

ALLOTMENT FIRES

Smoke coming from allotment fires affecting neighbouring properties is an increasing problem. Each allotment occupier has a Code of Practice to follow, the aim of which is to reduce the impact of having a fire on neighbouring properties. However, some allotment occupiers are burning more than just plant material and potentially exposing them and their neighbours to toxic fumes.

The Code of Practice allows the burning of plant material by bonfire between 1st November and 31st March. Materials such as treated wood, roofing felt, plastics, rubber, coal, should never be burnt.

It may be acceptable to burn dry plant material on the land where that waste is produced. However, the burning of plant material is not exempt from legislation and may be prohibited if the smoke from the fire is deemed to be causing a statutory nuisance, ie smoke is detrimentally affecting a neighbouring property on a frequent basis and/or for long periods **(1)**.

It is also an offence to dispose of waste on an allotment in a manner likely to cause pollution to the environment. This would not normally apply to the burning of plant material but would apply to material such as treated wood, paints, rubbers, plastics etc. **(2)**.

In addition to bonfires some allotment owners use chimineas, BBQs, stoves and incinerators. When externally sited such appliances should only be used to burn plant material generated on site **(1+2)**.

However, if a stove is housed within a shed or greenhouse it is covered by a Smoke Control Order. An allotment occupier should therefore ensure that only authorised smokeless fuel, ie no wood or plant material, is burnt on such an appliance **(3)**.

Allotment occupiers should only burn material generated on site and not bring material to site to burn. The transportation and disposal of waste generated through a business activity requires the waste carrier to be registered. The conditions of any such registration will not permit the disposal of waste at an allotment **(4+5)**.

Adhering to the allotment 'Code of Practice' should help prevent enforcement action being necessary but does not preclude action against a persistent offender.

Below is an explanation of the legislation referenced above.

1 Environmental Protection Act 1990, Sections 79 and 80

Councils must investigate complaints about smoke from premises that could be a 'statutory nuisance'. For smoke to be a statutory nuisance it must do one of the following:

- unreasonably and substantially interfere with the use or enjoyment of a home or other premises
- injure health or be likely to injure health

If they agree that a statutory nuisance is happening, has happened or will happen in the future, councils must serve an abatement notice. This requires whoever is responsible to stop or restrict the smoke. The notice will usually be served on the person responsible but can also be served on the owner or occupier of the premises.

2 Environmental Protection Act 1990, Section 33

Section 33 of the Environmental Protection Act states a person shall not treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

3 Clean Air Act 1993, Section 20 – Prohibition on emission of smoke in smoke control area

The whole of Newcastle has been declared a smoke control area. Under section 20 of the Clean Air Act 1993 it is an offence to allow the emission of smoke from the chimney of a building in a smoke control area, or from a chimney (not being a chimney of a building) which serves the furnace of any fixed boiler within a smoke control area.

In proceedings for an offence under this section it shall be a defence to prove that the alleged emission was not caused by the use of any fuel other than an authorised fuel (smokeless).

4 Environmental Permitting (England and Wales) Regulations 2010, regulations 12 and 38 and Schedules 1 and 3;

You may not bring waste materials onto the site to store, burn, bury or otherwise dispose of. The disposal of waste must be subject to permissions under the Environmental Permitting (England and Wales) Regulations 2010 (as amended).

5 The Waste (England and Wales) Regulations 2011; Control of Pollution (Amendment) Act 1989

Businesses who transport waste must be registered to do so with the Environment Agency.

A breach of waste management or pollution legislation can result in an unlimited fine and/or 5 years prison.