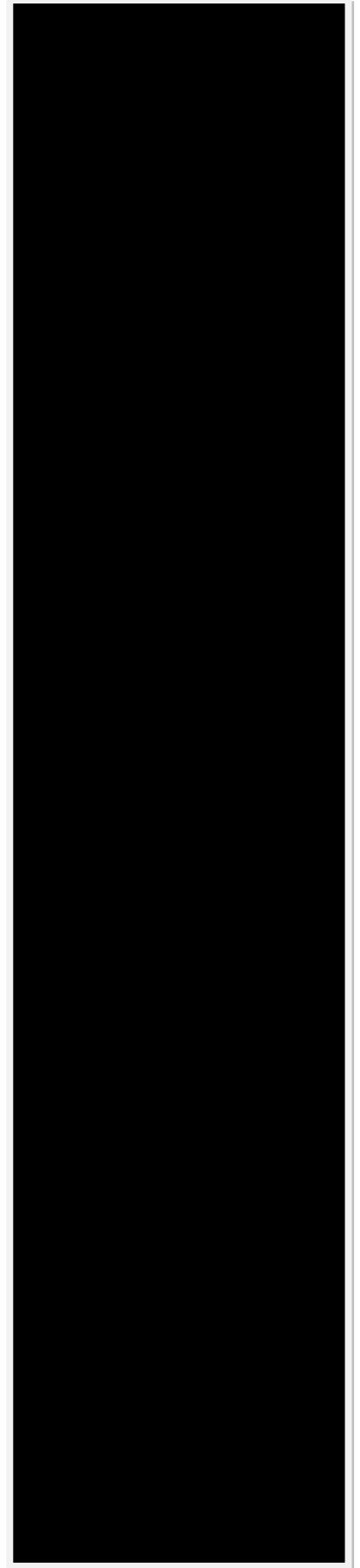




Street Scene Services Enforcement Policy

Date of issue: March 2017
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Section 1

Civil Parking Enforcement Discretion

Traffic Management Act 2004, s82

*Civil Enforcement of Parking Alleged Contraventions (England)
General Regulations 2007.*

*Civil Enforcement of Parking Alleged Contraventions (England)
Representations and Appeal Regulations 2007.*

This document contains:

1. Policy Statement of Mid Devon District Council for Civil Parking Enforcement.
2. Types of Appeals (Challenges and Representations).
3. Statutory Grounds under which a Formal Representation may be made.
4. Detailed examples of Representations under specific grounds.
5. Details of the Independent Adjudication Service – The Traffic Penalty Tribunal.

Policies set out in this document provide guidance only.

Each case must be considered on its own merits, taking into account all of the evidence available and the exceptionality of the circumstances surrounding any case.

NB: Mid Devon District Council enforce within their own car parks and as such are considered as the Enforcement Authority in those locations only. On-Street enforcement (yellow line enforcement etc) is the responsibility of Devon County Council.

How to contact Mid Devon District Council regarding off-street parking issues within a Council owned car park:

Address: Mid Devon District Council
Phoenix House
Phoenix Lane
Tiverton
Devon EX16 6PP

Tel: 01884 255255

e-mail: parkingservices@middevon.gov.uk

NB: Representations (appeals) against the issue of any Penalty Charge Notice (PCN) by Mid Devon District Council will only be considered if made in writing, and is within the legally prescribed time, and is made by the person or organisation entitled to make the representation.

Mid Devon District Council will endeavour to respond to all communications within 10 working days. All responses will be in writing and will address all issues raised within each representation.

If you make a representation and do not receive a reply within 10 working days or 15 calendar days, whichever is the soonest, please contact the Council's Parking Services Department as soon as possible.

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Section 1a

Introduction

The policies set out in this document are intended to provide guidance and information to the public and Council employees carrying out car park enforcement duties.

The policies and approach are consistent with current best practice and aim to provide clarity, consistency and transparency within the enforcement process and compliance with the aspirations of the legislation and associated guidance, the Traffic Penalty Tribunal (TPT) and the Local Government Ombudsman.

These policies represent a foundation upon which fairness, openness, transparency and discretion can be applied. The importance of flexibility in these matters has been recognised by the courts and, as a consequence, decisions made by councils must not be unduly rigid in their application.

The policies address the following:

- The Statutory Grounds upon which representations can be made at each stage.
- Mitigation – what constitutes mitigating circumstances, how this is considered and applied.
- The acceptance and rejection of representations.

It is important to recognise that each case will be considered on its own merits and will not be unduly influenced by previous decisions. Proportionality, objectivity, fairness and reasonableness must be paramount in the mind of the officer considering any representation.

Policy Statement of Mid Devon District Council for Civil Parking Enforcement within their own Car Parks

Mid Devon District Council is committed to making sure that it provides Equality of Opportunity in how its services are delivered. This commitment has been translated into its core values by ensuring that different groups and individual needs are reflected in the delivery of service.

The staff of Mid Devon District Council will ensure that they will offer all necessary assistance to any person to ensure that they are aware and can avail themselves of all services and rights due to them.

By carrying out Civil Parking Enforcement within its own car parks Mid Devon District Council will:

1. Maintain its car parks to a standard that encourages drivers to park legally and safely thereby improving traffic flow on the highway and making the District a more pleasant and environmentally safe place in which to live and visit.
2. Provide parking at a reasonable cost to the public so as to encourage the local economy.
3. Actively support the needs of disabled people bearing in mind that, in some cases, they are unable to use public transport and are entirely dependent upon the use of a car. This will ensure that people with disabilities are able to have equal access to all facilities within the District.

The policy shall be regularly reviewed and will take into account:

1. Existing and predicted levels of demand for off-street parking.
2. The availability and pricing of off-street parking.
3. The accuracy and quality of existing lines, signs within the car parks.
4. The levels of compliance that Mid Devon District Council considers to be acceptable and the level of enforcement necessary to achieve them.
5. The views of the public who shall be actively consulted on all matters relating to the extension of parking restrictions.
6. The views of Devon Police.
7. The provision of suitable parking facilities for disabled people.
8. The provision of suitable parking facilities for motorcyclists.
9. Consideration of the Council's overall aims with regard to the environment, fear of crime within the District and the sustained economic growth of the District.

Section 1b

Types of Appeals:

Under the terms of the Traffic Management Act 2004 (TMA) any appeal made to Mid Devon District Council is termed as a “Representation” and will either be:

1. **Informal Representation (aka A Challenge):** This refers to any representation made before the Council issues the Statutory Notice¹ to Owner to the person who is the registered owner / keeper at DVLA or the person that Mid Devon District Council believes to be the owner / keeper at the time of the alleged contravention.

The Informal Representation may be made by any party directly concerned with the vehicle who may not be the keeper, i.e. the driver at the time of the alleged contravention.

An Informal Representation should be made where the appellant believes that there are compelling reasons why the Penalty Charge Notice should not have been issued. These may be for any reason and any mitigating circumstances will be considered by the Council. Representations should be accompanied by any supporting evidence and will be considered against the evidence collected by the Council’s Civil Enforcement Officer at the time of the alleged contravention, which may include contemporaneous notes, both written and electronic as well as digital photographs.

If made within 14 days of service of the Penalty Charge Notice, thereby during the period in which the 50% discount for payment applies, the discount period shall be “frozen” so as not to disadvantage the appellant. Should the representation be rejected the appellant shall be notified in writing by the Council and the discount period recommenced and apply for 14 days from the date of written notice of rejection.

Only one Informal Representation will be accepted in respect of any alleged contravention. If this is rejected by the Council no other informal representation will be accepted and, if received, will be returned to the appellant.

Any informal representation received after the discount period has expired will be considered but the discount period will not be recommenced and the full penalty amount shall be payable should the representation be rejected.

2. **Formal Representations:** This refers to a representation made by the registered owner / keeper of the vehicle, according to DVLA, or the person(s) believed to be the registered owner / keeper by Mid Devon District Council.
3. This person(s) shall be the person(s) who has received the Statutory Notice to Owner¹ from the Council and the representation is made within 28 days of service of the Notice.

¹ A Statutory Notice to Owner (NTO) shall be sent to the person(s) that DVLA state was the registered keeper, at the time of the alleged contravention, or the person(s) that Mid Devon District Council believe to be the owner / keeper. This will be done after the Penalty Charge Notice remains unpaid for a period of 28 days.

Formal Representation from another party may be accepted only if the Council accept that they are acting as the authorised representative of the registered keeper / owner of the vehicle. In such cases the Council will require sight of the written authority from the registered keeper / owner before considering any such representation. In the absence of such authority the Council shall reject the representation without consideration and the registered keeper / owner shall be notified, in writing, of the rejection.

If a Formal Representation is made by a third party acting as the authorised representative of the registered keeper / owner of the vehicle, this does not remove the registered keeper / owner's liability for the penalty charge / Notice to Owner.

Formal Representations must be made on one of the grounds specified within the Statutory Notice to Owner (See Section 4 of this document). However, where these are not appropriate, the Council will consider mitigating circumstances and these should be described in full by the appellant and, in all cases, any supporting evidence included with the representation.

If the formal representation is rejected by the Council the appellant will be notified in writing by the Council who will issue a "Formal Notice of Rejection of Representation" which will give reasons why the representation was rejected. The appellant will always be considered as the registered keeper / owner of the vehicle, irrespective of the fact that the representation may have been made by an authorised representative.

The Formal Notice of Rejection will allow 28 days, from and including the date of service ²of the Notice, for the penalty charge to be paid or an appeal to the Independent Adjudicator to be made (see "4" over leaf). Failure by the keeper to either pay the penalty or make an appeal to the Independent Adjudicator within 28 days will result in a Charge Certificate being issued. This will have the effect of increasing the outstanding penalty amount by 50%. After the issue of the Charge Certificate no further appeal will be accepted. A Charge Certificate must be paid in full within 14 days of service.

Failure to pay the increased charge could result in the Council seeking a County Court Order for Recovery, which will add a further £7 to the outstanding amount. Failure to pay at this stage will then result in a Court Warrant of Execution being obtained and passed to Bailiffs for recovery. Bailiffs will add their fees to the outstanding debt and these can be significant.

² Date of Service is considered as being on the 2nd working day after the date of posting by 1st class post. All documents are posted on the date of issue. Working days do not include Saturdays, Sundays or any designated public (Bank) holiday.

4. Appeal to the Independent Adjudication Service: If a Formal Representation is rejected by the Council the registered keeper / owner of the vehicle (the appellant) has the right and will be given the opportunity to appeal the case to the independent parking adjudicator, The Traffic Penalty Tribunal.

Full details of how to appeal to the Independent adjudicator will be included with the Formal Notice of Rejection of Representation sent by the Council. If this is not received please contact the Council immediately.

The appeal must be made on one of the 9 grounds stated within the appeal form and the appeal must be made within the stipulated timescale (28 days of service of the Notice of Rejection of Formal Representation). Appeals made outside of this time may be rejected by the Adjudicator unless just cause for the delay can be demonstrated by the appellant.

Please see Section 1e of this document.

Section 1c

Statutory Grounds under which to make Formal Representations:

Important Note:

Although the following are the 9 possible statutory grounds under which to make a formal representation as defined by the Civil Enforcement of Parking Alleged contraventions (England) Representations and Appeal Regulations 2007, full consideration will be given and account taken of all formal representations received whether or not they fall within the description of "Statutory Grounds". It is for this reason that a 10th ground, encompassing any other information the owner / keeper would like the Council to consider. This 10th ground will be considered as "mitigation"

The 9 Statutory Grounds are:

- G1. The alleged contravention did not occur:
- G2. That the recipient of this Notice:
 - i. never was the owner of the vehicle in question;
 - ii. had ceased to be its owner before the date on which the alleged contravention occurred; or
 - iii. became its owner after that date.
- G3. That the vehicle has been permitted to remain at rest in the place in question by a person who was in control of the vehicle without the consent of the owner:
- G4. That the recipient of this Notice is a vehicle-hire firm and:

- iv. the vehicle in question was at the material time hired from that firm under a hiring agreement; and
 - v. the person hiring it had signed a statement of liability acknowledging their liability in respect of any penalty charge notice served in respect of any parking alleged contravention involving the vehicle during the period of the hiring agreement.
- G5. That the penalty charge exceeded the amount applicable in the circumstances of the case.
- G6. That there has been a procedural impropriety on the part of the Enforcement Authority or its agent.
- G7. That the Order which is alleged to have been contravened in relation to the vehicle concerned, except where it is an order to which part VI of schedule 9 to the 1984 Act (a) applies, is invalid.
- G8. That the notice to owner should not have been served because;
- vi. the penalty charge had already been paid in full;
 - vii. the penalty charge had been paid, reduced by the amount of any discount set in accordance with Schedule 9 to the 2004 Act, within the period specified in para 1(h) of the schedule to the General Regulations.
- G9. Where a PCN was served by post on the basis that a Civil Enforcement Officer was prevented by some reason from fixing it to the vehicle concerned or handling it to the owner or person in charge of the vehicle, that no CEO was so prevented.

The 10th Ground – Mitigation:

- G10. MITIGATION: The Council is required to use discretion when enforcing penalty charge notices and will do so if genuine mitigating circumstances exist.

Section 1d

Detailed Examples of Representations on specific grounds*

*These examples are for guidance only and the list is by no means exhaustive. We aim to give an indication as to how cases will be dealt with by the Council. In all cases representations should be an honest account of the appellant's position and should be accompanied by as much factual, supporting evidence as possible.

The area of Parking Enforcement is very emotive but the Council will not tolerate abusive, threatening or violent behaviour towards any member of its staff, whether it is verbal or physical and will take every action necessary to protect the interests of its staff.

Mid Devon District Council is responsible for enforcement within its own car parks only. On-Street enforcement within the District is carried out by Devon County Council.

Consequently Mid Devon District Council can only deal with representations relating to PCN's that were issued by them within their car parks.

- G1: The alleged contravention did not occur:

In car parks: THE COUNCIL MAY REJECT REPRESENTATIONS:

1. If a valid pay & display ticket was not purchased or not clearly displayed as required.

G1.2 Where the motorist claims that a parking pay & display machine was faulty

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If service records confirm a fault or that the machine had been taken out of service at the time of the alleged contravention;
2. If there is reasonable doubt because evidence not available to confirm that a machine was working at the time (test ticket) and there was not another ticket machine nearby which was operating correctly.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If there was another ticket machine nearby that was working correctly at the time;
2. If there is no record of the machine being faulty or taken out of service;
3. If there is reasonable doubt because evidence confirms that other visitors had been able to purchase tickets during the relevant period.

G1.3 Where a motorist claims that the restriction is not clearly signed or marked

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If signs and/or markings are missing or unclear;
2. If signs and markings are inconsistent with each other and/or Traffic Order or legislation.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If site visit records or photographs establish that signs and/or markings are correct and consistent with each other and the Traffic Order.

G1.4 Where a motorist was carrying out building works

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If valid dispensation to park at the location in question had been issued and was on display in the vehicle;
2. If works are of a statutory nature or are exempted from restrictions by a Traffic Order or legislation;
3. If it can be proven that works were an emergency.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. In all other circumstances.

G1.5 Where a motorist claims that PCN was not served (i.e. PCN not found attached to vehicle or handed to driver)

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the Civil Enforcement Officer's pocket book and/or computer notes confirm that the vehicle drove away before a PCN could be served, i.e. PCN not handed to the driver or fixed to the vehicle.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the Civil Enforcement Officer's notes or photographs confirm that a PCN was correctly served, i.e. handed to the motorist or fixed to their vehicle.
2. If the Civil Enforcement Officer has issued a Regulation 10 PCN by Post.

G1.6 Where a motorist claims that their vehicle was not parked in the location at the time and on the date alleged on the PCN, which was issued

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. Following consideration of all available evidence;

THE COUNCIL MAY REJECT REPRESENTATIONS

1. Following consideration of all available evidence;
2. If there is no evidence or if the evidence presented does not support the claim or is inconclusive.

G1.7 Where motorist claims that a valid authorisation to park, had been issued

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If records show that the motorist holds a valid authorisation to park.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the motorist cannot provide a copy of the valid authorisation to park or if there is no record of any issue of the authorisation;
2. If the motorist did not park in accordance with the authorisation.

NB: A valid authorisation to park could be a pay & display ticket, permit, season ticket, RING Go or dispensation.

G1.8 where the motorist claims that a pay & display ticket was purchased and displayed

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the motorist produces a Pay & Display parking ticket that was valid at the time the Penalty Charge Notice was issued.

and

2. The Civil Enforcement Officer confirms that a face down ticket or a ticket that was displayed but concealed in some other way was seen.

and

3. It is the first alleged contravention of this kind.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the motorist is unable to produce a valid pay & display ticket.
2. The Civil Enforcement Officer was unable to confirm that a face down ticket or a ticket that was displayed but concealed in some other way was seen.
3. The motorist has made a similar representation before and had a previous PCN cancelled, after giving them the benefit of the doubt; or
4. The Civil Enforcement Officer noted that the motorist obtained their ticket from another motorist in the car park.

G2 That the recipient:

Never was the owner of the vehicle in question;
Had ceased to be its owner before the date on which the alleged contravention occurred;
Became its owner after that date.

G2.1 Never was the owner of the vehicle in question;

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the DVLA confirms that the motorist was not the registered keeper at the time of the alleged contravention.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the DVLA confirms that the motorist was the registered keeper of the vehicle at the time of the alleged contravention.
2. If the previous registered keeper provides proof that the motorist bought the vehicle before the alleged contravention, or the subsequent registered keeper provides proof that the motorist sold the vehicle after the alleged contravention.
3. If the motorist is proven to have hired the vehicle for the day on which the alleged contravention occurred and signed an agreement to take responsibility for PCNs incurred, subject to the time of hire (see policy G4, below)

G2.2 Had ceased to be its owner before the date on which the alleged contravention occurred;

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the current registered keeper is able to provide proof that the vehicle was disposed of before the alleged contravention, i.e. a bill of sale, registration documents, insurance documents or a letter from the DVLA; and/or
2. If the current registered keeper is able to provide the full name and address of the person to whom they disposed of the vehicle.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the current registered keeper is unable to prove that they neither disposed of the vehicle before the alleged contravention nor provide the name and address of the person to whom they disposed of the vehicle.
2. If the person named by the current registered keeper as the person to whom they disposed of the vehicle, either does not exist, cannot be traced or is for some other reason not considered to be bona fide

G2.3 Became its owner after that date;

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the current registered keeper is able to provide proof that the vehicle was purchased after the alleged contravention, i.e. an invoice, registration documents, insurance documents or a letter from the DVLA; and/or
2. If the current registered keeper is able to provide the full name and address of the person from whom they purchased the vehicle.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the current registered keeper is unable to prove that they neither purchased the vehicle after the alleged contravention nor provide the name and address of the person from whom they bought the vehicle.
2. If the person named by the current registered keeper as the person to whom they disposed of the vehicle, either does not exist, cannot be traced or is for some other reason not considered to be bona fide.

G2.4 Where the current registered keeper claims that a contracted third party was responsible for the vehicle at the time of the alleged contravention

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. Only when a hire agreement exists (see policy G4, below).

THE COUNCIL MAY REJECT REPRESENTATIONS

1. In all other circumstances because the registered keeper is always liable, including where the vehicle was left in the care of a garage.

G3 That the vehicle had been permitted to remain at rest in the place in question by a person who was in control of the vehicle without the consent of the owner

G3.1 where the current registered keeper claims that the vehicle had been stolen

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the registered keeper provides a valid police crime report reference number.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the current registered keeper is unable to provide any proof of theft.
2. If the police crime report reference number provided by the current registered keeper does not exist or it does not match the theft or date of the theft alleged.

G3.2 Where the current registered keeper claims that the vehicle was driven by a third party (i.e. a friend, relative or estranged partner) without permission.

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the registered keeper provides a valid police crime report reference number.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. In all other circumstances because the registered keeper is always liable, save for when a hire agreement exists (see policy G4, below).

G4 That the recipient is a vehicle hire firm:

The vehicle in question was at the material time hired from that firm under a vehicle hiring agreement;

The person hiring it had signed a statement of liability acknowledging his/ her liability for any PCN served in respect of any alleged contravention involving the vehicle;

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the hire company are able to provide proof that the vehicle was hired at the time of the alleged contravention, i.e. a signed agreement;

and

2. If the hire company are able to provide the full name and address of the person to whom they hired the vehicle;

or

3. The vehicle is on long term lease and the company provides full details of the person / organisation leasing the vehicle. In such cases the lessee stands in the place of the registered keeper.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the hire company are unable to prove that they neither hired out the vehicle on the date of the alleged contravention nor provide the name and address of the person to whom they hired the vehicle.
2. If the person named by the hire company as the person to whom they hired the vehicle, without proof, either does not exist, cannot be traced or denies responsibility for the alleged contravention.
3. If the vehicle was being used as a courtesy car without an agreement signed to accept responsibility for Penalty Charge Notices issued.

G5 That the penalty charge exceeded the amount applicable in the circumstances of the case.

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the PCN and/or Notice to Owner showed the incorrect amount of penalty charge, i.e. the wrong penalty charge band

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the PCN or Notice to Owner showed the correct amount of penalty charge

G6 That there has been a procedural impropriety on the part of the enforcement authority

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If any requirements imposed by the TMA or the TMA Regulations in the relation to the imposition or recovery of a penalty charge have not been observed.
2. If any document has been served in advance of the time scale set out in the TMA regulations.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If all requirements imposed by the TMA or the TMA Regulations in the relation to the imposition or recovery of a penalty charge has been observed.
2. If all documents have been served in accordance with the time scale set out in the TMA regulations.
3. If the motorist merely considers the restrictions to be unfair.

G7 That the Order which is alleged to have been contravened in

relation to the vehicle concerned is invalid

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the Traffic Order which prescribes the restrictions that the vehicle was parked in alleged contravention was either not constructed correctly, i.e. is ultra-vires, or was not made correctly, i.e. not consulted on properly.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the Traffic Order which prescribes the restrictions that the vehicle was parked in alleged contravention of was constructed and made correctly.
2. If the motorist merely considers the restrictions to be unfair.

G8 That the Notice to Owner should not have been served because the penalty charge had already been paid in full or by the amount reduced by any discount set within the period set

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the penalty charge amount had been paid in full.
2. If the penalty charge amount, reduced by any discount set within the period set, had been paid in full.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the penalty charge amount had not been paid in full.
2. If the penalty charge amount, reduced by any discount set within the period set, had not been paid in full.

G9 In the case where a PCN was served by post on the basis that a Civil Enforcement Officer was prevented by some person from fixing it to the vehicle concerned or handing it to the owner or person in charge of the vehicle, that no Civil Enforcement Officer was so prevented

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the Civil Enforcement Officer's notes or photographs confirm that a PCN was correctly served, i.e. handed to the motorist or fixed to their vehicle.
2. If the Civil Enforcement Officer's pocket book and/or computer notes did not confirm that the vehicle drove away before a PCN could be served (In such a case the PCN must have been fully prepared prior to service), i.e. PCN not handed to the driver or fixed to the vehicle.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the Civil Enforcement Officer's pocket book and/or computer notes confirm that the vehicle drove away before a fully prepared PCN could be served, i.e. PCN not handed to the driver or fixed to the vehicle.

G10 Any other information that the motorist / vehicle owner want the Council to take into consideration

MITIGATING CIRCUMSTANCES:

Mitigation is any reason that may have caused the motorist to commit the alleged contravention which was either beyond their control or unavoidable. The scope of this is very wide and the examples below are, by no means, presented as a definitive list but serve to demonstrate how such representations are viewed and dealt with by the Enforcement Authority.

Motorists have the right to make representations in any case where they feel that they have just cause to do so. This should not be seen, however, as a tool to confuse the issue as Council Officers dealing with these cases are well trained and have comprehensive evidence at their disposal for each and every case.

The following examples primarily deal with on-street contraventions as, in normal circumstances, the Council would expect that anyone parking in a car park would pay the required parking fee before leaving the vehicle. Only in very extreme circumstances would this not be the case.

MC1 Where the motorist claims to have become unwell while driving

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the motorist provides proof of a medical condition, temporary or permanent, that is consistent with the conditions described.
2. When the notes made by the Civil Enforcement Officer support the motorist's representations.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the motorist cannot provide some proof of a medical condition, temporary or permanent, consistent with the conditions described.
2. Where other evidence contradicts the motorist's claims

MC2 Where the motorist claims to be a doctor, nurse or health visitor attending a patient

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the motorist concerned possesses a Medical Dispensation badge (BMA, HEBS) that the COUNCIL concerned recognises and approves and/or is exempt under the relevant Order.
2. If the motorist produces evidence that they were responding to an urgent medical call and there was no nearby legal parking place.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If motorist was not attending a patient in urgent circumstances or if there were legal parking spaces nearby.
2. If motorist was parked outside their practice or other place of work for any reason other than to collect supplies for an urgent call.
3. If motorist was parked in an area, which does not correspond with claims made in representations, i.e. far from patient's property, say, in a car park

MC3 Where the motorist stopped to use the toilet

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. On production of medical evidence confirming a relevant medical condition and in support of the circumstances described in a representation.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. In all other circumstances

MC4 Where the motorist stopped to collect (prescribed) medication from a Chemist

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. Only in the most grave, urgent and exceptional of circumstances and the use of a 'legal' parking place would have caused an unacceptable delay.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. In any lesser circumstances.

MC5 Where the motorist was a patient visiting a doctor's surgery

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the motorist can provide a letter from a doctor to confirm that the visit was very urgent and that they were unable to walk from the nearest legal parking space.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the motorist was not the patient but only driving the vehicle carrying the patient;
2. If the motorist was attending a pre-arranged, non-urgent appointment;
3. If the motorist could reasonably have been expected to parked legally elsewhere.

MC6 Where the motorist claims to have been recently bereaved

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If no evidence exists to the contrary, taking into account the sensitivity of this issue on first occasion.

2. THE COUNCIL MAY REJECT REPRESENTATIONS

1. Only if there is a significant reason to doubt the sincerity of representations, i.e. the Civil Enforcement Officer's notes indicating that the motorist was going about a normal day, say, shopping or working, or the bereavement is considered to be a long time ago.

MC7 Where the motorist was unavoidably delayed in returning to their vehicle and parking time purchased had expired

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If supported by appropriate evidence, the motorist's claims that the delay in returning to the vehicle was caused by circumstances that were entirely unforeseen, unavoidable and exceptional will be considered.
2. If the motorist became incapable of driving, since parking the vehicle. This would need to be fully supported by evidence.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the delay described by the motorist was avoidable or non-essential, i.e. queuing in a shop;
2. If the motorist simply underestimated the time needed and could have reasonably purchased more time, i.e. when conducting business, shopping or commuting;
3. If the motorist was unable to drive since parking due to excess alcohol in the body or had been detained and charged by the police.

MC8 Where the motorist “fed” a meter or pay & display machine by buying subsequent time to park in the same place or returned to the same place within a specified and prohibited time period

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. Where the restrictions are not made clear by on site signage.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. In all circumstances where this activity is prohibited by the restrictions in place.

MC9 Where the motorist left the vehicle parked without a valid ticket on display to obtain change.

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the motorist had not left the car park while obtaining change and a ticket was purchased.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the Civil Enforcement Officer’s notes indicate that the motorist returned to their vehicle, having completed their purpose for parking, while the PCN was being issued, i.e. carrying shopping, or had left vehicle in car park, while obtaining change (5 minutes will normally be allowed to obtain change in an off-street parking place).

MC10 Where the motorist claims to have been unaware of charges or restriction in the car park relating to vehicle’s class or weight.

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If reference to restrictions on tariff board(s) are incorrect or missing.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. In all other circumstances,
MC11 Where the motorist claims to have been unaware of a recent rise in tariff

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If statutory notices were not erected in accordance with procedural regulations;
2. If revised tariff is not on tariff board(s).

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If statutory notices were erected in accordance with procedural regulations and tariff board(s) were correct.

MC12 Where the motorist had parked with one or more wheels outside of a marked bay in a car park

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. Only in the most exceptional of circumstances that were outside the motorists control and are supported by incontrovertible evidence.
2. Otherwise, in no circumstances.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. When clear and incontrovertible supporting evidence (photographs/Sketch plan) is available.

MC13 Where the motorist is a Blue Badge holder or transporting a Blue Badge holder and they did not have their Blue Badge and/or clock on display or could not be read or had expired

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If it can be established that this is the motorist's first alleged contravention of this type and they can provide evidence that they are a Blue badge holder or were transporting a Blue Badge holder and that this was a genuine error.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. If the motorist has previously had a PCN cancelled for the same alleged contravention and has been warned to display a valid badge /time clock, correctly in the future.

MC14 Where the motorist was displaying an expired authorisation to park, i.e. waiver, parking place suspension, season ticket, residents' permit, business permit or visitors' permit

THE COUNCIL MAY ACCEPT REPRESENTATIONS

1. If the renewal of the authorisation was delayed by the COUNCIL administrative processes.
2. If it can be established that other reasonably unforeseen circumstances delayed the renewal of an authorisation to park, e.g. sickness on the part of the applicant or a postal dispute/delays (supported by appropriate evidence).
3. In the case of season tickets and resident's /business parking permits only, if the authorisation had expired by less than 14 days.

THE COUNCIL MAY REJECT REPRESENTATIONS

1. In all other circumstances.

In the event of more than one vehicle registration included on season ticket or permit, subsequent production of the season ticket will not necessarily cause automatic cancellation of the PCN as the season ticket may have been used on the other vehicle.

MC15 Where the motorist assumed that they were entitled to "a period of grace" before the PCN was issued

THE COUNCIL MAY ACCEPT REPRESENTATIONS

In no circumstances.

THE COUNCIL MAY REJECT REPRESENTATIONS

In all circumstances.

MC16 Where the motorist claims they were attending a funeral

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If no evidence exists to the contrary, taking into account the sensitivity of this issue.

THE COUNCIL MAY REJECT REPRESENTATIONS

Only if there is a significant reason to doubt the sincerity of the representations.

MC17 Where the motorist claims that snow, foliage, fallen leaves or flooding covered the signs or markings

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If it can be established that such conditions prevailed and it is likely that signs and markings were obscured as claimed and there was no alternative indication of the restriction.

THE COUNCIL MAY REJECT REPRESENTATIONS

If it can be established that such conditions did not cause lines and signs to be obscured as claimed.

If the Civil Enforcement Officer's notes/photographic evidence etc. directly contradict the motorist's version of events.

If any reasonable alternative indication of the restriction was available to the motorist. (i.e. the lines were clearly visible 5 yards further on).

If the location of the alleged contravention was unlikely to be subject to the natural conditions described by the motorist, i.e. it was under cover

MC18 Where the motorist claims that their vehicle had broken down

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If the motorist is able to provide evidence of a breakdown, i.e. proof of vehicle recovery or a bill of sale for repair or parts.

THE COUNCIL MAY REJECT REPRESENTATIONS

If the motorist is unable to provide evidence of any kind that their vehicle had broken down.

If the cause of the vehicle “breaking down” was due to negligence on the part of the motorist, i.e. the vehicle had not been properly maintained, had run out of petrol or water or a similar reason.

If the Civil Enforcement Officer’s notes contradict the motorist’s version of events.

MC19 Where the motorist claims that they were attending an emergency or another vehicle that had broken down

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If the motorist is able to provide reasonable proof of the emergency, i.e. a credible report of an accident or incident, or that they were attending to another vehicle that had broken down.

THE COUNCIL MAY REJECT REPRESENTATIONS

If the motorist is unable to provide evidence of any kind that they were attending an emergency or another vehicle which had broken down.

If the Civil Enforcement Officer’s notes contradict the motorist’s version of events, i.e. the motorist was not seen attending an emergency or another vehicle, which was broken down.

MC20 Where the motorist claims to have put money into the wrong ticket machine

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If it is agreed that the position of the ticket machine used by the motorist is likely to cause confusion.

THE COUNCIL MAY REJECT REPRESENTATIONS

If the ticket machine used by the motorist is positioned in such a place that confusion is not likely.

If the motorist has had representations accepted for a similar alleged contravention previously.

MC21 Where the vehicle in question was on police, fire brigade or ambulance duties

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If a senior officer of the service concerned, supports the representations and there is no reason to doubt that the vehicle was engaged on operational activities.

THE COUNCIL MAY REJECT REPRESENTATIONS

In all other circumstances

MC22 Where the motorist claims to have been collecting or depositing monies at a bank

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If the procedure explained in the motorist's representations is consistent with the allowance for loading and unloading.

Or

If specific arrangements have been agreed.

THE COUNCIL MAY REJECT REPRESENTATIONS

In all other circumstances

MC23 Where the motorist claims to have been unaware of a temporary parking restriction or special event restriction

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If the motorist claims that there was no indication of the restriction, and the Civil Enforcement Officer's notes/photographs do not confirm that appropriate signage was in place.

If the process followed to make the temporary order was defective in some way.

THE COUNCIL MAY REJECT REPRESENTATIONS

If the Civil Enforcement Officer's notes/photographs confirm that the vehicle was parked in an area restricted by the Temporary Order or Notice, and that appropriate signage was in place and clearly visible.

MC24 Where the registered keeper liable for payment of the PCN is expected to be absent for a long period of time, e.g. is living abroad or is in prison

THE COUNCIL MAY ACCEPT REPRESENTATIONS

In no circumstances

THE COUNCIL MAY REJECT REPRESENTATIONS

On all occasions

MC25 Where the registered keeper liable for payment of the PCN is said to have died

THE COUNCIL MAY ACCEPT REPRESENTATIONS

Where the circumstances can be confirmed.

THE COUNCIL MAY REJECT REPRESENTATIONS

Only if there is a significant evidence to doubt the sincerity of the representations.

MC26 Where the vehicle driven by the motorist is diplomatically registered

THE COUNCIL MAY ACCEPT REPRESENTATIONS

In all circumstances. A Notice to Owner should never be sent to the keeper of a diplomatically registered vehicle.

All un-recovered penalty charges from keepers of diplomatically registered vehicles, the information concerning these debts should be passed on to the Foreign and Commonwealth Office.

[Source – Secretary of State’s Traffic Management and Parking Guidance, Vienna Convention on Diplomatic Relations, Diplomatic Privileges Act 1964 and Government Report on Review of Vienna Convention...]

THE COUNCIL MAY REJECT REPRESENTATIONS

In no circumstances

MC27 Where the motorist received a Fixed Penalty Notice (FPN) from a police officer or traffic warden when parked in the same location

THE COUNCIL MAY ACCEPT REPRESENTATIONS

To prevent ‘double jeopardy’, if confirmation provided by the police that proceedings for a criminal offence in connection with the same parking/waiting incident have been instituted.

THE COUNCIL MAY REJECT REPRESENTATIONS

In all other circumstances

MC28 where a COUNCIL officer or Member parked in alleged contravention and claims to have been on COUNCIL business

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If the officer was carrying out emergency or other statutory work.

THE COUNCIL MAY REJECT REPRESENTATIONS

If it can be established that the officer/Member could have reasonably parked elsewhere.

MC29 where the motorist stopped to drop off someone

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If the circumstances are seen by the Civil Enforcement Officer. If, in exceptional circumstances and subject to observations times, the motorist had to escort a passenger (child, elderly or disabled person) to home, or school.

MC30 where motorist states they were in police custody when PCN issued

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If proof (from the Police) has been provided that the police had instructed the motorist to leave the vehicle. If the time of arrest (proof required from the Police) provides confirmation that motorist was legally parked and was unable to move vehicle before the restriction started.

THE COUNCIL MAY REJECT REPRESENTATIONS

If no proof provided. If vehicle could have been legally parked before arrest.

MC31 where motorist states they were visiting a friend or relative in urgent circumstances

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If due to an emergency the parking alleged contravention could not be avoided due to the exceptional nature of the incident

THE COUNCIL MAY REJECT REPRESENTATIONS

If the Civil Enforcement Officer's Pocket Book notes provides significant reason to doubt sincerity of representation

MC32 where motorist claims they were parked on private property

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If land search maps confirm location is private property & not subject of the relevant Traffic Regulation Order.

THE COUNCIL MAY REJECT REPRESENTATIONS

In all other circumstances

MC33 where motorist had parked while asking directions / opening gates to private property

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If evidence provided by the Civil Enforcement Officer does not contradict representations.

THE COUNCIL MAY REJECT REPRESENTATIONS

In all other circumstances

MC34 where motorist stopped to answer mobile phone

THE COUNCIL MAY ACCEPT REPRESENTATIONS

In no circumstances

THE COUNCIL MAY REJECT REPRESENTATIONS

On all occasions

MC35 where motorist states that the details on the PCN are incorrect, e.g. location

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If there is reason to doubt that the PCN was issued correctly, taking into account evidence provided by the Civil Enforcement Officer.

THE COUNCIL MAY REJECT REPRESENTATIONS

If the Penalty Charge Notice was fully and correctly completed.

MC36 where motorist states they were unaware of enforcement on Bank/Public holidays

THE COUNCIL MAY ACCEPT REPRESENTATIONS

In no circumstances

THE COUNCIL MAY REJECT REPRESENTATIONS

On all occasions

MC37 where motorist states that restriction was marked after the vehicle had been parked

THE COUNCIL MAY ACCEPT REPRESENTATIONS

If records confirm that signage/lining/ placement of cones or suspension notices was likely to have taken place after the vehicle parked.

THE COUNCIL MAY REJECT REPRESENTATIONS

If there is evidence to show that markings were already in place at the time of parking.

Section 1e

The Independent Adjudication Service.

If the Council does not uphold your Formal Representation you will be given the opportunity to appeal your case to the Independent Parking Adjudication Service: The Traffic Penalties Tribunal who are based in Manchester and hear appeals in respect of Penalty Charge Notices issued by Local Authorities in England apart from those issued in London.

Appeals can be heard either by post or at a personal hearing, this can be “face to face” in front of an adjudicator or over the telephone as a “conference call”. Those conducted “face to face” will be at a location selected by the appellant. All appeal hearings are informal but are legally binding on both parties. Costs are not normally awarded to the successful party but these may be awarded if the adjudicator feels that a party has acted “frivolously, vexatiously or totally unreasonably”.

It is Mid Devon District Council aim to, whenever possible, attend all personal hearings to present the Council’s case.

All parties involved in an adjudication hearing must act honestly and show respect for the other parties.

Details of the appeals process, including the specific grounds under which appeals can be made, will be sent to the appellant with the Formal Notice of Rejection of Formal Representation. Once received the appeal form must be completed and sent to the Adjudication Service within 28 days of the date of the Notice of Rejection. – Please read the appeal form carefully. Do not send the form to the Council as this will delay the matter and may lead to the appeal being rejected by the Adjudication Service.

If you do not receive an appeal form with the Notice of Rejection please contact the Council immediately.

If an appeal is made the Council will be notified by the Adjudication Service and will have 21 days in which to submit their response to the appeal. This will usually consist of a full evidence bundle along with a detailed summary including the Council’s submission.

If you include additional evidence with your appeal to the adjudication service the Council may accept this and will choose not to contest the appeal.

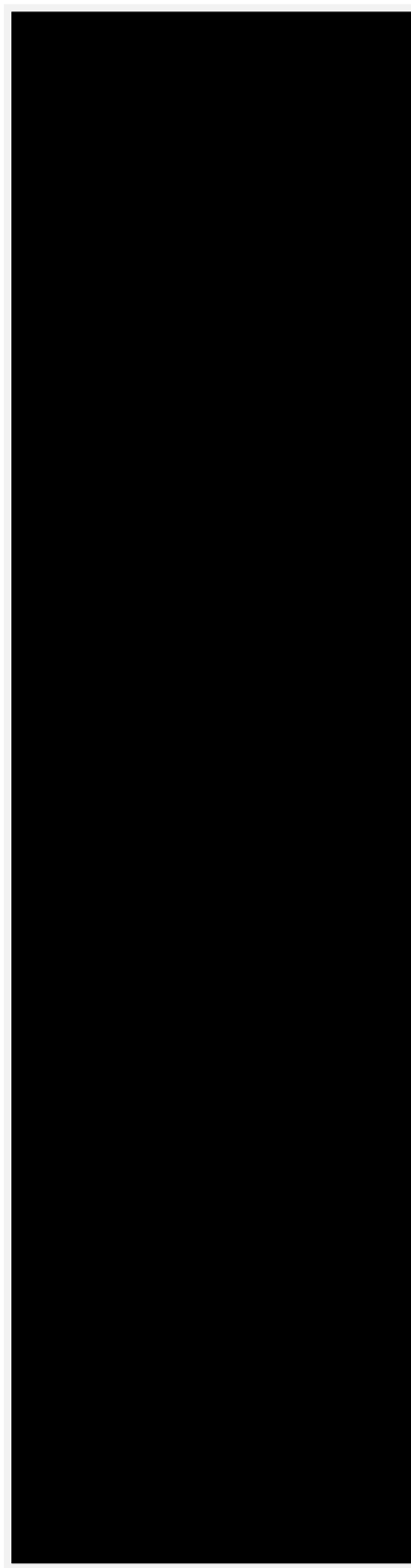
You will receive copies of the Council’s evidence bundle directly from the Council and you will be informed, formally, of the outcome of the appeal by the adjudication service. Please read this outcome letter properly as it may contain specific instructions for you to follow.



Section 2

Street Scene

FIXED PENALTY



Contents

2a	Introduction
2b	Principle
2c	The legislation and offences
2d	Penalties and Payments
2e	Procedure
2f	Minors and Juveniles
2g	Partnerships
2h	Advice and other bodies
2i	Comments and complaints about the policy

2a. Introduction

Fixed Penalty Notices are a means of punishing offenders for unlawful behaviour and offer a quick, flexible means of dealing with certain offences. It avoids overloading the judicial system with unnecessary cases. They allow a person who admits to the committing of an offence to end the matter promptly, avoid Court action and possibility of a criminal record.

Authorised Enforcement Officers can issue Fixed Penalties for offences contained within the Clean Neighbourhoods and Environment Act 2005 and the Environmental Protection Act 1990.

2b Principle

Mid Devon District Council is committed to providing a good local community for the public and protecting the environment.

As well as an enforcement tool, the use of fixed penalty notices is intended to encourage behaviour change and to bring improvements to local environmental quality and to protect the public safety.

Using Fixed Penalties brings with it a great deal of responsibility to ensure that the powers are used correctly, proportionately and lawfully – a responsibility that Mid Devon District Council takes very seriously.

At all times it must be remembered that the instances where the issue of a Fixed Penalty is considered, an offence indicative of a crime has been committed. The use of Fixed Penalties is a discretionary power and its use will take into account the proportionality of the offence or crime. Therefore, there will be occasions where an authorised officer will decide a Fixed Penalty will not be issued and the level of the offence or crime warrants a prosecution.

2c The legislation and offences

Clean Neighbourhood and Environment Act 2005

- Offence of failing to clear up dog faeces anywhere within the area of Mid Devon.
- Offence of failing to put a dog on a lead when directed to do so by an Authorised Officer.

Environmental Protection Act 1990

Offence of Littering

A Penalty can either be issued on the spot or through the post depending on the circumstances and type of offence. Enforcement Officers will observe offences whilst on dedicated patrol, on a pure chance basis whilst engaged on other duties, or following an approach by members of public willing to stand as a witness in any subsequent Court action.

If a Fixed Penalty is not paid within the prescribed time limit, the authority will normally start prosecution proceedings for the original offences. No proceedings will be taken for the offence before the expiration of 14 days following the date of the notice. The offender will not be liable to conviction for the offence if payment of the fixed penalty is received during the period of 14 days.

2d Penalties and Payments

Each Fixed Penalty Notice will contain details of the offence and the payment required. It will also have the address for Mid Devon District Council and the time limit for payment.

The table below shows the payment due for the given offence and the timescale for payment following the date of issue. All dates quoted are calendar days. The Council currently insists on cash, credit card or card supported cheques for the full amount. Payments can be made on-line, over the telephone, through the post or in person.

The table below shows the fixed penalty costs which will be issued.

Table to show Fixed Penalty costs

	Dog Fouling	Litter	No-smoking	Dog on lead
Up to 10 days	£50	£50	£150	£50
Up to 14 days	£80	£80	£150	£80

* Denotes the time from when an unpaid Penalty will be considered for prosecution.

2e Procedure

Where an authorised officer witnesses an offence, they will, if possible, approach the offender and identify themselves as an Enforcement Officer for Mid Devon District Council and show an identity card. The officer will be in uniform and at all times and carry an identity card. The offence observed will be explained and the offenders details taken. If the use of a Fixed Penalty is deemed appropriate, explanation will be given regarding the issue of Fixed Penalty and its use as an alternative to prosecution and possible criminal

record. An alleged offender may be asked to provide ID to confirm the personal details provided.

In some cases, for example litter thrown from a moving vehicle, an immediate approach is not possible so the Penalty will be sent in the post. Mid Devon District Council can request assistance and information from the Police, DVLA and other bodies to help with its investigations. In these cases, the Penalty will be issued as soon as possible with a full written explanation of the circumstances and procedure involved.

A Fixed Penalty will only be issued where it is both appropriate, in line with the Council's Principle and Environmental Policy. There will be a clear indication that an offence has been committed. There will be sufficient supporting evidence to enable a prosecution should the Penalty Notice go unpaid.

A Fixed Penalty Notice will not be issued if it is regarded as inappropriate or not in line with our principle above. Examples of this could include repeat offenders who should be considered for prosecution. Other examples might include un-cooperative persons, aggravating circumstances or where it is suspected the offender seems confused through impairment or drugs or alcohol. In cases like this, an Enforcement Officer will consider seeking support from other bodies such as the Police or another agency.

2f Minors and Juveniles

A fixed penalty notice can lawfully be issued to anyone over the age of 10. However, in view of the complexity of the youth justice system, Mid Devon District Council will normally only issue fixed penalty notices to those over 17 years old. This authority is mindful of the welfare needs, legal issues and other concerns relevant to children and young people and is keen to ensure they are adequately observed.

In straightforward cases, where an Enforcement Officer deals with a person under 17 years old, they will obtain the child's details and the name of their parents or legal guardian at the time for the offence and if on enquiry it is decided that a fixed penalty is suitable, the fixed penalty notice will be issued to the offender personally with a parent or legal guardian present. If for any reasons it is issued in writing, a responsible adult should be notified at the same time.

In the case of a person under the age of 17, in deciding whether a Fixed Penalty Notice is appropriate, this authority will consider whether the offender has received a fixed penalty previously or if a Reprimand, Warning or other sanction should be considered instead. We will also take into account his or her family circumstances and whether he or she suffers from vulnerabilities.

2g Partnerships

Mid Devon District Council issues Fixed Penalty Notices in partnership with Devon and Cornwall Police, and any other authorised personnel. All authorised officers use the same penalty notices.

2h Advice and other bodies

Any person having had a Fixed Penalty Notice served upon them can consider seeking independent advice on the matter from the Citizens Advice Bureau or a solicitor. Advice is also available from the website www.directgov.uk

2i Comments and complaints about the policy

The Council welcomes any comments, complaints, queries or suggestions about this Policy. You should set out any such matters in writing to the following address:

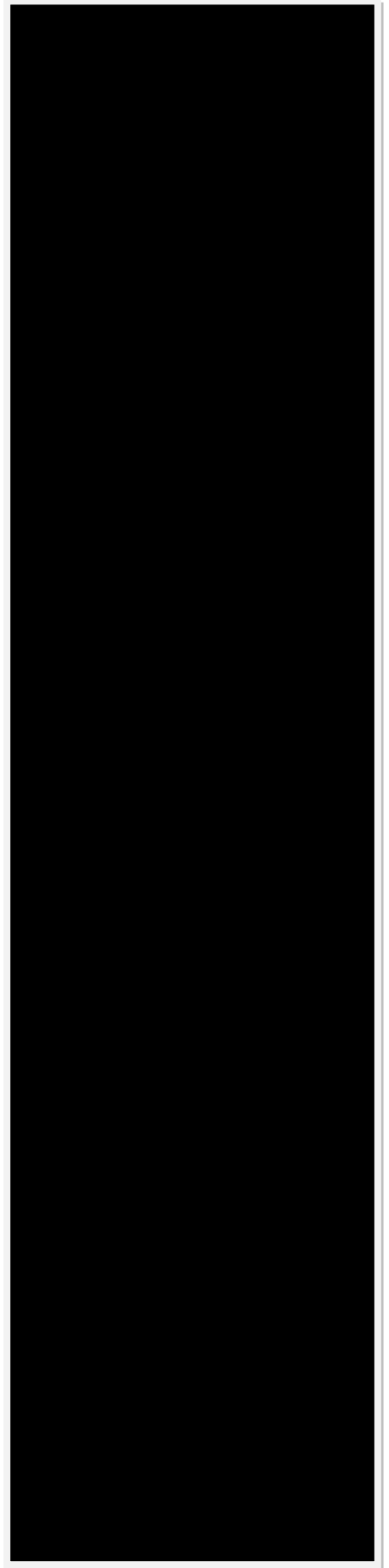
Mid Devon District Council
Phoenix House
Phoenix Lane
Tiverton
Devon EX16 6PP

The Council's complaints procedure is available for grievance against any actions or decisions taken by its officers.
The current policy will commence March 2017 and will be revised in March 2020 unless a change in legislation makes an interim review necessary.



Section 3

Fly Tipping



Contents

- 3a Introduction and legislation
- 3b The procedure for Flytipping
- 3c Fixed Penalties
- 3d Getting payment
- 3e Sending reminder letters
- 3f Costings
- 3g Other linked policies

3a. Introduction

Fly tipping is the illegal dumping of 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.

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force on the 9 May 2016, which amends the Environmental Protection Act 1990 to allow the issuing of fixed penalties for waste deposit offences.

Mid Devon District Council will not investigate any flytipping which has been deposited on private land.

3b. The Procedure

- Mid Devon District Council will take a proactive approach in its attitude towards tackling fly tipping.
- All reported fly tipping will be investigated within 2 working days and removed within a further 5 working days (unless this is found to be on Private land).
- In cases of fly tipping found on public open spaces or on highways etc 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 invitation 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 will be given to either issuing a Fixed Penalty Notice or prosecuting.
- Evidence held by the District Council shall be held in prosecution files in a locked cabinet
- Interviews under caution will be carried out under the Police and Criminal Evidence Act 1984 (PACE).

The table below identifies the process to be used for flytipping:

ACTION	TIMESCALE	NOTES
Contact complainant	2 working days	<ul style="list-style-type: none"> To acknowledge contact and obtain information
Visit Site	4 working days	<ul style="list-style-type: none"> Photograph fly tipping. Search waste for evidence on site or at depot. If amount is excessive over 50 tonnes inform Environment Agency.
Remove fly tipping	5 working days	<ul style="list-style-type: none"> Arrange with Waste Management if investigating officer is unable to remove.
Evidence found	4 working days	<ul style="list-style-type: none"> Open new prosecution file. Complete witness statement. Label exhibits. Print photo, label and date.
Invite alleged offender to attend a PACE interview	3 months	<ul style="list-style-type: none"> Ensure prosecution file is up to date. Book interview room. Arrange for member of Benefits to carry out PACE interview.
PACE interview	6 months	<ul style="list-style-type: none"> Listen carefully to offender, decide on action. Issue fixed penalty notice if appropriate. Update file.

4c. The Fixed Penalty Notice

If it is identified following a PACE interview that a Fixed Penalty Notice should be issued the following details must be included:

- The alleged offence, for example fly tipping;
- Details regarding the offence which contravenes the Environmental Protection Act 1990 Section 33 (1)(a);
- When and where the offence took place;
- How the FPN has been issued (in person or by post);
- The fine imposed (and if there's a discount for paying early)
- When the fine must be paid by (this must be at least 14 days);
- How the fine can be paid.

3d. Getting Payment

Mid Devon District Council will request payment is made within 14 days.

3e. Sending Reminder Letters

Reminder letters will be sent to those where payment has not been made. The letter must detail the full payment cost, when the payment must be made by, and what happens if payment is not made.

Authorising enforcement staff

Enforcement Officers must be authorised in writing by the authority to issue FPNs.

Taking offenders to court

Offenders may be taken to court for the offence committed.

Mid Devon District Council will wait 14 days after issuing an FPN before legal action is taken.

Legal proceedings will commence within 6 months of the offence.

3f. Costings

Fly tipping penalty charges:

Maximum full penalty	£150-£400
Minimum discount penalty	120

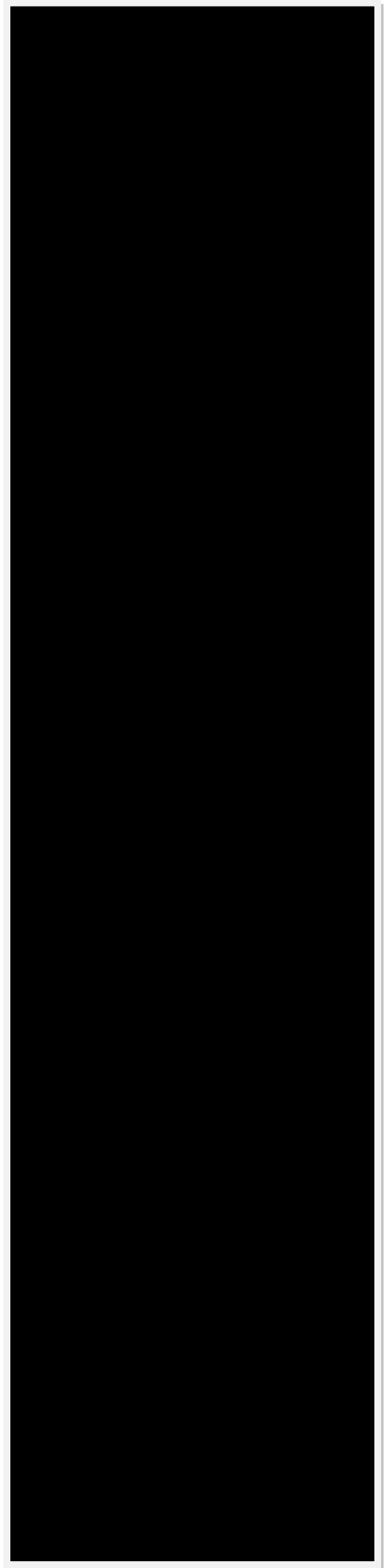
3g. Other linked policies

Other linked policies include :
Fixed Penalty Policy;
Compulsory Recycling Policy.



Section 4

Compulsory Recycling



Contents

- 4a Introduction
- 4b The Legislation and Offences
- 4c Penalties and payments
- 4d Procedure
- 4e Other linked policies
- 4f Appendix 1
- 4g Appendix 2

4a Introduction

Mid Devon District Council have taken the decision to introduce Compulsory Recycling

Current recycling procedures are a black recycling box for paper, glass, tins, cans, household metals, textiles, batteries and for the recently introduced mixed plastics. There is a green recycling box for cardboard and cartons. Both of these boxes are collected fortnightly.

From Autumn 2015, there is a weekly food waste kerbside collection using blue food caddies and an opt-in fortnightly chargeable garden waste collection service using a brown bin.

One of the purposes of introducing compulsory recycling is to increase our recycling performance and to reduce costs for the Council. This will have a positive effect by reducing the amount of waste especially garden waste that goes into landfill, by minimising the impact on the environment and at the same time promoting the waste hierarchy. A noticeable improvement in the cleanliness of the district has been proven in other districts that have also introduced this scheme.

The legislation is aimed at encouraging everybody to use the right containers for the right kind of materials. It is not aimed at those who are already doing the right thing but at those who insist on not recycling.

4b The legislation and offences

Compulsory Recycling legislation falls under the Environment Protection Act 1990 and in particular Section 46 of this act.

It would mean that all houses in the Mid Devon District Council area will be covered by this section and once the Council have provided householders with separate containers for waste and recycling, householders will have a responsibility to ensure that the correct containers are used for the correct materials.

Section 46 gives District Officers the powers to investigate those who put out their waste and recycling in wrong containers or who leave their waste out on the wrong day, time or frequency contrary to that prescribed by the Council.

4c Penalties and Payments

The presentation of waste for collection in the incorrect containers, on an incorrect day or before the prescribed time is an offence, which could result in a fine in the form of a Fixed Penalty Notice for £75.

The Fixed Penalty Notice would be issued under Section 47(z)(a) of the Environmental Protection Act 1990 and it applies where on any occasion an authorised officer of a waste collection authority has reason to believe that a person has committed an offence under section 46 (domestic) or 47 (business) in the area of that authority.

Prosecution will follow failure to pay a fixed penalty notice issued, by the Council, to the person seen to be responsible for the alleged offence.

4d Procedure

The Council intends to use its powers under Section 46 of the Environmental Protection Act to assist in achieving higher levels of recycling. Although the Act gives the Council power to impose penalties against non-compliance it is the intention of the Council to do this only as a last resort against persistent offenders.

The Council will ensure that residents receive relevant information and education before issuing Fixed Penalty Notices or taking prosecutions against residents.

Mid Devon District Council will have a 'four steps to rubbish and recycling enforcement' policy.

The four steps below will be followed before a fixed penalty notice is given. Ultimately, step 4 will be for non-recyclers, who persistently put their waste or recycling out in the wrong container, or who put it out later, or on the wrong day.

Step 1 – Waste or recycling found in wrong container, put out late or on the wrong day will not be collected and will be stickered – District Officer identifies source of waste or recycling.

- **No?** – Supply all householders in area with information leaflets about recycling – Record incident and waste is collected – NO FURTHER ACTION.
- **Yes?** – Unless a 'carer' is involved whereby Council will leave information leaflets with them, then move to

Step 2 – 1st occasion in six months – the District Officer calls at home. Ensures resident is fully informed about recycling and issues information leaflet – **first warning issued and recorded** (Letter to householder, see appendix 1, and an entry in the District Officers' pocket notebook) – waste collected – NFA.

Step 3 – 2nd occasion in six months – District Officer calls at home. Explains that this is the 2nd recorded occasion. Re-issues information leaflets – **Formal Section 46 Notice Served**. See Appendix 2.

The Fixed Penalty rate should be initially set at £75, reduced to £50 if paid within 14 days of issue. The discount period is to encourage settlement at an amount that is sufficient to act as a deterrent to future offences.

Warning period – no warning will remain ‘live’ for longer than six months. Where a resident has previously received a warning and further warning is required outside of the six month period, the offence will not be escalated but dealt with as a first offence.

4e Other linked policies

Fixed Penalty Notices

4f Appendix 1



Date

Address details

Street Scene Services

Phoenix House

Phoenix Lane

Tiverton

Devon

EX16 6PP

www.middevon.gov.uk

Contact: Street Scene Services
Telephone: 01884 255255
Email: Streetscene@middevon.gov.uk
Fax / DX:

Dear Occupier

ENVIRONMENTAL PROTECTION ACT 1990 Section 46 HOUSEHOLD WASTE FOR COLLECTION – FIRST ADVISORY LETTER

As you will be aware, Mid Devon District Council introduced compulsory recycling across the district in November 2015. Introducing this service has enabled us to achieve an increase in our levels of recycling. This is important because it contributes towards making the District a safer, cleaner and greener community and will help us to reach our statutory recycling target of 60%.

On the days we have monitored your road we have noticed that you may have **put waste into the wrong receptacle**. A brief assessment was made at the time as to whether to check the bags. This may be due to the fact that a number of black sacks had been put out for one household (our best recyclers are putting out less than one black sack full of waste for two weeks, the rest is being recycled); the weight of the bags (heavy bags would have been checked) or it would have been obvious that there were recyclable items in there (for example the chink of bottles, visual sight of what is inside if the bags were split, the feel of cartons inside).

By law, Section 46 of the Environmental Protection Act 1990, the Council requires that:

A. All other items of household waste (i.e. anything not listed under B, C, D or E) shall be placed within black sacks and presented for collection. No waste shall be presented for collection outside the black sack.

B. You must **ONLY** place the following items in the black recycling box supplied by the Council:
Paper, Glass, Tins/Cans/Household metals, Textiles, Batteries and Mixed plastics

C. You must **ONLY** place the following items in the green recycling box supplied by the Council:
Cardboard and drink and food cartons

D. You must ONLY place the following items in the blue food caddies:
Food waste

E. You must ONLY place the garden waste listed below in the opt-in fortnightly chargeable brown wheeled bin provided by the Council:

For example,
Grass Cuttings Shrubs
Plants Branches
Weeds Leaves

If we can help you in any way with recycling, or if you have any queries please contact the Council on 01884 255255.

We will continue to monitor your participation in the scheme, and if you do not take part, one of our District Officers will visit your property to make enquiries and answer any questions you may have.

Residents who deliberately fail to recycle will receive a statutory notice and may find themselves being prosecuted. We will only consider this as a very last resort and hope that in the future you will take part in the recycling scheme.

Yours faithfully,

On behalf of Street Scene



ENVIRONMENTAL PROTECTION ACT 1990
Section 46
Household waste for collection

Notice served by: Mid Devon District Council

To: **Name and address of household**

Mid Devon District Council as your waste collection authority (as defined in the Environmental Protection Act 1990) is under a duty to arrange for the collection of household waste from properties in its area.

1. NOTICE

THIS IS A FORMAL NOTICE served by Mid Devon District Council ('the Council') pursuant to section 46 of the Environmental Protection Act 1990 ('the Act') requiring you as occupier of premises known as **address to be inserted here** in the Council's area to place correctly any household waste for collection from those premises in the receptacles described in the Schedule hereto ('the Schedule') and further requires you as occupier of the Premises to comply with the conditions set out in the schedule.

2. WHAT HAPPENS IF YOU FAIL TO COMPLY

If you fail without reasonable excuse to comply with any requirements specified in this Notice and this gives rise to nuisance or detriment to amenity you:

- (a) If the breach is not rectified, you may be issued with a fixed penalty, following the issue of this notice, in the sum of £75.

Your attention is also drawn to section 46 (11) of the Act which states that: '*A waste collection authority is not obliged to collect household waste that is placed for collection in contravention of a requirement under this section*'. This means that if you do not comply with the requirements of this notice the Council shall be entitled to refuse to collect your waste.

THE SCHEDULE

No bins/bagged or boxed waste shall be presented for collection before 6.00pm on the evening before your appointed day of collection or after 6.00am on the morning of your collection. At all other times the waste must be retained within the curtilage of your property. When presented for collection it must be placed at an easily accessible position on the boundary at the front or rear of your property.

By law, Section 46 of the Environmental Protection Act 1990, the Council requires that:

- A. You must ONLY place the following items in the black recycling box supplied by the Council: Paper, Glass, Tins/Cans/Household metals, Textiles, Batteries and Mixed plastics;
- B. You must ONLY place the following items in the green recycling box supplied by the Council: Cardboard and drink and food cartons;
- C. You must ONLY place the following items in the blue food caddies:
Food waste;
- D. You must ONLY place the garden waste listed below in the opt-in fortnightly chargeable brown wheeled bin provided by the Council:

For example: Grass Cuttings Shrubs, Plants Branches, Weeds Leaves;
- E. All other items of household waste (i.e. anything not listed under A, B, C or D) shall be placed within black sacks and presented for collection. No waste shall be presented for collection outside the black sack.

Dated: _____ Signed: _____

Name: _____

Designation: Enforcement Officer

Please address any communications to:

Mid Devon District Council
Street Scene Services
Phoenix House
Phoenix Lane
Tiverton
Devon EX16 6PP
www.middevon.gov.uk

Customer services
01884 255255

customerservices@middevon.gov.uk

NOTES:

Appeals

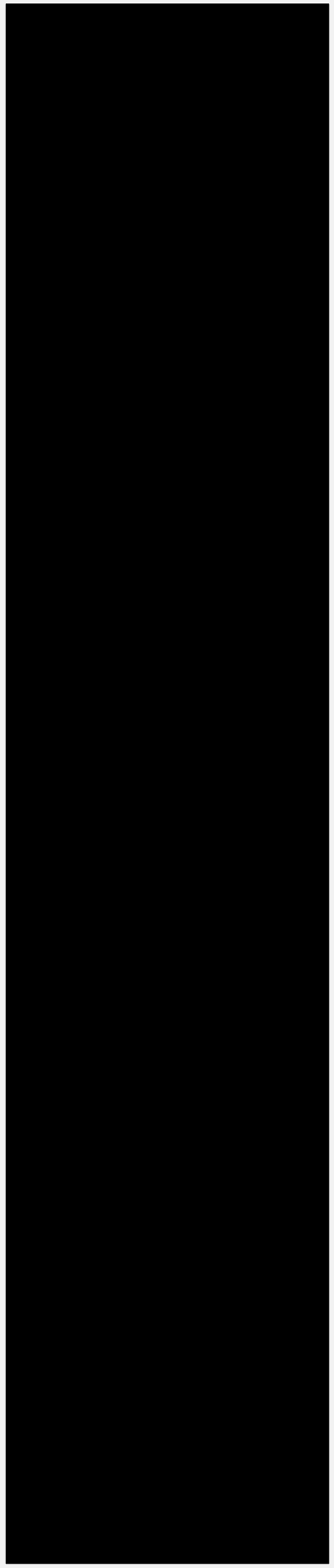
The Environmental Protection Act 1990 provides that where a notice under section 46 requires an occupier to provide receptacles, that person may appeal to a magistrates' court against the notice, either on the ground that any requirement specified in the notice is unreasonable, or on the ground that the receptacle(s) in which household waste is already placed is or are adequate.

If an occupier wishes to appeal in this way, the appeal must be made within 21 days beginning either with the last date specified in the notice by which the receptacle(s) must be provided, or, where no period is specified, from the day on which the notice was served.

If such an appeal is made the court may either quash or modify any requirement in the notice or may dismiss the appeal. Pending the determination of the appeal by the court the notice shall have no effect.

Section 5

ABANDONED VEHICLES



Contents

- 5a Introduction and the legislation
- 5b The Process
- 5c Notice periods
- 5d Contact details
- 5e Costings

5a. Introduction and Legislation

Local Authorities have a duty under Section 3 of Refuse Disposal (Amenity) Act 1978, to remove a vehicle, which is abandoned in their area, subject to certain provisos.

5b. The Process

Abandoned vehicles on private land will not be investigated or be removed by Mid Devon District Council, apart from vehicles in car parks and on Housing Revenue Accounts land whereby Mid Devon District Council will give 15 days' notice that it intends to remove the abandoned vehicle.

Mid Devon District Council will inspect each vehicle that has been reported (provided it is not on private land) as abandoned within 2 working days to confirm that it should be considered as abandoned. If the investigating officer has any doubts regarding the vehicles status an initial letter will be sent to the owner in advance of enforcing an official notice period.

- If a vehicle is deemed to be possibly abandoned then the vehicle will be dealt with according to standard operating procedure.
- As the Council has no storage facilities it will place a 7 day notice onto the vehicle with some value. Where a vehicle that no registered keeper coming forward after 7 days, the vehicle shall be collected from site and destroyed.
- A vehicle that has no registered keeper will have a statutory period of 24 hours before it is removed and destroyed.
- Where appropriate the complainant will be notified of the outcome.

Local authorities have the power to recover cost of removal, storage and disposal from the registered keeper for abandoning the vehicle.

5c ABANDONED VEHICLES – Notice periods

ACTION	TIMESCALE	NOTES
Contact complainant	Two working days	<ul style="list-style-type: none"> To acknowledge contact and obtain information.
Complete Abandoned Vehicle Report form on site	Two working days	<ul style="list-style-type: none"> To satisfy inspector of correct details
District Officer checks if the vehicle has an MOT and tax on Gov.UK		
<p>Action taken will be varied and each case considered in its own merit.</p> <p>Investigation can include door knocking in the vicinity of the vehicle or using local knowledge/sources/officer judgement.</p>	1-4 weeks, however, this is dependent on the situation and longer may be required.	<ul style="list-style-type: none"> Use of Gov.Uk or DVLA WEE or 101 may be supportive in the investigations
If necessary, confirm with DVLA the owners details and establish the vehicles excise duty status		<ul style="list-style-type: none"> This information is obtained via a direct and computer link with DVLA, Swansea
Consider options that can be taken		<ul style="list-style-type: none"> Issue an initial warning letter Issue a 7 day notice to remove vehicle Issue a 24 hours' notice to remove vehicle Monitor situation Or raise a Fixed Penalty Notice – S2A of the RDA 1978 as inserted by S10 of CNEA 2005 -£200 FPN instead of prosecuting offence
Initial warning letter issued		

Issue 7 day Notice to remove vehicle Final check with DVLA to ensure there are no changes in registered keeper details		<ul style="list-style-type: none"> Vehicle will be removed on day 8 and scrapped.
Issue 24 hours' Notice to remove vehicle Final check with DVLA to ensure there are no changes in registered keeper details		<ul style="list-style-type: none"> Vehicle will be removed after 24 hours and scrapped.
Contractor will provide a Certificate of Destruction		
Sundry debtor invoice issued to owner		<ul style="list-style-type: none"> If payment is not received consider prosecution
Where appropriate the complainant will be notified of the outcome		

5d. Contact details of removal companies

The current contractor for the removal of abandoned vehicles is Newberry Metals. Contact details are:

Head Office:

Newberry Metals
4 Ashton Road
Marsh Barton
Exeter
Devon
EX2 8LN

Local Office:

Newberry Metals
58 Blundells Road
Tiverton
Devon
EX16 4DE

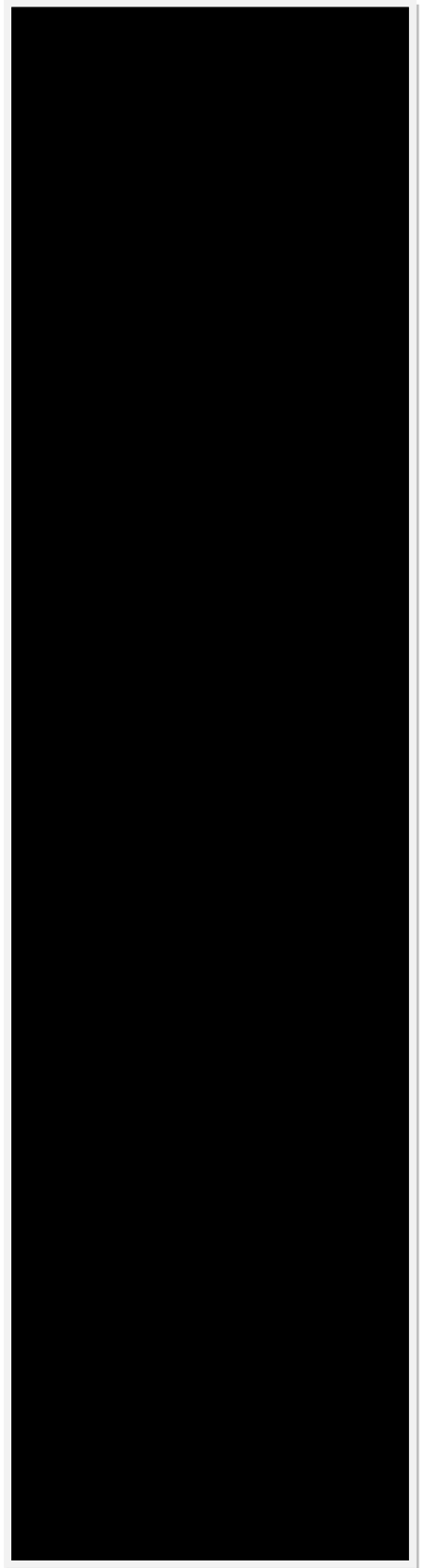
5e. Costings

At present the contractor will collect vehicles at no cost to Mid Devon District Council and there is no exchange of payment.



Section 6

Stray Dogs



Contents

6a. Introduction

6b. The principle

6c. The Legislation and Process

6d. Penalties and payments

6e. Contact details

6f. Other linked policies

6a. Introduction

The Council has a duty under s149(1) of the Environmental Protection Act (1990) (EPA) to appoint an officer “for the purpose of discharging the functions for dealing with stray dogs found in the area of the authority”

6b. The Principle

Mid Devon District Council is responsible for the seizure and transport of stray dogs:

- Patrolling the District and enforcement of dog fouling legislation;
- Encouraging responsible dog ownership through presentations and talks;
- Seizure and transport of stray dogs.

Members of the public who find a stray dog are required by the Environmental Protection Act to either return the dog to its owner, or report it to the local authority. The finder will be contacted within an hour. The Council does supply a collection service during normal working hours and will endeavour to collect the dog by the end of the day.

6c. The Legislation and process

The current legislation requires a dog in a public place to be fitted with a collar and tag bearing the name and address of the owner (see also microchipping policy). Where a stray dog has a form of identification or the owner of the dog is known, the District Officer will make every effort to return the dog to its rightful owner. However, if the owner cannot be contacted a ‘notice of seizure’ (s.149 (3) & (4) EPA) will be issued. The notice specifies that the dog has been seized, retained at kennels and that it is liable to be disposed of if it is not claimed within seven clear days from the date of the notice.

The owner of a stray dog is ‘not entitled’ to the return of the animal until they have paid all the expenses incurred and a further prescribed sum (s149 (5) EPA). Should the dog not be claimed or the owner declines to pay the sums outstanding, the ownership of the dog is legally transferred to the Council after seven clear days. The Council is then entitled to sell or re-home the dog (except for the purposes of vivisection) or to have it humanely destroyed.

Seizure of a dog

The Environmental Protection Act specifies that in each case, a dog seized as a stray is required to be detained and a notice of seizure served upon the owner (where known). In addition, the policy of the Council is that, on the first occasion that a dog is seized, the District Officer will make all reasonable efforts to identify the owner and return it to them before taking it to the kennels. The District Officer carries a scanning device to identify dogs fitted with a microchip. If the address of the owner is identified, the District Officer will either visit or telephone, if contact is made, the dog will be returned.

Returning a dog

A dog will only be returned to an address if there is someone able to receive the dog – it will not be left at an unoccupied property, for example where the owner is out.

The Council currently insists on cash, credit card or card supported cheques for the full amount (statutory fee, handling fee, kennelling fees, plus any veterinary costs incurred) **before a stray dog is released to a claimant.** Once all fees are paid the District Officer will arrange to deliver the dog back to the owner. The owner will be required to be at home to receive the dog and sign for its receipt.

Kennelling Fees

Kennelling fees of £15.00 per day (subject to annual review).

Out of Hours

The stray dogs' service is a 24 hours service. Dogs held in kennels over a weekend can only be returned on a Monday (Tuesday following Bank Holidays), following payment of the fees and charges.

Unclaimed Strays

Stray dogs are held for a minimum period of seven clear days following seizure, or following service of a notice of seizure, whichever is the latest. After this period, ownership of the dog reverts to the Council.

Section 149(6) of the Environmental Protection Act entitles the Council to deal with unclaimed stray dogs in one of three ways:

- By selling it or giving it to a person who will, in their opinion, care properly for the dog;
- By selling it or giving it to an establishment for the reception of stray dogs; or
- By destroying it in a manner to cause as little pain as possible:

Provided that no dog shall be sold or given for the purposes of vivisection.

Once transferred to the Council or re-homed to a new owner, the former owner of a stray dog has no legal claim for the return of the animal.

The details of the person to whom ownership is transferred by this Council is required to be recorded on a public register. Under normal circumstances, the majority of unclaimed strays are re-homed and therefore it is this information which is recorded in the public register, rather than any subsequent new owner. The register is available for public inspection.

6d. Penalties and Payments

The Council currently insists on cash, credit card or card supported cheques for the full amount (statutory fee, handling fee, kennelling fees, plus any veterinary costs incurred) **before a stray dog is released to a claimant.**

Statutory fee £30.00
Plus related administration and kennelling fees.

6e. Contact details

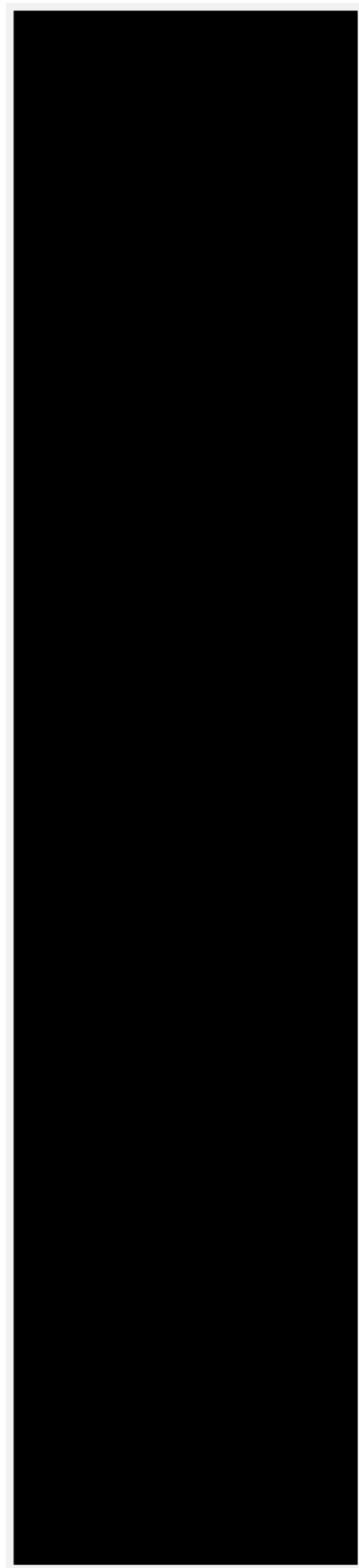
Lost or found dogs – telephone Customer First, 01884 255255 (*24 hours a day*)

6f. Other linked policies

Microchipping Policy
Collar and Tag Policy

Section 7

MICROCHIPPING



Contents

- 7a. Introduction
- 7b. The Legislation
- 7c. Procedure
- 7d. Appendices
- 7e. Annex A - Notice requiring a keeper to have their dog microchipped
- 7f. Annex B - Letter to Keeper – dog taken into possession for microchipping
- 7g. Annex B (i) - Dog taken into possession for microchipping
- 7h. Annex C - Letter to Keeper – transfer of a dog to a new keeper without a microchip

7a. Introduction

On the 6th April 2016 it became compulsory for all dogs to be microchipped. This is a move welcome by many, including Mid Devon District Council District Officers who, since July 2012, have microchipped almost 500 dogs for free in association with the Dogs Trust (Registered Charity Number 227523). This has resulted in a decrease in the number of stray dogs having to be kennelled by the Council by allowing dogs to be re-united with their owners sooner, therefore reducing the associated costs accrued by the Council for kennelling fees.

The permanent identification of dogs through microchipping not only has the benefit of allowing lost and stolen dogs to be re-united with their owners quickly, but will also encourage responsible ownership, deter dog theft and help tackle puppy farming and the associated problems.

Microchipping also has a number of animal welfare benefits including the swift contact of owners by veterinary surgeons for emergency procedures (for example dogs that have been involved in road accidents), easy identification of dogs in properties in emergency situations so that dogs and owners can be moved and reunited quickly, and the easy identification of owners involved in animal cruelty complaints.

Alongside Mid Devon District Council's statutory function to seize stray dogs, as District Officers we also work closely with Mid Devon District Councils Licensing Department, Housing and Neighbourhood Officers and the Police. Therefore compulsory microchipping will assist us in our work throughout Mid Devon.

7b. The Legislation

The Microchipping of Dogs (England) Regulations 2015 came into force on the 6th April 2016, and is made under section 12 of the Animal Welfare Act 2006. These Regulations provide for the compulsory microchipping of dogs and the recording of a dog's identity and keepers contact details on a database.

Under the Regulations a keeper means: –

- (a) in relation to an assistance dog
 - (i) until the dog ceases working as an assistance dog, the body responsible for its training and allocation;
 - (ii) after the dog has ceased working as an assistance dog, the person with whom it normally resides;
- (b) in relation to a new born puppy, the owner of the bitch which gave birth to it;
- (c) in relation to any other dog, the person with whom it normally resides.

Obligation to microchip dogs

From the 6th April 2016, every keeper of a dog that has not been implanted with a microchip by that date and where the dog is older than 8 weeks and not a certified working dog under the Animal Welfare Act 2006 must ensure that it is microchipped.

However this does not apply where a Secretary of State approved certificate has been completed by a veterinary surgeon stating that a dog should not be microchipped for health reasons (this also applies to imported dogs who must otherwise be microchipped within 30 days of being imported). The certificate must state the period for which the dog will be unfit to be microchipped. A dog is deemed to be microchipped where the implanted chip complies with requirements detailed in the Regulations and where these details are recorded on a database by a database operator as specified within the Regulations.

Change of keeper

From 6th April 2016, where a dog is transferred to a new keeper, the new keeper must (unless the previous keeper has already done so) record their full name, address and contact telephone number (if any) and any change in the dog's name with the database on which the dog's details are recorded.

From 6th April 2016, no keeper may transfer a dog to a new keeper until it has been microchipped unless a certificate has been issued stating that the dog should not be microchipped for reasons of the animal's health.

Implanting of microchips

No person may implant a microchip in a dog unless they are a veterinary surgeon or a veterinary nurse acting under the direction of a veterinary surgeon; a student of veterinary surgery or a student veterinary nurse acting under the direction of a veterinary surgeon; or they have been satisfactorily assessed on a training course approved by the Secretary of State; or before the day on which the Regulations come into force they received training on implantation which included practical experience of implanting a microchip.

Authorised person

A Local Authority in whose area a dog is kept may authorise in writing any person "an authorised person" to act for the purpose of enforcing these Regulations in its area.

Powers of an authorised person

An authorised person under the Regulations will be able to –

- (a) serve on the keeper of a dog which is not microchipped a notice requiring the keeper to have the dog microchipped within 21 days
- (b) where the keeper has failed to comply with the above notice, an authorised person, without the consent of the keeper can –
 - (i) arrange for the dog to be microchipped and

- (ii) recover from the keeper the cost of doing so
- (c) take possession of a dog without the consent of the keeper for the purpose of checking whether it is microchipped or for the purpose of microchipping in accordance with (b) (i).

Offences

Offences that will relate to our enforcement role are –

1. Failure to transfer a dog to a new keeper without a microchip (unless a certificate has been issued stating that the dog should not be microchipped for health reasons)
2. Failure to comply with a notice served by an authorised person requiring dog to be microchipped within 21 days
3. Obstructing an authorised person who is arranging for the dog to be microchipped, recovering the cost of doing so and/or taking possession of a dog for the purposes of microchipping.

Time limits and Penalties

The above offences are punishable on summary conviction (Magistrates) by a fine not exceeding level 2 (£500) on the standard scale with a 6 month time limit upon discovery of an offence to commence a prosecution).

Appeals

A keeper may appeal to the First-tier tribunal against a notice served requiring the keeper to have the dog microchipped within 21 days.

7c. The Procedure

In order to enforce the Microchipping of Dogs (England) Regulations 2015 it is proposed that the Mid Devon District Council District Officers are authorised in writing by the Local Authority as “authorised persons” in their roles as District Officers.

1. In accordance with the Regulations it is proposed that as authorised persons, Mid Devon District Council District Officers upon receiving a complaint about a dog that is not microchipped, but is required to be so, or where a stray dog is picked up and found to have no microchip but is required to have one then the following procedure will be followed:-

1(a) Serve on the keeper a Notice (see 7f Annex A) requiring them to have the dog microchipped within 21 days. A keeper may appeal against this notice.

1(b) Where the keeper has failed to comply with the Notice, arrangements will be made for the dog to be taken into possession to (a) check whether the animal has been microchipped and (b) to arrange microchipping of the dog with an approved implanter.

Dependant on the circumstances, Mid Devon District Council District Officers will either transport the dog to the implanter or make an appointment for the keeper to attend (this will be addressed on a case by case basis).

1(c) A written warning will be issued to the keeper (see 7g Annex B) advising them that failure to comply with the Notice is an offence under the Regulations. The letter will also state that (a) the dog is being taken into possession and (b) give details of the microchipping appointment.

1(d) If a dog is taken into possession and removed from the keeper's property to be microchipped then a Notice will be issued to the keeper (see Annex B (i)) which will then be returned to the Mid Devon District Council District Officers when the dog is returned to the keeper.

1(e) If the dog is taken to the implanter by a Mid Devon District Council District Officers then arrangements will be made for an invoice to be raised and sent to the keeper.

Change of Keeper

1. In accordance with the Regulations it is proposed that where it is found that a dog has been transferred to a new keeper without a microchip (unless a certificate has been issued stating that the dog should not be microchipped for health reasons) then the following procedure will be followed:-

2(a) A written warning will be issued (see 7h Annex C) reminding the keeper of their responsibilities under the Regulations including the penalties for failure to comply.


2(b) Where a second complaint is received about the same keeper, the keeper will be invited in to attend an interview carried out under the Police and Criminal Evidence Act 1984. Where there is evidence to suggest that an offence has been committed the case will be forwarded to the Mid Devon District Council Legal Department for consideration.

7d. Appendices

Detailed overleaf.

7e. Annex A

Notice requiring a keeper to have their dog microchipped

 <p>Mid Devon DISTRICT COUNCIL</p>	<p>Street Scene Services Phoenix House Phoenix Lane Tiverton Devon EX16 6PP Tel: 01884 255255</p>
--	---

The Microchipping of Dogs (England) Regulations 2015

Ref:

Name:

Address:

Date:

Under The Microchipping of Dogs (England) Regulations 2015, from 6th April 2016 all dogs that are older than 8 weeks, are not a certified working dog and have not been issued with a certificate by a veterinary surgeon stating that the dog should not be microchipped for health reasons, must be microchipped.

It has come to our attention that the following dog(s) has/have not been implanted with a microchip: (insert name, colour, breed and sex).

As the keeper, you are hereby required to have the above mentioned dog(s) microchipped within 21 days of the date of this notice.

*Proof of microchipping of the above mentioned dog(s) must be submitted to Mid Devon District Council by the end of the following working day of the appointment.

Failure to comply with this notice is an offence and may result in further action being taken against you by Mid Devon District Council.

<p>Signed..... District Officers</p>	<p>Date.....</p>
--	------------------

**We will accept a copy of a certificate issued by the implanter/an email from the implanter with microchip number or a copy of the microchip sticker as proof of microchipping.*

7f Annex B

Letter to keeper – dog taken into possession for microchipping



INSERT ADDRESS

Street Scene Services

Phoenix House

Phoenix Lane

Tiverton

Devon

EX16 6PP

www.middevon.gov.uk

Our Ref: **INSERT NOTICE REF**

Contact: Street Scene Services

Telephone 01884 255255

Email: streetscene@middevon.gov.uk

INSERT DATE

Dear Sir/Madam

THE MICROCHIPPING OF DOGS (ENGLAND) REGULATIONS 2015

I write following on from the Notice that was issued to you on **(insert date)** requiring you to have the following dog(s) microchipped (insert name, colour, breed and sex) within 21 days of the date of issue. According to our records, this Notice has not been complied with.

Failure to comply with this Notice is an offence under the above Regulations. Upon conviction a Magistrates Court can order a fine of up to £500.

Using powers under the above Regulations, it has therefore become necessary to take the following dog(s) into our possession to check whether the dog(s) has/have been microchipped. Should the dog(s) be found to not have a microchip then arrangements will be made for the dog(s) to be microchipped by an approved implanter at a cost to yourself.

Should you wish to discuss the contents of this letter or if you have now had the dog(s) microchipped then please contact a District Officers on the above telephone number.

Yours sincerely

District Officers

7g Annex B (i)

Dog taken into possession for microchipping

To **(insert keeper's name)**

Address **(insert keepers address)**

Insert name of dog(s), colour(s), breed(s) and sex

In accordance with The Microchipping of Dogs (England) Regulations 2015, I hereby take the above dog(s) into possession on (insert date) at (insert time) for the purposes of microchipping. This will be carried out at (insert implanter details) on (insert date and time). The dog(s) will be immediately transported to (insert implanter details) and immediately returned to (insert keepers name and address).

Signed by

District Officers

The following dog(s) have now been microchipped in accordance with The Microchipping of Dogs (England) Regulations 2015:-

Insert name of dog(s), colour(s), breed(s) and sex and microchip number. Details have been sent to (insert registered database) for registration of keepership.

Upon return of dog(s)

I confirm that the above dog(s) have been returned to me today **(insert date and time)**.

Name

Signed by

7h Annex C

Letter to keeper – transfer of a dog to a new keeper without a microchip



INSERT ADDRESS

Street Scene Services
Phoenix House
Phoenix Lane
Tiverton
Devon
EX16 6PP
www.middevon.gov.uk

Our Ref: **INSERT REF**

Contact: Street Scene Services
Telephone 01884 255255
Email: streetscene@middevon.gov.uk

INSERT DATE

Dear Sir/Madam

THE MICROCHIPPING OF DOGS (ENGLAND) REGULATIONS 2015

It has come to our attention that you have recently transferred a dog(s) to a new keeper without a microchip(s). The following dog(s) was sold/given/transferred by you on (insert date)

Insert name of dog(s), colour(s), breed(s) and sex

I therefore write to remind you of your responsibilities under the above legislation with regards to change of keeper.

Regulation 8 (2) states that:-

‘From 6th April 2016 no keeper may transfer a dog to a new keeper until it has been microchipped unless a certificate issued under regulation 3(2) or 3(3) states that the dog should not be microchipped for reasons of the animal’s health’.

Failure to comply with this Regulation is an offence. Upon conviction a Magistrates Court can order a fine of up to £500.

On this occasion no further action will be taken, however any further offences may result in further action being taken against you by Mid Devon District Council.

Should you feel that the/these dog(s) is/are exempt from the requirements of having it/them microchipped or you wish to discuss the contents of this letter then please feel free to contact a District Officers on the above telephone number.

Yours sincerely

District Officer

Section 8

COLLAR AND TAG

*(to be read in conjunction with
MICROCHIP POLICY)*



Contents

- 8a . Introduction
- 8b. Legislation
- 8c. Offences
- 8d. Time limits and penalties
- 8e. Procedure
- 8f. Annex 1
- 8g. Annex 2

8a.. Introduction

Mid Devon District Council as a Local Authority has a statutory function to seize stray dogs.

It is noticeable that dogs coming into the custody of Mid Devon District Council are rarely those that are wearing a collar and tag.

8b. The legislation

The Control of Dogs Order 1992 came into force on the 1st April 1992 and is made under section 13 of the Animal Health Act 1981. This Order is executed and enforced by officers of Mid Devon District Council.

Article 2 (Wearing of collars by dogs) states that:-

Every dog while in a highway or in a place of public resort shall wear a collar with the name and address of the owner inscribed on the collar or on a plate or badge attached to it.

This does not apply to the following:-

- (a) Any packs of hounds
- (b) Any dog while being used for sporting purposes
- (c) Any dog while being used for the capture or destruction of vermin
- (d) Any dog while being used for the driving or tending of cattle or sheep
- (e) Any dog while being used on official duties by a member of Her Majesty's Armed Forces or Her Majesty's Customs and Excise or the police force for any area
- (f) Any dog while being used in emergency rescue work, or
- (g) Any dog registered with the Guide Dogs for the Blind Association.

8c. Offences

The owner of a dog or the person in charge of a dog who, without lawful authority or excuse, proof of which shall lie on him, causes or permits the dog to be in a highway or in a place of public resort not wearing a collar as prescribed in article 2 shall be guilty of an offence under the Animal Health Act 1981.

Any dog in respect of which an offence is being committed under this Order may be seized and treated as a stray dog under section 149 of the Environmental Protection Act 1990.

8d. Time limits and Penalties

Section 71A of the Animal Health Act 1981 (Time limits) states that time limits for offences are within the period of 3 years starting with the date of the commission of the offence and within the period of 6 months starting with the day on which evidence that the prosecutor thinks is sufficient to justify the proceedings comes to his knowledge.

Section 75 of the Animal Health Act 1981 states that a person guilty of an offence to which this section applies is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5* on the standard scale or to both.

*Criminal Justice Act 1982

8e. Procedure

The Animal Health Act 1981 gives Mid Devon District Council the power to pursue a prosecution against those who fail to comply with The Control of Dogs Order 1992.

Where a dog is seen without a collar or tag attached to it bearing details of the owner as required by article 2 of The Control of Dogs Order 1992, the owner will be served with a Collar and Tag Notice as displayed in 8f Annex 1.

This Notice gives the owner/person in charge of the dog 7 working days from the date of the Notice to provide evidence to Mid Devon District Council that a collar and/or tag bearing the owner's name and address has been purchased. Upon presentation of the collar and/or tag, the Notice must be completed by the inspecting officer and no further action will be taken.

A record should be made of the service of this Notice and a copy kept on file.

Should the owner/person in charge fail to provide evidence within this time then a further Notice must be served with a letter as detailed in 8g Annex 2 giving the owner/person in charge of the dog a further 7 working days to produce evidence of a collar and/or tag.

Failure to produce a collar and/or tag on this occasion will result in an investigation being carried out into why the owner/person in charge has failed to present a collar and/or tag to Mid Devon District Council.

The owner/person in charge shall be invited to attend an interview carried out under the Police and Criminal Evidence Act 1984 and where there is evidence to suggest that an offence has been committed the case should be forwarded to the Mid Devon District Council Legal Department for consideration.



Street Scene Services
Phoenix House
Phoenix Lane
Tiverton
Devon
EX16 6PP
Tel: 01884 255255

Ref:

Name:

Address:

At....(insert time)....hrs on....(insert date)....a....(insert description of dog)....owned by you/in your charge, was seen/found straying in....(insert location)....

The dog did not have a collar or tag attached to it bearing details of the owner as required by Article 2 of The Control of Dogs Order 1992.

Consideration will be given to prosecuting you for failing to comply with this requirement unless within 7 days of service of this Notice you attend the Mid Devon District Council office as above with a collar and/or tag bearing the owner's name and address (telephone number will suffice).

Signed: MDDC Officer:	Date:
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For office use only:

MDDC office - TAG SEEN AND CHECKED AS BELOW
Details on the tag:

Signed: MDDC Officer: (print name)	Date:
--	-------

8g. Annex 2



INSERT ADDRESS

Street Scene Services

Phoenix House

Phoenix Lane

Tiverton

Devon

EX16 6PP

www.middevon.gov.uk

Our Ref: **INSERT NOTICE REF**

Contact: Street Scene Services

Telephone 01884 255255

Email: streetscene@middevon.gov.uk

INSERT DATE

Dear Sir/Madam

**ANIMAL HEALTH ACT 1981
THE CONTROL OF DOGS ORDER 1992**

I write following on from our conversation on **(insert date)** when I issued you with a Notice under the above Order requiring you to present a collar and/or tag bearing your name and address (telephone number will suffice) for your dog. This Notice was served upon you following on from your dog **(insert name, sex, colour and breed description)** who was **seen/found/handed** into the custody of Mid Devon District Council on **(insert date)** without a collar and/or tag as required under The Control of Dogs Order 1992.

To date this Notice has not been complied with. I therefore enclose a further Notice requiring you to present a collar and/or tag bearing your name and address (telephone number will suffice) to Mid Devon District Council within 7 days of the date of the Notice. Failure to produce a collar and tag by this date may result in further enforcement action being taken.

I must take this opportunity to remind you that every dog while in a highway or in a place of public resort shall wear a collar with the name and address of the owner inscribed on the collar or on a plate or badge attached to it.

The owner of a dog or the person in charge of a dog who, without lawful authority or excuse, proof of which shall lie on him, causes or permits the dog to be in a highway or in a place of public resort not wearing a collar as prescribed in article 2 of The Control of Dogs Order 1992 shall be guilty of an offence under the Animal Health Act 1981.

Contravention of The Control of Dogs Order 1992 is an offence against the Animal Health Act 1981. Upon conviction a Magistrates Court can order a fine of up to £5,000 and/or a term of imprisonment of up to 6 months.

Should you wish to discuss the contents of this letter please contact a Dog Warden on the above telephone number.

Yours sincerely

Street Scene Services