



# **Fly Tipping Policy**

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## **1.0 Introduction**

- 1.1 Fly tipping is the illegal dumping of any waste onto land that has no licence to accept waste. It can vary in scale significantly from a bin bag of rubbish to a large quantity of waste dumped from a truck. Enforcement legislation is embodied within the Environmental Protection Act 1990 sections 33 and 34.
- 1.2 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force on 9 May 2016 which amends the Environmental Protection Act 1990 to allow the issuing of fixed penalties for waste deposit offences.
- 1.3 Mid Devon District Council is a contributor to the web based National Fly Tipping Database Fly Capture<sup>1</sup> which has been in operation since April 2004.
- 1.4 All authorised District Officers in the Street Scene and Open Spaces service are fully trained in enforcement procedures and receive regular update training. All delegated officers will act in accordance with this policy and refer to this policy when making enforcement decisions.

## **2.0 The Procedure**

- 2.1 In the first instance, Mid Devon District Council's preferred action is to secure compliance through education and information. Enforcement action will require delegated officers to follow set procedures and protocols in order to ensure consistency in the collection of evidence and the enforcement actions applied. These actions represent a zero tolerance to environmental crime.

This policy supplements the guidance continued in the Operations Directorate Enforcement Policy. The Street Scene service encompasses numerous powers and duties that enable the control of behaviour of individuals and/or businesses in the interest of public health and the environment.

- 2.2 Mid Devon District Council may use CCTV to issue and pursue fixed penalty notices for fly tipping to ensure compliance with Regulation of Investigatory Powers Act 2000.
- 2.3 A fixed penalty notice may be issued to someone caught in the act of fly tipping for a less serious offence. Where evidence is obtained for a more serious case of fly tipping, and the case meets the tests for prosecution, a file will be prepared for prosecution.
- 2.4 In cases of fly tipping found on public open spaces or on highways. A letter shall be sent to the alleged offender with an explanation of the offence committed and an invitation for them to attend an interview under caution. The purpose of the investigation is to ascertain why the offence was committed and to see if there is a plausible explanation for the committed offence. If the

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<sup>1</sup> Flycapture is a database for recording incidents of fly-tipping in Great Britain.

interviewers are not satisfied, consideration may be given to either issuing a Fixed Penalty Notice or prosecuting.

- 2.5 Evidence held by the District Council shall be held in prosecution files which will be stored electronically in line with Data Protection Act 2018.
- 2.6 Interviews under caution may be carried out under the Police and Criminal Evidence Act 1984 (PACE).
  - 2.6.1 Mid Devon District Council may seize a vehicle, trailer or mobile plant suspected of being involved in waste<sup>2</sup> crime.
  - 2.6.2 Mid Devon District Council has the right to legally enter land, vehicles or premises to investigate.
- 2.7 Mid Devon District Council can serve a notice on anyone it thinks can provide information on the details of the driver of a vehicle used at the time when the offence was committed, using the DVLA WEEE system.
- 2.8 All offences that involve a vehicle may be investigated within 7 days of the offence taking place. The Council has the ability to check owner details on a vehicle within this time. After 7 days, a registered keeper check cannot take place using the WEE system.
- 2.11 A range of enforcement options are available for each offence. The case officer dealing with a situation will act on his/her own initiative in routine/straightforward cases. Any cases recommended for prosecution may be presented to Legal Services for comment and review prior to proceedings being instigated.

### **3.0 Duty of care**

- 3.1 The fixed penalty notice (FPN) for breaches of the household waste duty of care provides an alternative to prosecution. It allows an individual to discharge liability for the duty of care offence by payment of a financial penalty.
- 3.2 The duty of care requires occupiers of domestic property to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip it.
- 3.3 Mid Devon District Council may issue a FPN when an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990 in England. For example:

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<sup>2</sup> The Department for Environment, Food and Rural Affairs (DEFRA) states that "material is considered to be waste when the producer or holder discards it, intends to discard it, or is required to discard it."

- Where fly-tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person.
- Where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property.
- Where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption.

#### **4.0 The fixed penalty policy**

- 4.1 A Fixed Penalty Notice, in the appropriate case, can be issued on the spot or following a PACE interview.
- 4.2 Mid Devon District Council can request under section 59 of the Environmental Protection Act 1990 for the occupier and or landowner to remove the waste they knowingly caused or permitted to be deposited illegally.
- 4.3 If the occupier and or landowner does not remove the waste Mid Devon District Council can enter on to the land, clean the waste and charge them the costs of doing so.
- 4.4 Mid Devon District Council can also enter land to clear the waste if:
- There is no occupier
  - The occupier did not knowingly cause or permit the deposit of the waste
  - It is in order to prevent pollution.
- 4.5 A District Officer may require an occupier of domestic property to give the occupier's name and address if the officer proposes to give the occupier a fixed penalty notice.
- 4.6 A person commits an offence if the person:
- Fails to give a name or address when required to do, or
  - Gives a false or inaccurate name or address in response
- 4.7 Mid Devon District Council will ensure all enforcement complies with the principles of the Regulators Code<sup>3</sup> when approaching enforcement for the household waste duty of care.
- 4.8 Mid Devon District Council will request payment is made within 14 days of the FPN issue date.

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<sup>3</sup> section 23 of the Legislative and Regulatory Reform Act 2006

- 4.9 Reminder letters will be sent to those where payment has not been made within 14 days of the FPN being issued. The letter must detail the full payment cost, when payment must be made by and what happens if payment is not made.
- 4.10 District Officers must be authorised in writing by the authority to:
- Issue FPNs
  - Investigate crimes
  - Seizing vehicles and enter on to private land for the purposes of investigation
- 4.11 Where a FPN has been issued Mid Devon District Council will wait a further 14 days after the reminder letter was sent before legal action is taken. If the FPN is paid no court proceedings may take place.
- 4.12 Some cases may not be appropriate for a fixed penalty notice and may proceed directly to prosecution.
- 4.13 Convicted parties can be fined an unlimited amount or imprisoned for up to 5 years.

## **5.0 Amount of fixed penalty**

- 5.1 The Council has specified the amount of the fixed penalty at £400, this has been set at the maximum amount to discourage fly tipping.
- 5.2 The Council will attempt to recover the costs spent on investigations, clean up and enforcement work from the:
- Polluter
  - Occupier or landowner