

# **Environmental Health**

## ***Bonfire Complaints***



***(and other smoke related complaints)***

## **Domestic Bonfires**

Many people from time to time will be troubled by smoke or odour from bonfires. This Department cannot stop people from occasionally burning garden waste; however, persistent bonfires can cause a nuisance. At no point should general household waste be burnt.

There are **no** time restrictions limiting people who wish to have a bonfire. It is also **not** an offence to have a bonfire in a smoke control area, this area relates specifically to smoke from a chimney. Further information on smoke control areas can be found later on in this leaflet.

Where a bonfire significantly affects others and is considered to be a nuisance, this Authority is able to take enforcement action. This can result in a notice being served on the person responsible for the bonfire and/or the owner/occupier of the premises where the bonfire took place.

Failure to comply with a notice is an offence and any evidence gathered may be used to prosecute. This could result in a fine; under the Environmental Protection Act 1990 of up to £5000 and a further £50 for each day the offence continues and £2500 under the Anti Social Behaviour, Crime and Policing Act 2014 or a fixed penalty notice of £100.

We do encourage people to dispose of their waste by alternative methods without having to burn. However, if you decide that having a bonfire is the best practicable option, it is important that it is done responsibly and with consideration to others.

- ❖ ***NB: Complaints of excessive smoke produced from barbeques, chimneys etc, are investigated in the same way.***

## ***Duty of Care – Householder’s Domestic Waste Disposal***

Householders are responsible for ensuring that their rubbish is only passed on to authorised waste carriers. Some people pose as legitimate waste carriers and then fly tip rubbish that they have been paid to properly dispose of. If any fly tipped waste is traced back to the household it came from, the householder can be fined. The Authority can take action against any householder who has not taken reasonable measures to ensure their waste is passed on to an authorised person.

If you arranged for a contractor to remove household, garden or construction waste from your property check that they are a registered waste carrier and ask for their waste carrier number. The Environment Agency, tel. 08708 506506, can run an instant waste carrier validation check, alternatively you can [visit the Environment Agency website to do a check online](#). They should also provide you with a waste transfer note confirming the type of waste removed, when it was removed and who removed it. You could be issued with a fixed penalty notice or prosecuted if you are unable to provide this note if requested by the Council or the Environment Agency.

### ***What is nuisance?***

There has to be an unreasonable element to the activity causing the problem, not just an annoyance.

A nuisance can be defined as an unreasonable interference with the use and enjoyment of someone else’s property. This takes account of frequency, duration and intensity of the nuisance amongst other factors.

- ❖ **NB: It is an offence under the Highways Act 1998 for smoke to endanger anyone using the public highway. This Act is enforced by the Police.**



# BONFIRE IMPACT

## *What you can do*

- ✓ Ensure that only **dry** material is burnt. This will produce the minimum amount of smoke possible.
- ✓ Warn your neighbours before you have a bonfire.
- ✓ Never burn household rubbish, rubber tyres, aerosols or anything containing plastic, foam or paint, as these materials will cause dark smoke and an acrid smell. Exploding aerosols can also present a serious risk of injury.
- ✓ Never use lighter fluids or other accelerants to light or encourage a fire as the fumes can seriously affect people, especially young children, the elderly or people with breathing problems.
- ✓ Avoid lighting a fire in unsuitable weather conditions. Smoke lingers in the air on damp, windless days. In windy conditions smoke can carry over other people's property and over the public highway.
- ✓ Make sure neighbours do not have their washing out or have their doors and windows open. Try not to have bonfires when the weather is nice and people are out enjoying their gardens.
- ✓ **NEVER** leave a fire unattended they can be dangerous. Damage to property can occur.

## ***What if I am affected by smoke from a bonfire?***

### ***The friendly approach***

In most cases we advise that the informal approach is the best course of action in the first instance. This gives the person responsible time to take steps to address the issue. They may not be aware that a problem exists or to what extent it affects those nearby. By staying calm and taking on board both points of view, the problem can hopefully be resolved straight away.

### ***How do I complain?***

To investigate a complaint, we need the following information:

- the address to where the bonfires are taking place*
- the complainant's name and address (details are not disclosed in the initial stages of the complaint)*
- when and how the bonfires affect the complainant*
- any other relevant information would be useful*

### ***What to do if still suffering a nuisance?***

If the problem cannot be resolved informally an official complaint can be made. The Council has a duty to investigate complaints of this nature and we have a standard procedure for investigation to ensure that each complaint is treated fairly and with no bias. An investigation may last over 6 months while sufficient evidence is gathered, however, if a complaint is open for longer than this, we will keep all relevant parties informed.

Once an official complaint has been made, the following procedure is followed:

## **1. Making contact**

Contact is made with the person(s) allegedly responsible for the bonfires, making them aware that we have received a complaint and advising them accordingly. A letter is sent to the complainant asking them to complete and return a diary sheet detailing when and how the bonfires affect them.

The problem is often resolved once the issue has been raised with the person responsible for the bonfires, however if the problem persists, we would then ask the complainant to return a completed diary sheet.

***We do **not** disclose details of the complainant during the initial stages of the complaint. However, during the investigation we may have to identify who is affected in order to resolve the situation. In some cases the complainant's address may be included on an enforcement notice or the complainant may need to appear in court to give evidence, though this is very rarely necessary.***

## **2. Assessment of completed diary sheet**

The returned diary sheet is evidence and essential for the investigation to demonstrate the frequency and duration the complainant is being affected and also to justify any out of hour's resources that may be required.

### **2a. Witnessing the bonfires**

Whilst keeping the diary sheet, if the complainant is affected by a bonfire during office hours, they are advised to call the office immediately and if available, officers will attend and try to witness the problem in the complainant's own home. If the problem cannot be witnessed during office hours then arrangements can be made to visit out of hours.

***It should be stressed that the person being affected by the bonfires must understand that they continue to play an active role throughout the investigation.***

### ***3. Establishing a nuisance and taking formal action***

If we witness smoke and odour from a bonfire that is having a detrimental impact on neighbouring properties we will use the most appropriate legislation to take enforcement action. In the first instance, this would be an Abatement Notice under the Environmental Protection Act 1990 or where appropriate, a Community Protection Notice under The Anti Social Behaviour, Crime and Policing Act 2014.

Before a notice is served we may take a witness statement from the complainant(s). The statement is used to show how the bonfire(s) affect them, how long they have been happening and details other important facts. A statement is a legal document and could be used as evidence in court, if needed.

### ***4. Breach of notice***

If the person responsible does not comply with the notice, then further evidence will be gathered. Once sufficient evidence has been collected, the case would then be referred to our legal team with a view to prosecution. The complainant may be required to appear in court to give evidence.

### ***Do we always take formal action?***

In some cases after careful consideration further action cannot be taken. The reasons for this may be due to lack of evidence, sensitivity, the fact that the problem only occurs occasionally, is hard to witness or because there is no unreasonable element to the complaint.

### ***Advice for complainant's – taking your own action***

As an alternative, the complainant may decide to take their own action under Section 82 of the Environmental Protection Act 1990, by complaining directly to the Magistrates Court. For further information on this please contact us directly or alternatively visit the Council's website (our contact details can be found at the end of this booklet).

## ***How to get rid of rubbish without burning it:***

### ***Composting/Recycling***

Garden and kitchen waste can be composted to provide useful fertiliser and soil conditioner. For details on home composting and how you can purchase soil improvers, please contact Waste Management on 0800 269 098 or alternatively seek advice from 'Recycle Now' on 0845 076 0223 or visit [www.recyclenow.com/compost](http://www.recyclenow.com/compost) .

### ***Alternate Weekly Waste Collection Service***

Your domestic grey bin is used to dispose of any household waste that cannot be recycled. Your blue bin is used to dispose of recyclable materials such as glass, cans, plastic, cardboard and waxed cartons. Your blue bag is used to dispose of papers and magazines and your brown bin is used to dispose of garden and food waste.

The domestic grey bin will be emptied one week and the recyclable waste will be emptied the following week.

For further information, advice, or if you require a calendar which details the dates of collection then please contact Waste Management on 0800 269098.

### ***Special Collection***

Unwanted bulky household items and bagged waste can be collected by East Staffordshire Borough Council. For further information, please contact the Waste Management Team on 0800 269098. Furniture such as old beds and sofas should **NOT** be burnt and if in relatively good condition, can be given to the charity stores such as YMCA.

### ***Household Waste Recycling Sites***

Household waste can be taken to your local household waste site, for details of your nearest site contact Staffordshire County Council on 0800 232323 and ask to speak to their Waste Management Team. You can even take your garden waste for composting. For further information, visit the following website [www.recycleforstaffordshire.org](http://www.recycleforstaffordshire.org) or contact Staffordshire County Council's Waste Management Team.

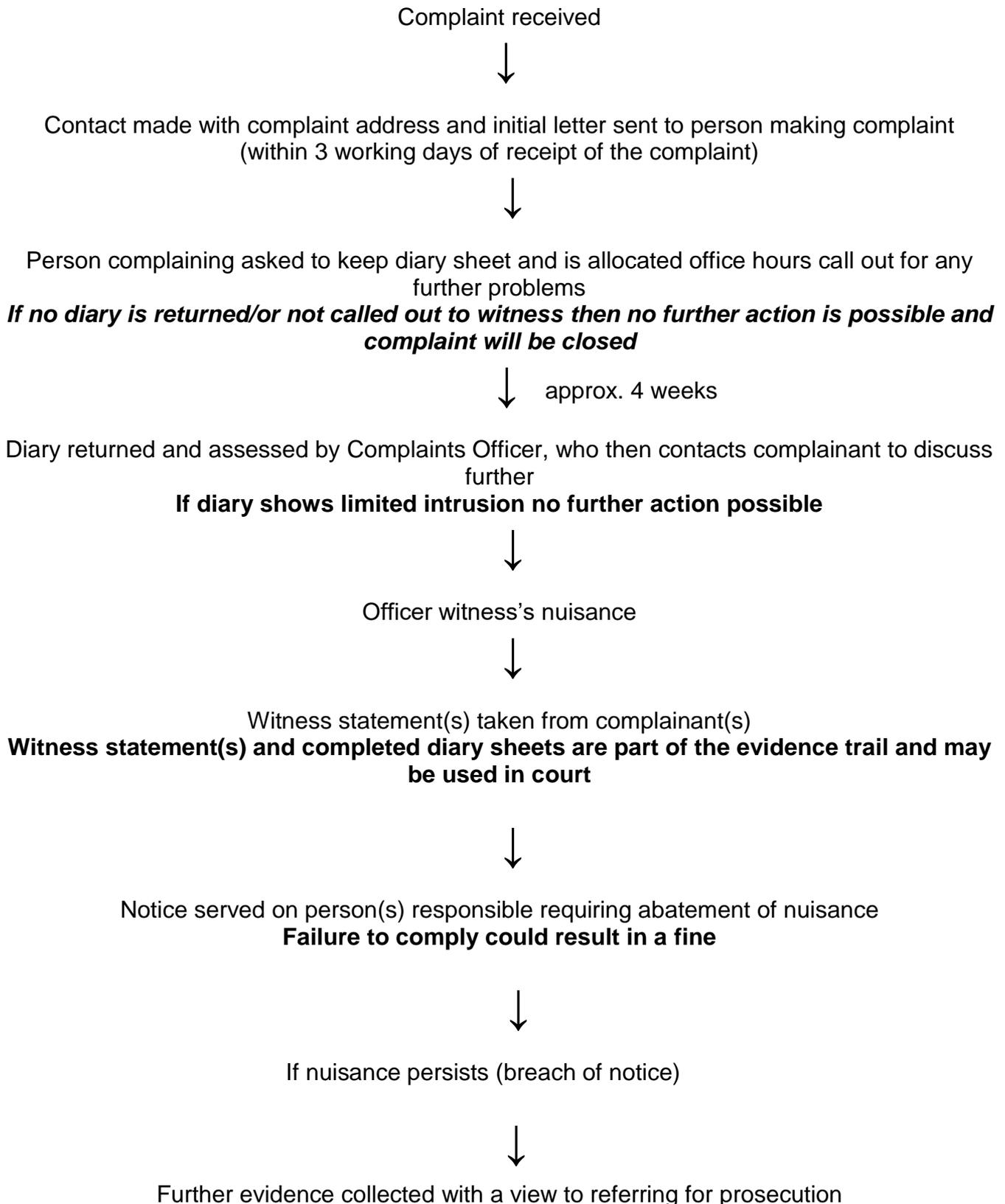
### ***Skip Hire***

In anticipation of large quantities of waste, hiring a skip may be most appropriate. Local skip hire companies can be found in the 'Yellow Pages'.



**Complaints Procedure – Bonfire/Smoke/Odour  
Environmental Protection Act 1990 (Statutory Nuisance)  
The Anti Social Behaviour, Crime and Policing Act 2014**

The flow diagram shows the general procedure which this Department follows when investigating a complaint.



## ***Bonfires – Industrial/Trade/Business***

All industrial, trade or business premises have a duty of care to ensure waste is handled and disposed of responsibly. The Council's Enforcement Team can prosecute businesses and individuals who fail to comply with their Duty of Care. For further information on this subject you can contact the Enforcement Team directly on 01283 508576.

It is also an offence for waste to be burnt on industrial, trade or business premises without authorisation from the Environment Agency. Therefore, all commercial waste should be collected by a licensed waste carrier and disposed of at a licensed site authorised by the Environment Agency. The Environment Agency can be contacted on 03708 506506 for further advice or to report an incident use 0800 807060 (24 hours).

Should bonfires occur on industrial, trade or business premises we can investigate them as a nuisance under the Environmental Protection Act 1990 or the Anti Social Behaviour, Crime and Policing Act 2014. However if dark smoke is emitted from a bonfire on industrial, trade or business premises then this is an offence under the Clean Air Act 1993. Upon conviction under the Environmental Protection Act 1990 or the Clean Air Act 1993 an uncapped fine can be imposed (previously £20,000 fine per offence). Under the Anti Social Behaviour, Crime and Policing Act 2014 an uncapped fine (previously £20,000 per offence) can be imposed or a fixed penalty notice of £100 can be issued.

If a complaint is received regarding a dark smoke offence, then this Department can investigate the complaint without the complainant's details, however we do need to know the address/premise of where the bonfire is taking place in order to follow the complaint up.

If an offence is witnessed, the Authority will then decide on what action will be taken, i.e. a formal warning or prosecution.

This Department can prosecute, even after only one incident has been witnessed. Action can even be taken where there is evidence of materials that have already been burnt, which are likely to have caused dark smoke. Examples of substances that would normally cause dark smoke are plastics, tyres, carpets or foam. On conviction an uncapped fine can be imposed (previously a maximum fine of £20,000 per offence).

If, officers attend a dark smoke complaint and there is no evidence of a dark smoke offence, then the complaint will be dealt with as a nuisance.

It is an offence under the Highways Act 1998 to light a bonfire, permit or direct one to be lit, where smoke injures, interrupts or endangers anyone using a highway. This act is enforced by the Police.

## ***Smoke from Chimneys – Clean Air Act 1993***

It is an offence to emit dark smoke from a chimney of any building. This applies to all premises including domestic, industrial, trade or business. On conviction, a fine of between £1,000 (domestic) to £5,000 (industrial, trade or business) can be imposed.

## ***Smoke Control Areas – Clean Air Act 1993***

Smoke control areas **do not** apply to bonfires, they apply specifically to smoke from any chimney (domestic, industrial, trade or business) attached to a building.

The Clean Air Act 1993 allows the local authority to declare 'Smoke Control Areas', in order to improve air quality. Almost the whole of Burton upon Trent is declared as a smoke control area; see the [Smoke Control Areas Map](#) on the Pollution Team web pages.

In these areas it is an offence for smoke to be emitted from the chimney of a building. The emphasis is on the occupier of the premises to prove that they used only 'authorised fuel'. Coal, oil and wood are not authorised fuels.

Alternatively, an 'exempt appliance' may be installed. If this is the case, this must only be used in accordance with the manufacturer's instructions and only to burn fuels specified on the exemption for it to apply; and unlike 'authorised fuels', the appliance will be exempt on the basis that it can burn fuel without producing any smoke or without producing a substantial quantity of smoke.

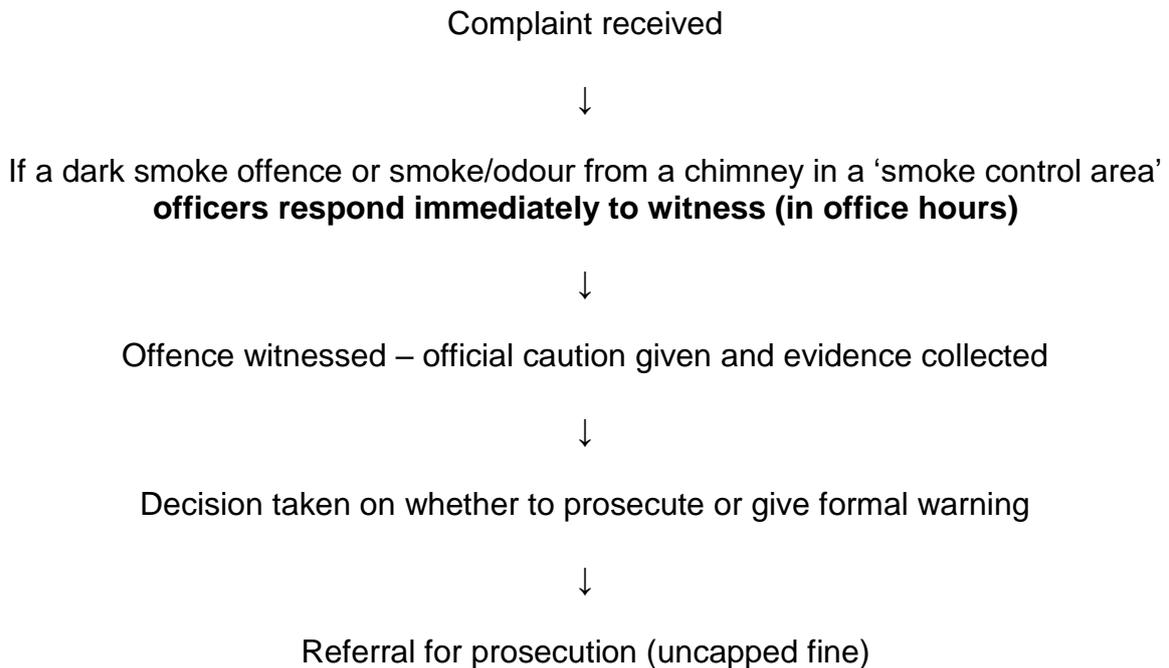
Further information can be found on 'authorised fuels' and 'exempt appliances' on the DEFRA website at: [www.gov.uk/smoke-control-area-rules](http://www.gov.uk/smoke-control-area-rules).

When complaints of this nature are received, officers will attempt to witness, where this is not possible the nuisance procedure is followed to gain the necessary evidence, however, the nuisance enforcement options do not apply.

On conviction, a fine of £1000 can be imposed.

**Complaint Procedure**  
**Dark Smoke Offence (Commercial/Trade, etc only)**  
**Chimney Smoke/Odour in a Smoke Control Area**  
**Clean Air Act 1993**  
**The Anti Social Behaviour, Crime and Policing Act 2014**

The flow diagram shows the general procedure which this Department follows when investigating a dark smoke offence in relation to a bonfire or chimney complaint and any smoke/odour from a chimney in a smoke control area.



- ❖ ***NB: If a dark smoke offence is not witnessed during a site visit, then the complaint can still be dealt with as nuisance under the Environmental Protection Act 1990 or The Anti Social Behaviour, Crime and Policing Act 2014.***
  
- ❖ ***NB: If these events are happening out of office hours, a diary sheet is sent to the complainant in order for the events to be monitored. Once in receipt of the completed diary, it will be assessed and if felt justified, out of hour's provision will then be allocated to the complaint so that officers are able to witness.***

## Contact Us

You can contact us:

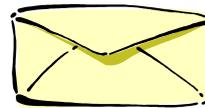
By telephone: 01283 508524 or 01283 508578



By email: [ehsupport@eaststaffsbc.gov.uk](mailto:ehsupport@eaststaffsbc.gov.uk)



By post: Environmental Health  
East Staffordshire Borough Council  
Burton Town Hall  
King Edward Place  
Burton upon Trent  
Staffordshire  
DE14 2EB



By calling in at ESBC Customer Service Centre, Market Place, Burton upon Trent

Visit our website at: [www.eaststaffsbc.gov.uk](http://www.eaststaffsbc.gov.uk)

Environmental Health Pages: <http://www.eaststaffsbc.gov.uk/environmental-health>