

Policy on Enforcement of Environmental Crimes

1 Introduction

This policy has been produced to support the Councils' commitment to protect and improve the environment. The Councils believe that:

- Tackling environmental crimes is a priority for local communities in both local authority area.
- Environmental crimes are unsightly and make our towns, villages and other areas less attractive for residents and visitors alike.
- Environmental crimes can result in negative perceptions of an area and make it feel unsafe and uncared for.
- Maintaining clean neighbourhoods benefits the local economy by improving the image of the area and thereby attracting more visitors and customers, encouraging investment in local businesses, increasing house prices and assisting businesses to retain employees.
- The cost to residents of clearing up after environmental crime is considerable.
- Waste can take years to degrade and can be costly to remove. It can be harmful to health and, for example, lead to cuts, puncture wounds and subsequent infections for children and others that come into contact with it. Waste can harm wildlife and habitats, and can attract pigeons and vermin such as rats.

The Councils operate a triple-track approach to responding to environmental crimes involving:

- **Education** - educating the public, such as through signage, use of warnings, action days and publicity campaigns;
- **Enforcement** – environmental crimes are illegal, which means that enforcement action will be pursued where necessary and appropriate; and
- **Cleansing** – Alliance Environmental Services (AES) carry out a routine programme of cleansing adopted highways and other public spaces, such as parks and play areas on behalf. This is supplemented by responsive action to

reported problems and extra sweeping when needed (for instance in busy visitor areas or after major events).

The purpose of the policy is to set out the Councils' approaches to enforcement of environmental crime. It is intended to ensure that the Councils follow a standard approach that is consistent, balanced, fair, transparent, and proportional.

The policy recognises that each incident of environmental crime is unique and must be considered on its own merits but sets out the general principles that will be applied by the Councils' officers.

This document should be read in conjunction with the Councils' General Policy Statements on Enforcement and any relevant policies relating to individual environmental crimes.

2 What is Environmental Crime?

Environmental crime is generally used to describe any illegal activity that harms the environment¹ but there is no universally agreed definition. In the broadest sense, it includes waste crime and activities such as wildlife crime, illegal resource extraction, and fraud around sustainability and carbon trading permits. In addition to environmental impacts, it can also have serious human health and social impacts.

High Peak Borough Council and Staffordshire Moorlands District Council have adopted a pragmatic approach to defining environmental crime based upon their remit and concerns of residents. The Councils define environmental crime as encompassing:

- Abandoning vehicles
- Accumulations of waste
- Dog fouling
- Fly-posting
- Fly-tipping/depositing waste
- Graffiti; and
- Littering

¹ Parliamentary Office of Science and Technology (2017)

3 The Councils' Approach to Enforcement

Experience has shown that enforcement action is most effective where it is targeted in the right places at the right times, and carried out by suitably equipped officers with the capacity and appropriate training to undertake enforcement activity. The Councils recognise that the safety of officers is paramount.

Environmental Crime Enforcement Officers are allocated with a body-worn video camera for use when carrying out patrols and enforcement activity. This will be switched on, where possible, as soon as the officers suspect an offence has been committed, or is about to be committed, and will be kept on until the interaction has ended. For the avoidance of doubt, the lack of a body worn video camera, or failure to record on a particular occasion, would not preclude the council from pursuing enforcement action if there is sufficient evidence and it is in the public interest to do so. The cameras are intended to both assist with evidence gathering but also to protect the officer from physical or verbal abuse and can be used in the event of complaints against an officer.

Other Council and AES officers, particularly operational officers working in the community, are expected to provide intelligence to enable enforcement activity to be effectively targeted. This could include providing evidence of people discarding litter from vehicles or notifying the Environmental Enforcement Officers if a suspected abandoned vehicle remains in a reported location.

AES Officers provide the initial response to complaints about waste being deposited on relevant land, i.e. land in the open air that is under direct control of the Councils and to which the public are entitled or permitted to have access with or without payment (this includes highways in agreement with the relevant County Council). AES Officers examine the waste for any evidence and, where such evidence exists, record the information and pass it on to the relevant Council service.

Where the complaint does not relate to relevant land and where the Council has a statutory duty to investigate, or it is in the public interest and appropriate to do so, the deposit of waste will be investigated by the appropriate Council service.

Where the Council receives a complaint that:

- material accumulated or deposited is prejudicial to health or a nuisance, then the Council is required to take reasonable steps to investigate whether the complaint amounts to a statutory nuisance and, if satisfied that a statutory nuisance exists (or is likely to occur or recur) issue a notice under Section 80 of the Environmental Protection Act 1990; or
- significant harm (or possibility of such harm) is being caused to land or pollution of controlled waters, then the Council must consider whether it amounts to contamination of land under Part IIA of the Environmental Protection Act 1990.

Where the above does not apply, the deposit, treatment or disposal of waste will be investigated under the appropriate legislation such as:

- a potential “fly-tip” under Sections 33 and 34 of the Environmental Protection Act 1990;
- littering under Section 87 of the Environmental Protection Act 1990;
- “unreasonable conduct” under Section 42 of the Anti-Social Behaviour, Crime and Policing Act 2014 (Community Protection Notices), where the conduct of an individual body that is having a detrimental effect on the quality of life of those in the locality; or
- as an “untidy site” under Section 215 of the Town and Country Planning Act 1990, where the condition of land in the Councils’ area adversely affects the amenity of part of the Council’s area, or of an adjoining area.

Targeting Activity

It is important that enforcement activity is targeted in those areas where environmental crimes are occurring. The Council keeps records of problems reported by members of the public and these can be analysed to produce maps of problem areas. Information about ‘hot spot’ areas can also be provided by councillors and frontline council workers.

Response

Officers will normally issue a fixed penalty notice where an offence of abandoning a vehicle, littering, fly-tipping, fly-posting or dog fouling has occurred. The Council may also seek to recover the cost of removal. This reflects the zero-tolerance approach being taken by each Council to tackle environmental crimes. The FPN is issued as

an alternative to prosecution. If an FPN is issued then the offender has 14 days to discharge their full liability for the offence by paying the FPN. The Council will normally seek to prosecute if someone fails to pay the FPN within the specified timescale.

Where the defacement of an area by waste is detrimental to the amenity of the locality, but not a statutory nuisance, then this would normally be dealt with through a Community Protection Notice, or under Section 215 of the Town and Country Planning Act 1990 as appropriate. This includes areas where there is recurrent defacement by litter of open land in the vicinity of commercial or retail premises. A breach of a Community Protection Notice may result in either a fixed penalty notice being issued or prosecution. Failure to comply with a Section 215 Notice is an offence and would be dealt with by means of a prosecution.

If a person fails to comply with a Community Protection Notice then the authority also has the power to apply to court for seizure or forfeiture of items used in commission of the offence.

There are several situations when the Council would consider that the issuing of a fixed penalty notice may not be appropriate and instead would seek to prosecute under the relevant legislation. This includes:

- Large-scale depositing of waste items, which will normally be dealt with by means of prosecution for littering (Section 87 Environmental Protection Act 1990), fly-tipping (Section 33 Environmental Protection Act) or failure to keep proper control of controlled waste (Section 34);
- Statutory nuisances- where the condition or activity is prejudicial to health or a nuisance (Section 79 of the Environmental Health Act 1990);
- When the offence is committed by someone that has previously received a fixed penalty notice for the same offence; and
- Where the offender is aggressive to the Enforcement Officer (or other staff member) and/or refuses to provide their name and address.

Payment by instalments

The option to pay in instalments will be offered if requested by the alleged offender and provided that they can adequately demonstrate to the authority that one or more of the following criteria applies:

- A fixed penalty notice has been issued to a young person (aged under 18);
- The alleged offender is on benefits; and
- There is a proven case of financial hardship.

The Councils must commence prosecution for a summary offence within six months from the date of occurrence. Instalment payments will thus be spread over a maximum of three months to retain the option of prosecuting for the offence if the alleged offender fails to pay all instalments.

If the offender pays the initial instalment but then fails to pay one or more of the subsequent instalments, then the local authority would normally seek to prosecute the individual for the original offence.

Young People

The Councils recognise that all sections of society can be responsible for littering and that the age of criminal responsibility in England is 10. The Councils also recognise that littering can be a particular problem around schools and along routes to school premises.

If the Councils intend to carry out targeted enforcement activity close to a school in response to reported problems, then they will endeavour to undertake an education initiative at the school prior to enforcement patrols taking place. The Councils, however, recognise that there may be occasions where an enforcement officer observes a young person aged 17 or under littering during their normal duties and not as part of targeted action.

The Councils think that it is important that officers respond to littering by young people and send out the message that littering is unacceptable and will not be tolerated. If the Council does not take action in such circumstances, then it may be seen to be: i) giving out the wrong message and suggesting that the law does not apply to young people, and ii) not adequately responding to public concern about littering. Officers will, therefore, issue fixed penalty fines to anyone aged 11 or over

(corresponding to secondary school age) who is found to commit an offence or prosecute as described above.