) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), ss. 40(1), 108(4)(f), **Sch. 5 Pt. 4** (with s. 40(2))
- F12** S. 33(7)(c) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 64** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**
- F13** S. 33(8) substituted (E.W.) (7.6.2005) for s. 33(8)(9) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 41(1), 108(4)(g)** (with s. 41(2)(3))
- F14** Words in s. 33(8)(a) inserted (E.W.) (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), **reg. 2(2)(b)**
- F15** By [The Hazardous Waste \(England and Wales\) Regulations 2005 \(S.I. 2005/894\)](#), regs. 1, **71** (with reg. 75), it is provided that in s. 33(9) the words "hazardous waste" shall be substituted (E.W.) (16.7.2005) for the words "special waste"

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- F16** S. 33(9)(10) inserted (E.W.) (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), [reg. 2\(2\)\(c\)](#)
- F17** S. 33(11)-(13) added (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), [regs. 73](#), [Sch. 21 para. 4\(6\)](#) (with [reg. 72](#), [Sch. 4](#))
- F18** Words in s. 33(13) substituted (E.W.) (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), [reg. 1\(2\)](#), [Sch. 4 para. 3\(2\)](#) (with [regs. 2](#), [47\(2\)](#))

#### Modifications etc. (not altering text)

- C4** S. 33 restricted (E.) (13.4.2001) by [S.I. 2001/1478](#), [reg. 3\(b\)](#)
- C5** Ss. 33-34C applied (E.W.) (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), [regs. 1\(2\)](#), [47\(3\)](#) (with [regs. 2](#), [47\(2\)](#))
- C6** S. 33(1)(a) excluded (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), [reg. 68](#), [Sch. 3 Pt. 2](#) (with [reg. 72](#), [Sch. 4](#))
- C7** S. 33(1)(a)-(c) amended (1.5.1994) by [S.I. 1994/1056](#), [regs. 1\(3\)](#), [19](#), [Sch. 4 Pt. I para. 9\(3\)-\(5\)](#)  
S. 33(1)(a)-(c) excluded (1.5.1994) by [S.I. 1994/1056](#), [reg. 16](#)
- C8** S. 33(1)(a)(b) excluded (1.5.1994) by [S.I. 1994/1056](#), [reg. 17](#)  
S. 33(1)(a)(b) modified (27.7.1999) by [1999 c. 24](#), [s. 4\(6\)\(8\)](#)  
S. 33(1)(a)(b) excluded (E.W.) (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), [reg. 13](#)
- C9** S. 33(1)(a) excluded (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), [regs. 1\(1\)\(b\)](#), [68](#) (with [Sch. 4](#))
- C10** S. 33(5) amended (1.5.1994) by [S.I. 1994/1056](#), [regs. 1\(3\)](#), [19](#), [Sch. 4 Pt. I para. 9\(3\)](#)
- C11** S. 33(6) restricted (27.7.1999) by [1999 c. 24](#), [s. 4\(7\)\(8\)](#)

#### Commencement Information

- I2** S. 33 not in force at Royal Assent, see s. 164(3); s. 33(3)(4) in force at 13.12.1991, s. 33(1)(c) in force at 1.4.1992 and s. 33(2)(6)-(9) in force for certain purposes at 1.4.1992 by [S.I. 1991/2829](#), [arts. 2](#), [4](#); s. 33 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by [S.I. 1994/1096](#), [arts. 2\(2\)\(3\)](#), [3](#) (as amended by [S.I. 1994/2487](#), [art. 2](#) and [S.I. 1994/3234](#), [art. 2](#))

### 33 Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste. **S**

- (1) Subject to subsection (2) [<sup>F35</sup>, (2B)] and (3) below and, in relation to Scotland, to section 54 below, a person shall not—
- (a) deposit controlled waste, or knowingly cause or knowingly 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;
  - (b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of—
    - (i) in or on any land, or
    - (ii) by means of any mobile plant,
 except under and in accordance with a waste management licence;
  - (c) [<sup>F36</sup>keep or manage] controlled waste in a manner likely to cause pollution of the environment or harm to human health.

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- [<sup>F37</sup>(2) Subject to subsection (2A) below, paragraphs (a) and (b) of subsection (1) above do not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling.
- (2A) Subsection (2) above does not extend to the treatment, keeping or disposal of household waste by an establishment or undertaking.]
- [<sup>F38</sup>(2B) Paragraphs (a) and (b) of subsection (1) above do not apply to the deposit or keeping of a waste portable battery or accumulator at a collection point set up to comply with Article 8(1)(a) of Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators (in this section, “the Batteries Directive”).
- (2C) In subsection (2B) above, “portable battery or accumulator” has the meaning given by Article 3(3) of the Batteries Directive, but does not include any battery or accumulator excluded from the scope of that Directive by Article 2(2).]
- (3) Subsection (1)(a), (b) or (c) above do not apply in cases prescribed in regulations made by the Secretary of State and the regulations may make different exceptions for different areas.
- (4) The Secretary of State, in exercising his power under subsection (3) above, shall have regard in particular to the expediency of excluding from the controls imposed by waste management licences—
- (a) any deposits which are small enough or of such a temporary nature that they may be so excluded;
  - (b) any means of treatment or disposal which are innocuous enough to be so excluded;
  - (c) cases for which adequate controls are provided by another enactment than this section.
- (5) Where controlled waste is carried in and deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle shall, for the purposes of subsection (1)(a) above, be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.
- (6) A person who contravenes subsection (1) above or any condition of a waste management licence commits an offence.
- (7) It shall be a defence for a person charged with an offence under this section to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or
  - (b) that he acted under instructions from his employer and neither knew nor had reason to suppose that the acts done by him constituted a contravention of subsection (1) above; or
- <sup>F39</sup>[(c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—
- (i) he took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and
  - (ii) particulars of the acts were furnished to the waste regulation authority as soon as reasonably practicable after they were done.]

(8) Except in a case falling within subsection (9) [<sup>F40</sup>or (10)] below, a person who commits an offence under this section shall be liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [<sup>F41</sup>£40,000] or both; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (9) A person who commits an offence under this section in relation to special waste [<sup>F42</sup>(other than household waste of the description specified in subsection (10) below)] shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [<sup>F41</sup>£40,000] or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.
- [<sup>F43</sup>(10) A person who commits an offence under subsection (1)(c) above in relation to household waste from a domestic property within the curtilage of the dwelling shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.]

#### Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

#### Textual Amendments

- F35** Words in s. 33(1) inserted (S.) (6.7.2009) by The Waste Batteries (Scotland) Regulations (S.S.I. 2009/247), {reg. 3(2)}
- F36** Words in s. 33(1)(c) substituted (S.) (27.3.2011) by The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226), regs. 1(1), **2(3)**
- F37** S. 33(2)(2A) substituted (S.) (21.1.2005) for s. 33(2) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1(1), **3(2)(a)**
- F38** S. 33(2B)(2C) inserted (S.) (6.7.2009) by The Waste Batteries (Scotland) Regulations (S.S.I. 2009/247), {reg. 3(3)}
- F39** S. 33(7)(c) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 64** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F40** Words in s. 33(8) inserted (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1(1), **3(2)(b)**
- F41** Words in s. 33(8)(a)(9)(a) substituted (S.) (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 66, 145(2), **Sch. 2 Pt. 1 para. 4(3)**; S.S.I. 2004/420, **art. 3**, Sch. 1
- F42** Words in s. 33(9) inserted (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1(1), **3(2)(c)**
- F43** S. 33(10) added (S.) (21.1.2005) by The Waste (Scotland) Regulations 2005 (S.S.I. 2005/22), regs. 1(1), **3(2)(d)**

#### Modifications etc. (not altering text)

- C12** S. 33 restricted (E.) (13.4.2001) by S.I. 2001/1478, **reg. 3(b)**
- C13** S. 33(1)(a)-(c) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. 1 para. 9(3)-(5)**  
S. 33(1)(a)-(c) excluded (1.5.1994) by S.I. 1994/1056, **reg. 16**
- C14** S. 33(1)(a)(b) excluded (1.5.1994) by S.I. 1994/1056, **reg. 17**  
S. 33(1)(a)(b) modified (27.7.1999) by 1999 c. 24, s. 4(6)(8)

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**C15** S. 33(5) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. 1 para. 9(3)**

**C16** S. 33(6) restricted (27.7.1999) by 1999 c. 24, s. 4(7)(8)

#### Commencement Information

**I3** S. 33 not in force at Royal Assent, see s. 164(3); s. 33(3)(4) in force at 13.12.1991, s. 33(1)(c) in force at 1.4.1992 and s. 33(2)(6)-(9) in force for certain purposes at 1.4.1992 by S.I. 1991/2829, **arts. 2, 4**; s. 33 in force in so far as not already in force at 1.5.1994 save for purposes of application to activities specified in art. 2(2) of the commencing S.I. and otherwise in force in relation to those activities in accordance with art. 3 of the commencing S.I. by S.I. 1994/1096, **arts. 2(2)(3), 3** (as amended by S.I. 1994/2487, **art. 2** and S.I. 1994/3234, **art. 2**)

### [<sup>F19</sup>33A Section 33 offences: investigation and enforcement costs **E+W**

[<sup>F20</sup>(1) This section applies where a person is convicted of an offence—

- (a) under section 33 above, in respect of a contravention of subsection (1) of that section;
  - (b) under [<sup>F21</sup>regulation 38(1) of the Environmental Permitting Regulations], in respect of a waste operation[<sup>F22</sup> or a mining waste operation].]
- (2) The court by or before which the offender is convicted may make an order requiring him to pay to an enforcement authority a sum which appears to the court not to exceed the costs arising from—
- (a) investigations of the enforcement authority which resulted in the conviction; and
  - (b) the seizure by the enforcement authority under section 34B below of a vehicle involved in the offence.
- (3) The costs arising from the seizure of a vehicle as specified in subsection (2)(b) above may include the cost of disposing of the contents of the vehicle.
- (4) The power of a court to make an order under this section is in addition to its power to make an order under section 18 of the Prosecution of Offences Act 1985 (award of costs against accused).
- (5) In this section “enforcement authority” means the Environment Agency or a waste collection authority.]

#### Textual Amendments

- F19** S. 33A inserted (E.W.) (18.10.2005) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 42(1), 108** (with s. 42(2)); S.I. 2005/2896, **art. 2(a)**
- F20** S. 33A(1) substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 5** (with reg. 72, Sch. 4)
- F21** Words in s. 33A(1)(b) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), regs. 1(1)(b), 107, **Sch. 26 para. 5(6)(a)** (with Sch. 4)
- F22** Words in s. 33A(1) inserted (E.W.) (7.7.2009) by The Environmental Permitting (England and Wales) (Amendment) Regulations (S.I. 2009/1799), reg. 28, {Sch. 2 para. 1(4)}

#### Modifications etc. (not altering text)

- C5** Ss. 33-34C applied (E.W.) (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), regs. 1(2), **47(3)** (with regs. 2, 47(2))

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### **[<sup>F44</sup>33A Fixed penalty notices for contraventions of section 33(1)(a) and (c): Scotland S**

- (1) Where—
  - (a) an authorised officer of a local authority has reason to believe that a person has committed a relevant offence in the area of that authority; or
  - (b) a constable, or an authorised officer of a waste regulation authority, has reason to believe that a person has committed a relevant offence,
 he may give that person a notice under this section in respect of the offence.
- (2) In subsection (1) above, “relevant offence” means an offence under section 33 above in respect of a contravention of subsection (1)(a) or (c) of that section.
- (3) A notice under this section is a notice offering the opportunity, by paying a fixed penalty, of discharging any liability to conviction for the offence to which it relates.
- (4) Where—
  - (a) a constable; or
  - (b) an authorised officer of a waste regulation authority,
 gives a notice under this section to a person, he shall, no later than 24 hours after the giving of the notice, send a copy of it to the local authority in whose area the offence was committed.
- (5) Where a person is given a notice under this section in respect of an offence—
  - (a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and
  - (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.
- (6) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence and shall state—
  - (a) the period during which, by virtue of subsection (5)(a) above, proceedings will not be taken for the offence;
  - (b) the amount of the fixed penalty; and
  - (c) the person to whom and the address at which the fixed penalty may be paid;
 and without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).
- (7) Where a letter is sent in accordance with subsection (6) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (8) The form of notices under this section shall be such as the Scottish Ministers may by order prescribe.
- (9) The fixed penalty payable in pursuance of a notice under this section shall, subject to subsection (10) below, be £50.
- (10) The Scottish Ministers may by order substitute a different amount (not exceeding level 2 on the standard scale) for the amount for the time being specified as the amount of the fixed penalty in subsection (9) above.
- (11) In any proceedings a certificate which—



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- (a) purports to be signed by or on behalf of the proper officer for the local authority in whose area the offence was committed; and
  - (b) states that the payment of a fixed penalty was or was not received by a date specified in the certificate,
- shall be evidence of the facts stated.
- (12) A fixed penalty payable in pursuance of a notice under this section shall be payable to the local authority in whose area the offence was committed; and as respects the sums received by a local authority, those sums shall [<sup>F45</sup>accrue to that authority] .
- (13) In this section—
- “authorised officer” means an officer of the authority in question who is authorised in writing by the authority for the purpose of issuing notices under this section;
  - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); and “area”, in relation to a local authority, means the local government area (within the meaning of that Act) for which the council is constituted;
  - “proper officer” means the officer who has, as respects the authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (c. 65) (financial administration).]

#### Textual Amendments

**F44** S. 33A inserted (S.) (5.11.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), **ss. 55**, 145(2); [S.S.I. 2004/420](#), **art. 3**, Sch. 2

**F45** Words in s. 33A(12) substituted (S) (10.3.2008) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84**, **Sch. para. 8(a)**; [S.S.I. 2008/42](#), **art. 3(1)**, Sch.

#### Modifications etc. (not altering text)

**C5** Ss. 33-34C applied (E.W.) (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), **regs. 1(2), 47(3)** (with **regs. 2, 47(2)**)

### [<sup>F23</sup>33B Section 33 offences: clean-up costs

- [<sup>F24</sup>(1) This section applies where a person is convicted of an offence—
- (a) under section 33 above, in respect of a contravention of subsection (1) of that section consisting of the deposit or disposal of controlled waste [<sup>F25</sup>or extractive waste];
  - (b) under [<sup>F26</sup>regulation 38(1) of the Environmental Permitting Regulations], in respect of a contravention of regulation 12 of those Regulations consisting of the disposal of waste.]
- (2) The reference in section 130(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders) to loss or damage resulting from the offence includes costs incurred or to be incurred by a relevant person in—
- (a) removing the waste deposited or disposed of in or on the land;
  - (b) taking other steps to eliminate or reduce the consequences of the deposit or disposal; or
  - (c) both.

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- (3) In subsection (2) above “relevant person” means—
- (a) the Environment Agency;
  - (b) a waste collection authority;
  - (c) the occupier of the land;
  - (d) the owner of the land (within the meaning of section 78A(9) below).
- (4) The reference in subsection (2) above to costs incurred does not, in the case of the Environment Agency or a waste collection authority, include any costs which the Agency or authority has already recovered under section 59(8) below.
- (5) [<sup>F27</sup>Subject to subsection (6) below,] in relation to the costs referred to in subsection (2) above, the reference in section 131(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (limit on amount payable) to £5000 is instead to be construed as a reference to the amount of those costs (or, if the costs have not yet been incurred, the likely amount).
- [ Subsection (5) above does not apply where a person (other than an establishment <sup>F28</sup>(6) or undertaking) is convicted of a relevant offence within the meaning of section 33 above.]]

#### Textual Amendments

- F23** S. 33B inserted (E.W.) (18.10.2005) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 43(1), 108** (with s. 43(3)); [S.I. 2005/2896](#), **art. 2(b)**
- F24** S. 33B(1) substituted (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), **reg. 73, Sch. 21 para. 6** (with [reg. 72, Sch. 4](#))
- F25** Words in s. 33B inserted (E.W.) (7.7.2009) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations \(S.I. 2009/1799\)](#), **reg. 28, {Sch. 2 para. 1(5)}**
- F26** Words in s. 33B(1)(b) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), **regs. 1(1)(b), 107, Sch. 26 para. 5(6)(b)** (with [Sch. 4](#))
- F27** Words in s. 33B(5) inserted (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), **reg. 2(3)(a)**
- F28** S. 33B(6) inserted (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), **reg. 2(3)(b)**

#### Modifications etc. (not altering text)

- C5** Ss. 33-34C applied (E.W.) (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), **regs. 1(2), 47(3)** (with [regs. 2, 47\(2\)](#))

### [<sup>F29</sup>33C Section 33 offences: forfeiture of vehicles

- [<sup>F30</sup>(1) This section applies where—
- (a) subject to subsection (1A) below, a person is convicted of an offence under section 33 above in respect of a contravention of subsection (1) of that section consisting of the deposit or disposal of controlled waste;
  - (b) a person is convicted of an offence under [<sup>F31</sup>regulation 38(1) of the Environmental Permitting Regulations] in respect of a contravention of regulation 12 of those Regulations consisting of the disposal of waste.]

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- [ This section does not apply where a person (other than an establishment or <sup>F32</sup>(1A) undertaking) is convicted of a relevant offence within the meaning of section 33 above.]
- (2) The court by or before which the offender is convicted may make an order under this section if—
- (a) the court is satisfied that a vehicle was used in or for the purposes of the commission of the offence; and
  - (b) at the time of his conviction the offender has rights in the vehicle.
- (3) An order under this section operates to deprive the offender of his rights in the vehicle (including its fuel) at the time of his conviction and to vest those rights in the relevant enforcement authority.
- (4) In a case where a vehicle has been seized under section 34B below and the offender retains rights in any of the vehicle's contents, an order under this section may, if and to the extent that it so specifies, deprive the offender of those rights and vest them in the relevant enforcement authority.
- (5) Where an order under this section is made, the relevant enforcement authority may take possession of the vehicle (if it has not already done so under section 34C below).
- (6) The court may make an order under this section whether or not it also deals with the offender in any other way in respect of the offence of which he is convicted.
- (7) In considering whether to make an order under this section a court must in particular have regard to—
- (a) the value of the vehicle;
  - (b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making);
  - (c) the offender's need to use the vehicle for lawful purposes;
  - (d) whether, in a case where it appears to the court that the offender is engaged in a business which consists wholly or partly in activities which are unlawful by virtue of section 33 above, [<sup>F33</sup>or [<sup>F34</sup>regulation 38(1) or (2) of the Environmental Permitting Regulations],] the making of the order is likely to inhibit the offender from engaging in further such activities.
- (8) Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (power to deprive offender of property) does not apply in any case where this section applies.
- (9) For the purposes of this section, where a vehicle or its contents have been seized under section 34B below in connection with the offence referred to in subsection (1) above, any transfer by the offender after the seizure and before his conviction of any of his rights in the vehicle or its contents is of no effect.
- (10) In this section—
- “relevant enforcement authority” means—
- (a) the Environment Agency, where the proceedings in respect of the offence have been brought by or on behalf of the Agency, or
  - (b) in any other case, the waste collection authority in whose area the offence was committed;
- “vehicle” means any motor vehicle or trailer within the meaning of the Road Traffic Regulation Act 1984 or any mobile plant.]

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#### Textual Amendments

- F29** S. 33C inserted (E.W.) (18.10.2005) by [Clean Neighbourhoods and Environment Act 2005 \(c. 16\)](#), **ss. 44(1)**, 108 (with [s. 44\(2\)](#)); [S.I. 2005/2896](#), **art. 2(c)**
- F30** S. 33C(1) substituted (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), [reg. 73](#), **Sch. 21 para. 7(1)** (with [reg. 72](#), [Sch. 4](#))
- F31** Words in s. 33C(1)(b) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), [regs. 1\(1\)\(b\)](#), 107, **Sch. 26 para. 5(6)(c)** (with [Sch. 4](#))
- F32** S. 33C(1A) inserted (15.5.2006) by [The Waste Management \(England and Wales\) Regulations 2006 \(S.I. 2006/937\)](#), **reg. 2(4)(b)**
- F33** Words in s. 33C(7)(d) inserted (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), [reg. 73](#), **Sch. 21 para. 7(2)** (with [reg. 72](#), [Sch. 4](#))
- F34** Words in s. 33C(7)(d) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), [regs. 1\(1\)\(b\)](#), 107, **Sch. 26 para. 5(7)** (with [Sch. 4](#))

#### Modifications etc. (not altering text)

- C5** Ss. 33-34C applied (E.W.) (29.3.2011) by [The Waste \(England and Wales\) Regulations 2011 \(S.I. 2011/988\)](#), [regs. 1\(2\)](#), **47(3)** (with [regs. 2](#), [47\(2\)](#))

**Status:**

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