

## ENVIRONMENTAL SERVICES - ENFORCEMENT DIVISION

Operational Policy Subject: Commercial Waste receptacles on pavements & highways

Approved By: Chief Environmental Services Officer

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### **Objective**

To ensure that commercial waste wheeled bins are stored in correct locations in order to improve the overall street scene environment.

Enforcement action will be proportionate and will be taken against those businesses whose bins are causing problems on the streets.

### **Purpose**

To describe the way in which offences, obstructions and complaints relating to commercial waste receptacles are dealt with. Every business has a responsibility to manage their waste arrangements within duty of care guidelines and regulations so as not to be detrimental to the local amenity and as the authority requires. Many different commercial waste collection companies provide businesses with wheeled bins in various colours and sizes, for the collection and recycling of commercial waste. After collection, it is important that the wheeled bins are returned to within the boundaries of the business premises and not left on the highway. Bins left on streets can look unsightly, can be vandalised and interfered with, cause obstruction and are a potential hazard to the passing public.

### **Scope**

This policy will apply to commercial wheeled bins used for trade waste collections within Leeds.

This policy does not cover household waste bins. However, it may include domestic waste bins of a size larger than the standard 240 litre bins in the following circumstances; bins used for mixed hereditament properties such as public houses with a domestic living accommodation within the same premises; or by multi occupied domestic accommodation such as flats and apartments which require shared commercial size receptacles provided by a property or managing agent.

## **Link to Strategic Outcomes**

This policy contributes to the following strategic outcomes:

- **A reputation for environmental excellence** - Cleaner, greener and more attractive city through effective environmental management and changed behaviours.
- **A Modern Transport System** - Improve road safety for all our users, especially motor cyclists and pedal cyclists.
- **Thriving Places: A place of many parts** - Reduce crime and fear of crime.

Bins which are thoughtlessly or deliberately left in the street encourage a feeling of lack of care for the community, potentially undermining community cohesion and the efforts of public agencies. They can exacerbate the fear of crime; actually facilitate crime; undermine local investment in regeneration; and adversely affect aspirations and jobs.

## **Application of the Environmental Enforcement Policy**

Paragraph 5.1.1 – Statutory Notices – allow for the use of legal notices to prevent, cease a nuisance and sometimes provide or alter existing arrangements.

“Paragraph 5.2 - Fixed penalty notices” allows for the use of fixed penalty notices where the legislation allows.

5.2.1 Fixed penalties will be applied through sections 47ZA of the Environmental Protection Act 1990 (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 bins on streets, although there must be wilful or deliberate breaches of the law. Legal action will therefore only be taken after warnings have been issued.

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

## **Legislation**

The main pieces of legislation that will be used are:

The Environmental Protection Act 1990 (EPA). Further details are contained in Appendix 1

Supporting legislation can be found within

- Clean Neighbourhoods and Environment Act 2005 (CNEA)
- Highways Act 1980 (obstructions on the highway)

## Policy

This policy applies to businesses who leave their bins on the streets. The policy is not designed to prevent businesses from recycling opportunities and the authority encourages this at every opportunity.

The officer will respond to intelligence based reports relating to wheeled bins being left out on the street or that are causing a nuisance. These reports will be accepted from the public, neighbourhood wardens, Members, city centre regulators and other key partners. The receipt of such a complaint would indicate that an area is suffering from one or more commercial properties persistently breaching the legal requirement to return their bins to the proper location.

Where reported by a member of the public, that person will be informed of the process which will be undertaken. In order to keep the process efficient, further updates will not be provided unless there is an extraordinary need to do so.

Officers will also proactively deal with issues within this policy without the need for complaints or referrals where they come across them.

It is the general expectation that all commercial wheeled bins shall be stored off the highway. Bins should only be placed on the highway on the day of collection within a few hours of that service and then returned to its premises by the end of the same day of collection.

An officer will visit the site of complaint and establish key factors listed below. If bins are found left on the pavement or highway, the officer will:

- Check that that the bins are not merely awaiting a return back to the property or a collection service
- Identify the persons and/or business responsible for the receptacles and the number and type of bins involved.
- Insist the bins are kept off the highway where premises have areas to keep their bins
- If they do not have such an area, the officer will advise the occupier to explore if they can arrange an agreement with a neighbouring land owners to share their facilities, so that their bins are removed from the street.
- Consider if the occupier can accommodate a bag collection rather than a permanent bin sited on the street, where the occupier can store bagged waste on their premises until collection time.
- Requirements to alter arrangements shall be requested in a Section 47 legal notice served on the occupier at the time

In the occasional circumstance where a premises has no immediate facility to store waste on their land or within their premises, they must arrange to minimise the impact of the bins being on the street by reducing the numbers, sizes and/or style of receptacles as well as increasing the frequency of

collection. This is merely a starting point to mitigate the nuisance, hazard or complaint until a final conclusion is sought. This will only be acceptable if all else has been exhausted, and that the bins

- are not the subject of complaint
- do not cause a detriment to the local area,
- do not cause nuisance
- Do not cause obstruction and, if on the pavement, provide at least 1.8m of free and uninterrupted passage along side the bin
- Does not compromise other highway controls in place, such as yellow line restrictions.

Should the location of the bins pass all of the above tests, the bin must always be in a clean condition and the lids kept securely down. Spillages/overflow will not be tolerated. The bin must also be located neatly and the owner will accept all liabilities from its location.

Bins kept on their own premises must be stored so as not cause nuisance or detriment. This will normally involve lids being kept closed, bins being kept clean and maintained, and stored neatly. Spillages/overflow will not be tolerated.

Section 47 notices will be served “in perpetuity” and will remain valid for the period the business occupier remains at that premises. The Notice will fall when the recipient vacates the property, so will not be transferred to new occupiers.

There is a 21 day period within which the person can appeal to the Magistrates Court against the terms of the notice.

After the appeal period has expired, if an appeal has been lodged, no further action will be taken until the appeal has been determined. If no appeal was lodged, further visits will be undertaken, either randomly or following complaint/intelligence leads from partner agencies or the public.

Failure to comply with a section 47 Notice will result in prosecution, although the business may avoid prosecution by being offered the opportunity to discharge their liability by payment of a £100 fixed penalty notice (FPN), payable within 14 days.

Failure to pay the FPN will result in the offender being prosecuted. The maximum fine for the offence is £1000.

If further failures are identified after the officer may decide that an FPN is not appropriate and may proceed directly with a prosecution.

### **Media exposure:**

All cases prosecuted in the courts will be referred to the media for maximum publicity in order to help reinforce the policy in the public arena. Cases are

reported on the Leeds City Council website, successful prosecutions page, which is updated monthly.

## **Appendix 1 - Legislation**

### **Environmental Protection Act 1990**

**Sec 47.(2)** ... the authority may, by notice .., require the occupier of the premises to provide at the premises, receptacles for the storage of waste of a kind and number specified.

- (4) In making requirements ... 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.

(5) No requirement shall be made under subsection (2)..... for receptacles to be placed on a highway.....unless

- (a) the relevant highway or roads authority have given consent.....

The Clean Neighbourhoods and Environment Act 2005 updates and amends section 47, in particular providing the FPN opportunity.

Transcripts of legislation can be found at: [www.opsi.gov.uk](http://www.opsi.gov.uk)