

CITY SERVICES - ENFORCEMENT DIVISION

Operational Policy Subject: Flytipping Enforcement Policy

Approved By: Director of City Services

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Objective

To stop and prevent illegal deposits of waste in Leeds, commonly referred to as “flytipping”. To pursue a zero tolerance approach to flytippers, to prosecute all cases and, wherever possible, ensure that the polluter pays.

Enforcement against flytipping needs to be supported by education through media releases and promotional documentation.

Purpose

To seek an improvement in the visual street and public open space environment. Leeds provides collection sites and offers free doorstep collections of bulky household waste, so there is no reason to flytip.

Fly tipping is not only harmful to the environment but poses a high risk to human health and eco systems, especially if chemicals and or hazardous substances are involved. Flytipping attracts flytipping and is extremely costly to remove. It can also encourage and provide harbourage for rodents.

Flytipping is normally deposited from motor vehicles, but waste can arise from incorrectly used bins from houses and commercial premises. Where vehicles are used, the offender has deliberately gone out of their way to flytip on land other than licensed sites. This is conscious environmental crime and will be prosecuted every time evidence is available.

Scope

This policy will apply to land within the authority unless an owner of that land has sanctioned the deposit of controlled waste **and** obtained the relevant waste management licenses, together with permission from the Environment Agency to allow, store or contain such deposits on that land.

The policy considers how flytipping will be investigated when it has occurred, and also how prevention can be improved using enforcement techniques with waste carriers and waste producers.

Leeds City Council is working in partnership with the Environment Agency to combat flytipping. The principles contained within “Working Better Together -

protocol 6 - Flytipping & illegal waste activities” have been agreed as the operational frame work within Leeds. In general terms, the Agency will deal with large-scale flytipping, or flytipping from commercially organised criminal gangs, whilst the local authority will investigate the remainder. In many cases, the agency will work together with the Local Authority. It has been agreed that even where it is not clear which partner should take the lead, the offence will be investigated by officers without there being a delay caused by responsibility.

This policy does not cover Leeds` response to flytips potentially hazardous to health, including asbestos, as this will require a swifter response based upon the merits of each case.

Link to Council Plan

Providing a safe, clean and green neighbourhood is one of the 7 key strategic outcomes desired by the council. In particular, environmental crime will not be tolerated. A second outcome is to provide harmonious communities where people are happy to live.

The presence of flytipping encourages a spiral of decline, which can undermine community cohesion and the efforts of public agencies. The presence of flytipping can exacerbate the fear of crime; undermine local investment in regeneration; and adversely affect education, aspirations and jobs. Conversely, tackling environmental crime sends a message to a community that things can improve and encourages the establishment of a stronger, more confident local community.

Application of the Environmental Enforcement Policy

“Paragraph 5.2 - Fixed penalty notices” allows for the use of fixed penalty notices where the legislation allows and where the amount of waste deposits are small or innocuous enough to be classed as litter.

5.2.1 Fixed penalties will be applied through sections 34A(2) & 47ZA of the Environmental Protection Act 1990, and section 5B(2) Control of Pollution (Amendment) Act 1989 (as provided in the Clean Neighbourhoods & Environment Act 2005).

“Paragraph 5.3 - Prosecution” and “par 5.3.1 - community benefit” apply to the problem of flytipping. Legal action will therefore be taken on each occasion an offence is evidenced. It is likely that a person will commit the offence again due to the financial rewards of such crimes

Paragraph 5.3.4/5.3.5 - Failure to comply with lawful requirements and history of non-compliance apply to the problem of flytipping.

Paragraph 5.8 - Informal Action to secure compliance with the legislation includes offering advice, issuing warnings and requests for action.

Legislation

The main pieces of legislation that will be used are:

- The Environmental Protection Act 1990 (EPA)
- Control of Pollution (Amendment) Act 1989 (CPA)
- The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991
- The Environmental Protection (Duty of Care) Regulations 1991
- The Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005
- The Environment Act 1995
- Clean Neighbourhoods and Environment Act 2005 (CNEA)
- Town & Country Planning Act 1990

Further details are contained in Appendix 1

Policy

The enforcement division will investigate all fly tipping incidents which are likely to result in a conviction.

Where reported by a complainant, that person will be informed of progress during the investigation.

A full and thorough investigation will be carried out on all incidents where members of the public or other reliable witnesses have come forward with evidence to assist in the pursuance of a prosecution.

Prosecutions can be taken on the basis of sound evidence provided by members of the public.

A flytip on public land will be examined for evidence. After this has been obtained, arrangements will be made to have the material removed as soon as practical by the Local Authority. Where the Investigating Officer believes there could be a possible conviction, the costs of removal will be recorded for recovery through an application to the courts for costs.

A flytip on private land will again be examined for evidence. The existing waste will have to be removed by the land occupier/owner. Where there is no occupier, the owner will be responsible. The division will liaise with land owners to resolve fly tipping issues on their land and encourage them to take preventative measures to prevent fly tipping. These requests will be made using a legal Notice.

Action to be taken against flytippers

Flytipping is normally carried out covertly, as the offender is aware of the fact that it is illegal. However, any persons caught flytipping will be cautioned under the Police and Criminal Evidence Act and reported for offences under section 33/34 of the EPA 1990, or other relevant legislation which provides for the most likelihood of success and greatest punishment.

Evidence will be obtained from any of the following sources:

1. CCTV
2. Covert surveillance
3. Witness statements from officers of the council
4. Citizens prepared to identify the person.
5. Photographic evidence
6. Physical materials

Identification of people caught on camera will be actively sought through crimestoppers and other media outlets. Vehicles that have been witnessed flytipping will be traced through DVLA internet access.

Regular fly tipping sites commonly known as “Hotspots” will be targeted for surveillance by manual resources and by the use of covert surveillance equipment. The enforcement division will try to eradicate such sites by means of closure and through investigations resulting in successful prosecutions.

All surveillance activities will, where legally required, be supported by the relevant RIPA (Regulation of Investigatory Powers) authorisations.

Action against persons associated with the flytipping (such as traders without a lawful duty of care, or the owner of a vehicle) will be considered in every case. An application for a “bolt-on” Anti Social Behaviour Order (ASBO) will also be considered in serious cases.

Duty of care – businesses

Section 34 of the EPA and The Environmental Protection (Duty of Care) Regulations 1991 provide that a producer of controlled waste must have a written description of the waste on a waste transfer note. The producer must keep these notes for 2 years. The person taking the waste must also have a transfer note with the waste. Repeated similar collections can be covered by one note for up to a year.

In cases where the duty of care is not being complied with, officers will serve a Notice (sec 4 The Environmental Protection (Duty of Care) Regulations 1991) requesting that the waste transfer notes are produced at a stated place within 7 days.

Cases where there has been an illegal deposit of business waste will be prosecuted.

Failure to comply with a section 4 Notice will result in prosecution, although the business will be offered the opportunity to discharge the liability to prosecution for that activity by payment of a £300 fixed penalty notice

There will be a presumption that the business creating the waste is aware of the need to check that the carrier of the waste has the relevant documents and is to dispose of the waste in a proper disposal facility. If they are found to be in breach of this requirement, prosecution will be taken. Ignorance of the

law is no excuse, and it is incumbent upon businesses to ensure they are aware of the legislation that affects their activities. However, if the business demonstrates that it inadvertently broke the law due to naivety, rather than deliberately breaking the law, and they fully cooperate with the investigation, a formal caution may be offered instead of prosecution providing they are willing to plead guilty to the offence. If they are not willing to plead guilty, the matter will proceed to the magistrates courts. Formal cautions will act as the first and only warning and repeat offences by businesses or individuals associated with the offences will be prosecuted.

General business waste – containment

Notices under section 47 of the EPA will be issued to any business that does not have sufficient waste receptacles or have sufficient waste capacity, and may also state steps to be taken to ensure correct location of the bins.

Failure to comply with a section 47 Notice will result in prosecution, although the business will be offered the opportunity to discharge the liability to prosecution for that activity by payment of a £100 fixed penalty notice

Commercial properties which allow waste to spill out of the bins resulting in the waste looking like a flytip will be prosecuted using sections 33 & 34 of the EPA 1990.

General household waste – containment

This is dealt with under the waste in gardens policy document:

Household Waste – Duty of Care

The occupiers of domestic property must take such measures as are reasonable to ensure that any waste is only given to an authorised person for removal/disposal.

When investigating cases of flytipping arising from property where a householder has arranged for waste to be removed by a third party - following clear outs, building work, gardening etc – the presumption will be not to prosecute the householder for duty of care offences unless they do not cooperate fully with the investigation. In these circumstances, a written warning explaining the offence will be issued and used as evidence should a similar offence occur in the future.

Removal of waste from private land (not domestic):

Notices under section 59 of the EPA or Section 215 of the Town and Country Planning Act will be served to require the removal of controlled waste from land. Both forms of legislation have a right of appeal against the requirements. Where a person fails to comply with the requirements of the notice, the authority may carry out works in default and recover any costs reasonably incurred from them. This process will take a minimum of 21 days to complete, depending upon the legislation.

Vehicles carrying waste:

Periodically, vehicles carrying waste will be stopped by the police and enquiries made by enforcement officers to establish that

- a) the vehicle contains controlled waste being carried to or from a place in Great Britain.
- b) and that the person has a certificate of registration as a carrier of controlled waste.

The person may show the certificate to the officer at the time. If they do not have it with them, a written request will be issued to the driver to send a copy of the certificate, valid for that activity, to the enforcement officer within 7 days, or produce it at a stated place within 7 days.

Failure to produce the certificate will result in prosecution, although the offender will be offered the opportunity to discharge the liability to prosecution for that activity by payment of a £300 fixed penalty notice

Section 37 of the CNEA (which amends section 5 of the CPA) provides the powers for an authorised officer to stop a vehicle (police officer if on the road), or to enter premises to search suspected vehicles. It also allows an officer to require the details of the occupants of the vehicle and the registered keeper. Proof of identification, such as a driving licence or other formal document should be requested.

If the vehicle is on premises, the business may show the certificate to the officer at the time. If they cannot locate it, a written request will be issued to the business to send a copy of the certificate, valid for that activity, to the enforcement officer within 7 days, or produce it at a stated place within 7 days.

When vehicles have been witnessed flytipping, the driver, and/or a person who is in a position to control, will be investigated with a view to prosecution. Should the registered keeper of the vehicle not be locatable, a warrant to seize the vehicle will be obtained under the provisions of section 6 of the Control of Pollution Act 1989.

Water Courses:

Flytipping in water courses will be investigated as if the material were on dry land and, where evidence is available, prosecutions taken. Again the operational protocol between Leeds and the Environment agency will operate.

Where such flytipping is likely to block the water course, it will be urgently referred to Land Drainage for removal in order to prevent flash flooding should heavy rainfall occur.

Removal of flytipping

It is important to remove flytips quickly, so liaison between the removal teams and enforcement will be thorough. Where flytips have been investigated and are awaiting removal, bright yellow self adhesive warning stickers identifying that the waste has been examined and an investigation is in progress are placed upon the waste. The public and other departments then know that the matter is in hand.

Data provision:

Leeds City Council will collate data and information and submit this monthly to the Flycapture database administered by the Environment Agency along with DEFRA.

Media exposure:

All successful cases will be referred to the media for maximum publicity. Cases are reported on the Leeds City Council website, successful prosecutions page, which is updated monthly.

Appendix 1 - Legislation

The document "Working Better Together - protocol 6 - Flytipping & illegal waste activities" can be found at:

www.environment-agency.gov.uk/subjects/waste - flytipping protocol

Environmental Protection Act 1990

Sec 33.—(1)... a person shall not—

(a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence;

(b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of—

(i) in or on any land, or

(ii) by means of any mobile plant,

except under and in accordance with a waste management licence;

(c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

(2) Subsection (1) above does not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling by or with the permission of the occupier of the dwelling.

(5) Where controlled waste is carried in and deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle shall, for the purposes of subsection (1)(a) above, be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.

(8) A person who commits an offence under this section is liable-

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both."

46.(1) ... the authority may, by notice ..., require the occupier to place ... waste for collection in receptacles of a kind and number specified.

(4) ... the authority may, ... make provision with respect to—

(a) the size, construction and maintenance of the receptacles;

(b) the placing of the receptacles for the purpose of facilitating the emptying of them, ...

(c) the placing of the receptacles for that purpose on highways ...

(d) the substances or articles which may or may not be put into the receptacles...

(e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles.

47-(2) If it appears ... that there is likely to be situated, on any premises ..., commercial waste or industrial waste ... which... is likely to cause a nuisance or to be detrimental to the amenities of the locality, the authority may, by notice ... require the occupier of the premises to provide ... receptacles for the storage of .. waste....

59.—(1) If any controlled waste is deposited in or on any land ...in contravention of section 33(1) above, the authority may, by notice served on him, require the occupier ...

(a) to remove the waste from the land within a specified period not less than a period of twenty-one days beginning with the service of the notice;

(b) to take ... steps ... to eliminating or reducing the consequences of the deposit of the waste.

Transcripts of legislation can be found at: www.opsi.gov.uk

The agreement between local authorities and the Environment Agency describing which organisation will investigate which offence is contained within the document:

“Working Better Together - protocol 6 - Flytipping & illegal waste activities”

It can be found at: www.environment-agency.gov.uk/subjects/waste

This is a protocol describing the normal situation, but does allow for either agency to pursue investigations which would ordinarily be undertaken by the other.