



Fly Tipping Policy

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Contents

- 1.0 Introduction and legislation
- 2.0 The procedure for fly tipping
- 3.0 Duty of care for household waste
- 4.0 Waste Removal notices
- 5.0 Fixed penalties
- 6.0 Amount of fixed penalties

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 (The Council) is a contributor to the web based National Fly Tipping Database Fly Capture.
- 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 Flytipping Enforcement Procedure

- 2.1 In the first instance, The 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 The Council may use CCTV to issue and pursue fixed penalty notices for fly tipping provided it is in compliance with Regulation of Investigatory Powers Act 2000.
- 2.3 A fixed penalty notice may be issued to someone caught in the act or subsequently determined guilty of the offence of fly tipping. Where evidence is obtained for a more serious case of fly tipping, and the case meets the threshold 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 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 will be carried out under the Police and Criminal Evidence Act 1984 (PACE).
- 2.6.1 The Council may seize a vehicle, trailer or mobile plant suspected of being involved in waste¹ crime.
- 2.6.2 Mid Devon District Council has the right to legally enter land, vehicles or premises to investigate fly tipping offences.
- 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 WEE 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 of a vehicle within this time. After 7 days, a registered keeper check cannot take place using the WEE system.
- 2.9 A range of enforcement options are available for each offence. The case officer dealing with a situation will liaise with the Environment and Enforcement manager to determine the appropriate outcome. Any cases recommended for prosecution will be presented to Legal Services for comment and review prior to proceedings being instigated.

3.0 Duty of care for household waste

- 3.1 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 for disposal. This reduces the chance of waste ending up in the hands of those who would fly-tip it. It is an offence to fail to comply with the duty of care.
- 3.2 The 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:
- 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.

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."

- 3.3 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

4. Waste Removal notices under section 59 of the Environmental Protection Act 1990

- 4.1 The Council can serve a notice on an occupier of land on which controlled waste has been unlawfully deposited requiring the occupier to either:
- Remove the waste from the land within a specified period of not less than 21 days, beginning with the service of the notice.
 - Take specified steps within 21 days to eliminate or reduce the consequences of the waste deposit.

Provided the occupier did not deposit, knowingly cause or knowingly permit the deposit of the waste.

- 4.2 The section 59 notice can be served on the owner of the land where:
- There is no occupier.
 - The occupier cannot be found without the authority incurring unreasonable expense.
- 4.3 It is an offence to fail to comply with a section 59 notice without reasonable excuse. There is no fixed penalty notice that can be served.
- 4.4 The Council has step-in powers to do what the recipient of the section 59 notice failed to do and can recover its reasonably incurred expenses
- 4.5 The Council can also remove waste from land where it appears to the authority that the waste has been fly tipped on land and:
- It is necessary to remove the waste or take other steps to prevent:
 - pollution of land, water or air; or
 - harm to human health.
 - There is no occupier of the land or he cannot be found without the Council incurring unnecessary expense.
 - The occupier did not deposit, knowingly cause or knowingly permit the deposit of the waste.

5. The Fixed Penalty Policy

- 5.1 A Fixed Penalty Notice (FPN), in the appropriate case, can be issued on the spot or following a PACE interview. The FPN must identify the offence and give reasonable particulars of the offence. It must also state no proceedings may be instituted for the offence before the end of the period of 14 days following the date of the notice; and that the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period. The FPN should also state the person to whom and the address at which the fixed penalty may be paid.

- 5.2 District Officer who proposes to give a FPN to a person may require the person to give the person's name and address. It is an offence to—
(a) fail to give a name or address when required to do so , or
(b) give a false or inaccurate name or address in response to a requirement :
- 5.3. The Council will ensure all enforcement complies with the principles of the Regulators Code² .
- 5.4 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
- 5.5 Some cases may not be appropriate for a fixed penalty notice and may proceed directly to prosecution. The fixed penalty is not an appropriate sanction for:
- operators in the waste management industry
 - repeat offenders
 - those responsible for large-scale fly-tipping or the fly-tipping of hazardous waste

These types of incident will continue to be enforced by using existing prosecution powers.

- 5.6 Convicted parties of flytipping can be fined an unlimited amount or imprisoned for up to 5 years.

6.0 Amount of fixed penalty

- 6.1 The Council has specified that FPN's relating to fly tipping will work on a sliding scale. The minimum charge for a fly tipping offence being £400 and the maximum amount £1000. Delegated authority has been given to the Environment and Enforcement Manager to determine the fine amount based on the facts of each case.
- 6.2 The Council has specified that FPN's relating to household duty of care offences will work on a sliding scale. The minimum charge for a household duty of care offence being £150 and the maximum amount £600. Delegated authority has been given to the Environment and Enforcement Manager to determine the fine amount based on the facts of each case.
- 6.3 The Council will attempt to recover the costs spent on investigations, clean up and enforcement work from the:
- Offender
 - Occupier or landowner