

## **Enforcement Procedures and Guidelines**

### **1. Introduction**

The aim of this document is to determine good practice and to demonstrate clarity and consistency in the delivery of waste management enforcement duties and powers relevant to the Dorset Waste Partnership (DWP), in accordance with the DWP Waste Management Enforcement Policy.

Enforcement is any formal or informal action taken to prevent or rectify infringements of legislation. The enforcement options may differ where different areas of legislation are used but the principles of application should remain constant and consistent.

Enforcement includes visits, inspections, verbal and written advice or information on legal requirements and good practice, assistance with compliance, written warnings, the servicing of statutory notices, issuing fixed penalty notices, formal cautions, prosecution, seizure and detention and injunctions. Liaison and co-operation with other enforcement authorities and organisations will also occur where appropriate.

The details contained within this document will offer guidance and assistance to officers involved in enforcement activities in Waste Enforcement. These core functions relate to enforcement for:

- Abandoned vehicles
- Fly tipping
- Dropping litter
- Powers to prevent littering
- Duty of care compliance checks
- Waste collection related offences – Recycle for Dorset service

The DWP will routinely consult and work with other agencies including the Police, Environment Agency, DVLA and the Highways Agency.

### **2. Key pieces of legislation**

The DWP has key legislative powers, under the Environmental Protection Act 1990 (EPA 1990), Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) and other legislation relating to the environment. These offer a wide range of powers to enable the DWP to fulfil the duties for which it is responsible.

All enforcement action taken by the DWP will be with regard to the relevant statutory provisions and their amendments. The key pieces of legislation include:

#### **2.1 Environment Protection Act 1990**

A definitive Act for the structure and authority of waste management and the control of emissions in England, Wales and Scotland. Part 1 sets out the regulations whereby the Secretary of State for Food and Rural Affairs can set limits on emissions into the environment. Part 2 deals with regulations surrounding the controlled disposal of waste, either household, industrial or commercial, on land. It also addresses the regulations surrounding transportation, treatment, carrying and storage of waste.

### 2.2 Controlled Waste Regulations 1992 / 2012

The revised regulations came into force on 6 April 2012. These revoke and replace the Controlled Waste Regulations 1992. The regulations classify waste as household, industrial or commercial waste. They enable local authorities in England and Wales to charge for the collection and disposal of waste from non-domestic properties.

### 2.3 Clean Neighbourhoods and Environment Act 2005

The Act provides local authorities with more effective powers to tackle poor environmental quality and anti-social behaviour. In particular the Act includes sections on nuisance and abandoned vehicles, litter, graffiti, waste, noise and dogs. Many of the provisions relate to powers not duties.

### 2.4 Refuse Disposal (Amenity) Act 1978

States that local authorities have a duty under the Refuse Disposal (Amenity) Act 1978 to remove any vehicle abandoned on land in the open air or land part of a highway.

### 2.5 Anti-Social Behaviour, Crime and Policing Act 2014

The Anti-Social Behaviour, Crime and Policing Act 2014 (c. 12) is an Act of the Parliament of the United Kingdom which greatly expands law enforcement powers in addressing anti-social behaviour. It gives powers to issue community protection notices, these community protection notices deal with unreasonable, ongoing problems or nuisances which negatively affect the community's quality of life by targeting the person responsible.

### 2.6 The Deregulation Act 2015

The Deregulation Act 2015 came into force on 15 June 2015 and involves the decriminalisation of waste receptacle offences under section 46 of the Environmental Protection Act 1990.

Local authorities are still able to issue FPNs under section 46A of the Environment Protection Act but the deregulated civil process is lengthier and gives those in receipt of a notice greater rights of appeal.

An offence is now committed only if there has been a failure to comply with requirements a local authority has made; and the failure to comply:

- has caused, or is or was likely to cause, a nuisance; or
- has been, or is or was likely to be, detrimental to any amenities of the locality.

As the act 'decriminalises' waste receptacle offences, it is no longer possible in England to prosecute individuals for failure to comply with the Environmental Protection Act 1990. The FPN is the only enforcement route, and the previous level of FPN (£100) has been reduced to a scale of between £60 and £80, with an early payment amount of no less than £40. Unpaid FPNs are recovered as civil debt.

### 2.7 Regulations of Investigatory Powers Act 2000

The Regulation of Investigatory Powers Act 2000 (c.23) (RIP or RIPA) is an Act of the Parliament of the United Kingdom, regulating the powers of public bodies to carry out surveillance and investigation, and covering the interception of communications.

### 2.8 Police and Criminal Evidence Act 1984

The Police and Criminal Evidence Act 1984 (PACE) (1984 c. 60) is an Act of Parliament which instituted a legislative framework for the powers of police officers in England and Wales to combat crime, and provided codes of practice for the exercise of those powers.  
<http://www.legislation.gov.uk/ukpga/1984/60/contents>

### 2.9 Criminal Procedure and Investigations Act 1996

The Criminal Procedure and Investigations Act 1996 is a piece of statutory legislation in the United Kingdom that regulates the procedures of investigating and prosecution of criminal offences.  
<https://www.gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice>

## 3. Enforcement actions

Enforcement actions against offences, as set out in this document, will require authorised officers to follow set procedures and protocols. This will ensure consistency in the collection of evidence and the type of enforcement actions applied. Enforcement action should only be taken if there is compelling and complete evidence of an offence having taken place.

The DWP will use the following range of enforcement actions:

Type of enforcement action	Activities to be undertaken
Information and advice	<p>The first contact with a person reported to the DWP or believed to be causing or permitting an offence, will be by advisory letter or verbal communication. The enforcement officer's role will be to inform, guide and support.</p> <p>If written observations, suggestions or requirements are appropriate, such written guidance will clearly identify the nature of the complaint or problem and any remedial works that are required.</p> <p>Any requirements made verbally or in writing will clearly identify whether they are mandatory or advisory in nature. If the requirements are mandatory, a timescale for compliance will be specified.</p> <p>Informal written warnings may be issued to make clear that it will view any further breaches of legislation to be treated seriously and that these may be subject to enforcement action.</p>
Written warnings	<p>Written warnings should only be used when there is evidence that shows beyond reasonable doubt that a person has committed an offence and it is considered to be inappropriate to issue an official caution or Fixed Penalty Notice.</p> <p>A written warning should contain the following information:</p> <ul style="list-style-type: none"> <li>• Date</li> <li>• Time and location of the alleged offence</li> <li>• Personal details of the alleged offender</li> <li>• The nature of the offence and relevant legislation</li> </ul>

	<ul style="list-style-type: none"> <li>• Be signed and dated upon issuing by an authorised officer.</li> </ul>
Official cautions	<p>The decision whether to issue an official caution, or higher level enforcement action, will relate to the nature of the offence and the attitude of the alleged offender.</p> <p>As with all types of enforcement action, the alleged offender will be required to supply the officer with their personal details. These details cannot be used to issue any other type of enforcement action for that offence; however they can be used in conjunction with future enforcement action.</p> <p>Persons alleged to have committed an offence will only be issued with one official caution; any subsequent offences will require the issuing of a Fixed Penalty Notice.</p> <p>Official cautions must contain the following information; date, time and location of the alleged offence, personal details of the alleged offender, the nature of the offence and relevant legislation. It must be signed and dated by an authorised officer and must be issued using a formal notice which also includes the signature of the offender agreeing to accept a caution.</p>
Fixed Penalty Notices (FPN)	<p>An FPN will be issued to persons who are alleged to have committed an offence where it is considered that a caution is not appropriate. This gives the alleged offender the opportunity of discharging any liability to conviction for any offence by payment of an FPN.</p> <p>It is essential for the issuing of an FPN that the authorised officer collects adequate evidence to support any legal proceedings if the notice is returned unpaid.</p> <p>The FPN must contain the following information; date, time and location of the alleged offence, personal details of the alleged offender, the nature of the offence and relevant legislation, and be signed and dated upon issuing by an authorised officer. The notice will clearly state that by opting to pay the fixed penalty, the DWP will take no legal action for the prescribed offence.</p> <p>When an FPN has been issued, the alleged offender has 14 days within which to make the full payment amount, or pay a discounted amount within 7 days.</p> <p>After 7 days if an FPN has not been paid, the alleged offender will be sent a reminder letter. This letter will state the terms of the penalty payment, and the payment deadline. If it remains unpaid for a period of 14 days after the payment deadline has passed, a file will be put together and court proceedings will be issued. Unpaid penalties will be followed up by prosecutions through the courts.</p>
Prosecution	<p>In certain cases prosecution through the courts may be the most appropriate course of action, or where other enforcement actions have had no effect. Prosecution will likely follow when:</p>

	<ul style="list-style-type: none"> <li>• An FPN is issued to an alleged offender is returned unpaid after the 14 day payment period</li> <li>• Three FPNs have been issued to a person</li> <li>• An offence is of a size or nature where an FPN is considered to be insufficient</li> <li>• It is an offence where an FPN cannot be issued.</li> </ul> <p>Where prosecution through the courts is appropriate, a full case file will be prepared by the Enforcement Officer and then reviewed and signed off by the Head of Strategy, DWP. Once signed off, it will be passed to the Dorset County Council Legal Department for further scrutiny and to progress for prosecution if it is within the public interest.</p>
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#### 4. Evidence gathering

Evidence is key to the enforcement procedure. The recording and storage of this evidence must be carried out in a concise and consistent manner to ensure its admissibility in Court. Evidence collected by authorised officers will come in various forms, from various sources and, dependant on its quality, could be used in a variety of enforcement actions.

Evidence that is obtained by an authorised officer 'in the field' will be recorded in a timely manner in ink in a PACE notebook. All entries must be clear and precise.

Evidence must be in the form of:

<b>Type of evidence</b>	<b>Activities to be undertaken</b>
Addressed documents	Evidence gathered in relation to an offence, can come in the form of an addressed document, which may relate to the person believed to have committed the offence (e.g. when household waste is found to be fly tipped, an authorised officer will search the waste for any documentation which may relate to the person responsible).
Witness statements	<p>Where an authorised officer has witnessed an offence occurring, that officer will have to produce a witness statement.</p> <p>If a member of the public has witnessed an offence, in order for the evidence to be of value, they must be willing to attend court to give evidence, if that becomes necessary. Any statement made by a witness must be signed and dated by the witness and witnessed by the authorised officer at the time of taking the statement.</p> <p>Statements will be recorded on an s9 witness statement form (Appendix 1).</p>
Interviewing	The Police and Criminal Evidence Act (PACE) Codes of Practice require any person interviewed regarding his involvement or suspected involvement in an offence must be under caution, otherwise the evidence will be inadmissible in court. This caution must be carried out before any questions are put to him regarding the offence. PACE interviews (Appendix 2) will only be undertaken by authorised trained officers.

	<p>No juvenile (a person aged under 17) or mentally impaired person should be interviewed without an appropriate adult being present.</p> <p>As a last resort, it may be necessary to try to interview the suspect by way of correspondence. In this way it will be possible to write to the suspect under caution asking them relevant questions and giving them a time by which to reply.</p>
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In determining the sufficiency of evidence, consideration should be given to the following factors with regard to the credibility of witnesses:

- are they likely to be seen as credible witnesses
- are they likely to be consistent and fair under cross-examination
- are they willing to attend as witnesses
- could they be 'hostile' witnesses

Where the case depends in part on admissions or confessions, consideration should be made to their admissibility and whether interviews, statements and other evidence have been obtained in compliance with relevant legislation. In determining the admissibility of evidence, regard should be given to the requirements of the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigations Act 1996 and associated Codes of Practice.

## 5. Further Enforcement Considerations

### 5.1 Waste collection charge (Controlled Waste Regulations 2012)

Paragraph 4 of the Controlled Waste (England and Wales) Regulations 2012 can be used to impose a collection charge to cover the cost of collecting side waste and contaminated waste if the authority has already served a section 46 notice in relation to this issue. Any charges under this paragraph are not tended to be penal – they simply allow the authority to cover the cost of collecting waste which falls outside their usual service.

### 5.2 Request for personal details by an authorised officer

Authorised officers have the power to require the name and address of a person who they believe has committed an offence.

To avoid serving enforcement action using false details, the authorised officer will use all reasonable methods to confirm the details supplied by an alleged offender. The initial method of confirmation will be through the Electoral Services Officer, where personal details can be checked against the electoral roll (but this will not include juveniles).

Failing to supply personal details, or giving a false name and address to an authorised officer is an offence, and carries a fine of £1,000 upon conviction. If a person fails to provide an authorised officer with personal details, the officer will take all reasonable steps to obtain information on that person.

### 5.3 Persistent offenders

Where a written warning has been issued on a previous occasion, and a further offence is committed on a separate occasion, no further warnings will be issued. The next course of action will be to issue an official caution, unless the offence warrants an FPN.

Where an official caution has been issued on a previous occasion, and a further offence is committed on a separate occasion, no further cautions will be issued. In these cases the next likely course of action would be to issue an FPN.

A person may be issued with up to three FPNs in total. If found to have infringed the law on a fourth separate occasion, no further penalty notices will be served upon that person and court proceedings will be instigated.

### 5.4 Juveniles (person aged under 17)

When a juvenile is alleged to have committed an offence the name, address, age and date of birth of the suspected offender should be obtained, together with the name and address of his or her parent or legal guardian. For offenders aged 16 or 17 years old, an FPN can be issued using the same procedure as for adults.

For offenders between 10 and 15 years old, an FPN should not normally be issued. If on enquiry it is found that an FPN is suitable, then the notice should be issued to the offender with an appropriate adult being present.

## **6. Core offences and procedures**

The DWP has the power to take enforcement action against persons that commit a variety of environmental crimes. The following are considered to be the core offences:

- Abandoned vehicles
- Fly tipping
- Dropping litter
- Powers to prevent littering
- Duty of care compliance checks

### 6.1 Abandoned vehicles

Under the Refuse Disposal (Amenity) Act 1978, a person commits an offence if, without lawful authority, abandons on any land in the open air, or on any land forming part of a highway, a motor vehicle or anything that has formed part of a motor vehicle. There is no legal definition of an abandoned vehicle. Authorised officers must use their discretion when forming decisions on abandonment using guidance issued by DEFRA.

<http://webarchive.nationalarchives.gov.uk/20130403014732/http://archive.defra.gov.uk/environment/quality/local/legislation/cnea/documents/vehicles.pdf>

Authorised officers will normally only be able to arrange for the removal of a vehicle from a highway or public land. Abandoned vehicles will also only be investigated if the vehicle has no tax and no MOT, and is in the open air. However, the MOT and tax status does not apply if the vehicle is a detriment to the environment i.e. it is vandalised or damaged.

Abandoned vehicles on private land can be removed at the request of the landowner or occupier, but the cost of doing so will be recharged to them. If the vehicle is on private land we require a request for removal from the land owner and a copy of the land registry deeds, clearly showing the red curtilage line of ownership.

If found guilty of abandoning a vehicle on a highway or on land in the open air, a person can be fined up to £2,500, or a term of not exceeding three months imprisonment, or both. In lieu of prosecution, the DWP will issue an FPN of £200, reduced to £150 if paid within the first 7 days.

### Procedural guide

- Check the abandoned vehicle registration number on the .gov website to ascertain tax and MOT status and print off. This must be done before visiting the site and before applying to the DVLA for any registered keeper details.
- Visually inspect the vehicle on site, and complete an abandoned vehicle report using a DWP abandoned vehicle sheet (Appendix 3). Fill out as much information as possible. Always take a photograph/s of the abandoned vehicle at the location.
- If necessary, complete a 24/zero hour notice (vehicle of no value), 7 day notice (on public highway) or 15 day notice (private land) on site and stick it on the drivers' window or windscreen. Take a photograph of the notice on the abandoned vehicle.
- Apply for registered keeper details on the DVLA computer. Only an authorised officer employed directly by DWP can undertake this and it must only be used for this offence. Enter enquiry on to the log sheet (hard copy only). Keep paperwork (ABV sheet and photo) for each ABV in sequence with log sheet.
- Send first letter to registered keeper (Appendix 4) instructing them to remove the vehicle from the area.
- Once the notice has expired (7 days for vehicles on public highway and 15 days for vehicles on private land), an authorised officer will revisit the area to establish if the letter / notice has been adhered to by the registered keeper. Subsequently, if it is found that the vehicle is no longer at the location, the date of the revisit and a brief note needs to be written on the DWP abandoned vehicle sheet (Appendix 3), stating the vehicle is no longer at the location and has been removed by persons unknown. If the vehicle has been removed as detailed above the Lagan case needs to be updated and closed.
- If, after the notice has expired or for other reasons, the decision is made to remove the vehicle, enter all relevant details onto the abandoned vehicle spreadsheet on the network (Appendix 5). Use next consecutive reference number on spreadsheet as the log number for that vehicle.
- Complete Form A (Appendix 6), save in folder and email to [enquiries@dorsetwastepartnership.gov.uk](mailto:enquiries@dorsetwastepartnership.gov.uk) and to the contractor, [simon@wsrecycling.co.uk](mailto:simon@wsrecycling.co.uk).
- Email should contain request to the contractor for removal, vehicle details (registration, make, model, and colour), exact location (GIS, postcode) and date to be removed. A picture of the vehicle sent with the email is also useful. Ask for notification from contractor that vehicle has been removed on date requested.
- The vehicle will then be stored for 21 days at the contractor's premises and then destroyed/dismantled. Vehicles of no value can be destroyed immediately.
- Update Lagan and complete ABV spreadsheet when the vehicle has been removed
- If the owner contacts the DWP after the vehicle has been removed from the highway/land and it has not yet been destroyed, the owner may collect the vehicle from the contractor at a cost. This is usually the removal fee and a charge for storage (daily charge since removal date) and will be negotiated between the contractor and the vehicle owner.
- If an owner of a vehicle is identified at any stage of the process, dependant on individual case circumstance, the DWP have the discretion to issue an FPN for abandoning a vehicle under the Refuse Disposal (Amenity) Act 1978.

### 6.2 Fly tipping

The Environment Protection Act 1990 (EPA 1990) makes it an offence to 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/or the defence of an offender states that they are acting under his employer's instructions.

The powers to deal with fly tipping incidents are shared between local authorities and the Environment Agency. The national fly tipping protocol (agreed between the Environment Agency



and LGA) gives guidance on which authority should take the lead in dealing with fly tips dependant on their size, composition and location.

Both the DWP and the Environment Agency may serve a notice under the EPA 1990 requiring the landowner or occupier of land to remove material fly tipped and/or reduce the consequences of the deposit of the fly tipped material. Landowners or occupiers of land can establish a statutory defence such as they did not knowingly permit the material to be fly tipped on their land. The DWP or the Environment Agency can also remove fly tipped material and recover their investigation and clean-up costs of doing so from convicted fly tippers.

The Clean Neighbourhoods and Environment Act 2005 applies a penalty for a person found guilty of a fly tipping offence to be up to £50,000, or a term not exceeding 5 years imprisonment for both hazardous and non-hazardous waste offences.

In lieu of prosecution for a fly tipping offence, the DWP can give an alleged offender the opportunity to pay an FPN of £400, reduced to £200 if paid within the first 7 days.

### Procedural guide

- For every fly tipping investigation, the following information must be recorded:
  - Date, time, place
  - What was fly-tipped (description, how much)
  - Check fly tip for evidence of origin (letters with names and addresses).
  - Take photographic evidence
- Any evidence obtained needs to be recorded and stored as per the Criminal Procedure and Investigations Act 1996 (section 23(1)) Code of Practice.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/447967/code-of-practice-approved.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/447967/code-of-practice-approved.pdf)

- Try and establish:
  - Were there any witnesses? (If so, then statements should be taken)
  - Note details of any vehicle involved (registration, make, colour etc.) Never check for registered keeper details on the DVLA system unless information received is from a council officer or there is a written signed s9 statement regarding the incident from the witness.
  - Descriptions of fly tippers
  - Send out investigative letter (appendix 7)

This information can then be used to try and identify the offenders.

- Interviewing witnesses:
  - All persons who witness fly-tipping should have their identities established and be interviewed under PACE as soon as possible in a controlled setting by a trained/ authorised officer.
  - The witness statement should be documented on an s9 witness statement form and dated and signed by the witness.
- Interviewing offenders:
  - The following details of the interview must be recorded on tape or in notebook:

- Date, time, place of interview
  - Who was present
  - That the caution was administered - “You do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.”
- Details of any vehicle involved in the offence (registration, make, colour etc)
  - What was fly-tipped (description, how much)
  - Note any breaks in interview and reason
  - The time at the end of the interview
  - Sign at end of interview and ask interviewee to sign at the end of the interview
- Decide on what enforcement action will be taken (i.e. written warning, official caution, FPN and/or prosecution). If a prosecution is taken through the court, use the DWP case file template (appendix 8).

### 6.3 Dropping litter

The Environment Protection Act 1990 (EPA 1990) section 87 makes it illegal to drop litter. This relates to places in the open air to which the public are entitled or permitted to have access without payment, including any covered place open to the air on at least one side and to which the public has access. The Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) extends the scope of that offence so that it becomes an offence to drop litter anywhere in the open air (including rivers and lakes) regardless of ownership, except in locations where the public does not have access or the owner of the land has given permission for the dropping of litter or a legal authorisation exists to do so.

The law applies to pedestrian offenders and to drivers/passengers in motor vehicles. The term litter refers to any discarded item/s that leads to the defacement of the area, including food and drink containers, sweet papers, cigarette ends, chewing gum etc. The absence of a litter bin is not an excuse to drop litter. There is usually a litter bin within a reasonable walking distance and people have the option to take it home.

If found guilty of a litter offence, the offender can be fined up to £2,500, or a term of not exceeding three months imprisonment, or both. In lieu of prosecution for a litter offence, the DWP can issue an FPN of £75, reduced to £50 if paid within the first 7 days.

### Procedural guide – pedestrians

- DWP Authorised Officers will approach and speak to pedestrian offenders. The officer’s authorisation and identity will be shown at the beginning of any interaction and the offender advised of the offence - “that, they did deposit and leave litter (namely....) on (any land or water open to the air, whether public or private, namely...), contrary to section 87 of the Environmental Protection Act 1990.”
- The offender will then be interviewed to obtain their name, address and date of birth and they will be given opportunity to comment. Evidence of identity will be requested but not insisted upon. If date of birth is declined, make a note of approximate age.
- If a person picks up the litter following the approach of the officer, an FPN can still be issued. This can be done at the time or through the post.
- If the offender refuses to provide their name and address, they will be informed that this will be treated as an obstruction and a PACE caution must be issued at this point. – (“you do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.”)

Police support may then be requested. The offender will now be liable for prosecution and not given the opportunity to receive an FPN.

- If the FPN is not paid within 7 days, the alleged offender will be sent a reminder letter. This letter will state the terms of the penalty payment, and the payment deadline,
- If an FPN remains unpaid for a period of 14 days after the payment deadline has passed, a file will be put together and court proceedings will be issued. All unpaid penalties will be followed up by prosecutions through the courts.

### Procedural guide – vehicles

- Vehicle offences will be pursued through DVLA enquiries - **never check for registered keeper details on the DVLA system unless information received is from a council officer or there is a written signed s9 statement regarding the incident from the witness.**
- Once all the relevant information is obtained, the authorised officer will write to the registered keeper of the vehicle, with the option of issuing an FPN for littering.
- If the option of issuing an FPN is chosen and not paid within 7 days, the alleged offender will be sent a reminder letter. This letter will state the terms of the penalty payment, and the payment deadline.
- If a FPN remains unpaid for a period of 14 days after the payment deadline has passed, a file will be put together and court proceedings will be issued. All unpaid penalties will be followed up by prosecutions through the courts.

### 6.4 Powers to prevent littering - Community protection warnings and notices

The Community Protection Notice is intended to deal with unreasonable, on-going problems or nuisances which negatively affect the community's quality of life by targeting the person responsible (Anti-Social Behaviour, Crime and Policing Act 2014) (section 43(1)). The notice can direct any individual over the age of 16, business or organisation responsible to stop causing the problem and it could also require the person responsible to take reasonable steps to ensure that it does not occur again (section 43(3)).

An authorised person may issue a community protection notice to an individual aged 16 or over, or a body, if satisfied on reasonable grounds that (i) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality; and (ii) the conduct is unreasonable.

A community protection notice may be issued by a constable, the relevant local authority, or a person designated by the relevant local authority for the purposes of this section.

A community protection notice imposes any of the following requirements on the individual or body issued with it:

- a) A requirement to stop doing specified things
- b) A requirement to do specified things
- c) A requirement to take reasonable steps to achieve specified results.

A person issued with a community protection notice who fails to comply with it commits an offence. Breach of any requirement in the notice, without reasonable excuse, would be a criminal offence, subject to a fixed penalty notice (which attracts a penalty of £100) (section 52) or prosecution. On summary conviction, an individual would be liable to a level 4 fine (currently up to £2,500). An organisation such as a company is liable to a fine not exceeding £20,000.

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- A written warning (appendix 9) will be issued to the person committing the offence. This must make clear the nature of the behaviour that is considered anti-social, that if they do not stop the anti-social behaviour they could be issued with a CPN and, the time by which the offending behaviour must stop/change. It will also detail the potential consequences of being issued with a CPN, i.e. the penalties for breaching it.
- If the situation does not improve, the CPN will be issued (Appendix 10). This can be handed directly to the person in question or it can be posted to them.
- Failure to comply will result in either an FPN being issued or prosecution through the courts.

### 6.5 Duty of care compliance checks

Sections 34 and 47 of the Environment Protection Act 1990 (EPA 1990) places a 'Duty of Care' on all producers of commercial waste to ensure all such waste is stored and disposed of in a proper and safe manner. Waste must be passed on to an authorised person and the producer must retain a waste transfer note that sets out certain details of the waste. These waste transfer notes must be kept for two years.

Under the EPA 1990 the DWP can request to see evidence of a waste collection from a licensed waste disposal company (i.e. Waste Transfer Notes).

If a person is not able to produce the relevant waste disposal documents, the DWP will allow that person 14 days within which to produce the documentation. Failure to produce any documentation after 14 days can result in a fixed penalty fine of £300 or prosecution where the maximum fine is £5000. The maximum fine for illegally dumping waste is £50,000 or five years in prison.

Section 34A (2) of the Environment Protection Act 1990 also places a 'Duty of Care' on householders to ensure they reasonable steps to check that people removing waste from their premises are authorised and licensed to do so. As with the commercial checks, the DWP can request to see evidence of a waste collection from a licensed waste disposal company (i.e. Waste Transfer Notes). A breach of the household duty of care would attract an unlimited fine if convicted.

## **7. Waste collection related offences - Recycle for Dorset service**

The DWP has developed a 'Recycle for Dorset' Service Policy detailing the service policies in relation to the collection of household recycling and residual waste for Dorset.

Under the Environment Protection Act 1990 (EPA 1990), the DWP can specify what materials can and cannot be placed in certain kinds of waste receptacles and the location where residents must put their waste receptacles to facilitate waste collection. If the location is outside of the boundary of a property, the DWP can also specify between what times the receptacles must be put out and taken back in. However, if an offence is persistent with no attempt of conformity, the DWP can issue a section 46 notice (Appendix 11) to a person who fails to comply with these specified requirements.

Due to the amendment of the Environmental Protection Act 1990 by the Deregulation Act 2015, this has resulted in the waste collection offences becoming civil rather than criminal. In addition, an offence has only been committed if there has been a failure to comply with the requirements a local authority has made and the failure to comply has caused a nuisance or has been detrimental to any amenities of the locality.

**The following procedures are guidelines for non-compliance of the policy for the ‘recycle for Dorset’ service, and are only to be used for blatant abuse of the service. Officers should use discretion in applying these procedures as the overall aims of the DWP are where such an offence as detailed below occurs, the intention is to resolve the issue by information, advice and education. Only in cases of persistence or severe non-compliance will enforcement action be taken.**

### 7.1 Non DWP sacks and containers

The ‘Recycle for Dorset’ service policy says:

- We will not collect waste contained in non-authorized DWP sacks, boxes or other loose rubbish.
- We will only empty wheeled bins that are provided by the DWP.
- We reserve the right to only collect the authorized number of sacks per property per collection.

#### Procedural guide

- First occurrence - The operative will collect the DWP authorised sacks and containers but will not remove unauthorised non-DWP containers, bags/waste attaching a rejection hanger and/or sticker on the bin/box/sacks. (If the authorised sacks and containers are inaccessible due to the unauthorised waste, they will not be collected). Non DWP sacks or containers letter 1 (appendix 12) sent to the property by the depot. Details of the event will be recorded on a relevant management system (LAGAN).
- Second non-compliance - The operative will collect the DWP authorised sacks and containers but will not remove unauthorised non-DWP containers, bags/waste attaching a rejection hanger and/or sticker on the bin/box/sacks. (If the authorised sacks and containers are inaccessible due to the unauthorised waste, they will not be collected). A warning letter will be sent by the enforcement team to the householder clearly outlining their responsibilities and referring to possible action under an s46 notice (non DWP sacks or containers letter 2 (appendix 12)). Details of the event will be recorded on a relevant management system (LAGAN).
- Third non-compliance - The operative will collect DWP authorised sacks and containers but will not remove unauthorised non-DWP containers bags/waste attaching a rejection hanger and/or sticker on the bin/box/sacks. (If the authorised sacks and containers are inaccessible due to the unauthorised waste, they will not be collected). The enforcement team will make contact with the householder to issue an s46 notice (appendix 11). The depot will be notified and details of the event will be recorded on a relevant Management system (LAGAN).
- Continued non-compliance:
  - The operative will collect the DWP authorised sacks and containers but will not remove unauthorised non-DWP containers, bags/waste attaching a rejection hanger and/or sticker on the bin/box/sacks. (If the authorised sacks and containers are inaccessible due to the unauthorised waste, they will not be collected).
  - An option to pay a ‘waste collection charge’ to the DWP, under the Controlled Waste Regulations 2012, may be given to the householder. This will provide them with a method to clear the waste.
- In cases of continued non-compliance following the issue of a s46 notice, the documents below will be issued in consecutive order by the enforcement team:
  - Written warning under s46 which will include a date for compliance (appendix 13).

- If the non-compliance continues to be continuous, then a Notice of intent under s46 will be issued (appendix 14). If the failure to comply is not continuous, only if an individual commits another same or similar offence within one year of the first offence can a Notice of intent be issued.
- Allow 28 days for appeal.
- If the representations are rejected by the council, issue a final notice that a FPN of £75 (reduced to £50 if paid within 7 days) will be issued (appendix 15).
- The FPN is payable within 28 days or the individual can appeal. There is a reduced amount if paid within 14 days.
- Appeal possible to a first-tier tribunal, which either confirms FPN is payable or rejects it. There is then 28 days to pay from ruling.
- Further appeal possible. If it reaches the High Court or county court, it is recoverable as a civil debt.

## 7.2 Collection point for emptying wheelie bins and boxes

The 'Recycle for Dorset' service policy says:

- Containers should be placed on the kerbside at the boundary/edge of curtilage of the property adjacent to the publicly maintained road, unless otherwise agreed by the DWP.

### Procedural guide

- First occurrence - The operative will not empty the container. Should a missed collection or other complaint be reported, a depot representative will make contact with the householder clearly outlining the householder's responsibilities and to identify if there are any underlying reasons as to the non/incorrect presentation of the bin/box. Collection point for emptying containers and sacks letter 1 (appendix 12) and map/diagram will also be sent out by the depot to the householder clearly outlining the householder's responsibilities, including agreed presentation location. Details of the event will be recorded on a relevant management system (LAGAN).
- Second non-compliance - The operative will not empty the container. Should a missed collection or other complaint be reported, the enforcement team will make contact with the householder clearly outlining the householder's responsibilities and referring to possible action under an s46 notice (collection point for emptying containers and sacks letter 2 (appendix 12)). Details of the event will be recorded on a relevant management system (LAGAN).
- Third non-compliance - The operative will not empty the container. Should a missed collection or other complaint be reported, the enforcement team will make contact with the householder to issue an s46 notice (appendix 11). The depot will be notified and details of the event will be recorded on a relevant Management system (LAGAN).
- In cases of continued non-compliance following the issue of a s46 notice, the documents below will be issued in consecutive order by the enforcement team:
  - Written warning under s46 which will include a date for compliance (appendix 13).
  - If the non-compliance continues to be continuous, then a Notice of intent under s46 will be issued (appendix 14). If the failure to comply is not continuous, only if an individual commits another same or similar offence within one year of the first offence can a Notice of Intent be issued.
  - Allow 28 days for appeal.
  - If the representations are rejected by the council, issue a final notice that a FPN of £75 (reduced to £50 if paid within 7 days) will be issued (appendix 15).

- The FPN is payable within 28 days or the individual can appeal. There is a reduced amount if paid within 14 days.
- Appeal possible to a first-tier tribunal, which either confirms FPN is payable or rejects it. There is then 28 days to pay from ruling.
- Further appeal possible. If it reaches the High Court or county court, it is recoverable as a civil debt.

### 7.3 Bin presentation and return

The 'Recycle for Dorset' service policy says:

- After the containers are emptied..... It is the householders' responsibility to return the containers to within the boundary of their property as soon as possible after they have been emptied and no later than the evening of the day of collection.

### Procedural guide

- First occurrence - The operative will empty the container. If there is evidence that the resident is not returning the container after collection, a depot representative will make contact with the householder clearly outlining the householder's responsibilities and to identify if there are any underlying reasons as to the non/incorrect return of the bin/box. Containers left on highway between collections letter 1 (appendix 12) will also be sent out by the depot to the householder clearly outlining the householder's responsibilities. Details of the event will be recorded on a relevant management system (LAGAN).
- Second non-compliance - The operative will empty the container. If there is evidence that the resident is not returning the container after collection, the enforcement team will make contact with the householder clearly outlining the householder's responsibilities and referring to possible action under an s46 notice (containers left on highway between collections letter 2 (appendix 12)). Details of the event will be recorded on a relevant management system (LAGAN).
- Third non-compliance - The operative will empty the container. If there is evidence that the resident is not returning the container after collection, the enforcement team will make contact with the householder to issue an s46 notice (appendix 11). The depot will be notified and details of the event will be recorded on a relevant Management system (LAGAN).
- In cases of continued non-compliance following the issue of a s46 notice, the documents below will be issued in consecutive order by the enforcement team:
  - Written warning under s46 which will include a date for compliance (appendix 13).
  - If the non-compliance continues to be continuous, then a Notice of intent under s46 will be issued (appendix 14). If the failure to comply is not continuous, only if an individual commits another same or similar offence within one year of the first offence can a Notice of Intent be issued.
  - Allow 28 days for appeal.
  - If the representations are rejected by the council, issue a final notice that a FPN of £75 (reduced to £50 if paid within 7 days) will be issued (appendix 15).
  - The FPN is payable within 28 days or the individual can appeal. There is a reduced amount if paid within 14 days.
  - Appeal possible to a first-tier tribunal, which either confirms FPN is payable or rejects it. There is then 28 days to pay from ruling.
  - Further appeal possible. If it reaches the High Court or county court, it is recoverable as a civil debt.

## 7.4 Side waste

The 'Recycle for Dorset' service policy says:

- Additional residual waste presented alongside the residual waste bin or authorised sacks will be deemed as 'side waste' and will not be collected.

### Procedural guide

- First occurrence - The operative will empty the container / collect authorised sacks but will not remove unauthorised bags/waste attaching a rejection hanger and/or sticker on the bin/box/sack. (If the authorised sacks and containers are inaccessible due to the unauthorised waste, they will not be collected). Side waste letter 1 (appendix 12) will also be sent out by the depot. Details of the event will be recorded on a relevant management system (LAGAN).
- Second non-compliance - The operative will empty the container / collect authorised sacks but will not remove unauthorised bags/waste attaching a rejection hanger and/or sticker on the bin/box/sack. (If the authorised sacks and containers are inaccessible due to the unauthorised waste, they will not be collected). An education officer will make contact with the householder clearly outlining the householder's responsibilities and referring to possible action under an s46 notice (side waste letter 2 (appendix 12)). Details of the event will be recorded on a relevant management system (LAGAN).
- Third non-compliance - The operative will empty the container / collect DWP authorised sacks but will not remove unauthorised bags/waste attaching a rejection hanger and/or sticker on the bin/box/sack. (If the authorised sacks and containers are inaccessible due to the unauthorised waste, they will not be collected). The enforcement officer will make contact with the householder to issue an s46 notice (Appendix 11) for repeated non-compliance and notify the depot. Details of the event will be recorded on a relevant Management system (LAGAN).
- Continued non-compliance:
  - The operative will empty the container / collect the DWP authorised sacks and containers but will not remove unauthorised non-DWP containers, bags/waste attaching a rejection hanger and/or sticker on the bin/box/sacks. (If the authorised sacks and containers are inaccessible due to the unauthorised waste, they will not be collected). An option to pay a 'waste collection charge' to the DWP, under the Controlled Waste Regulations 2012, may be given to the householder. This will provide them with a method to clear the waste.
- In cases of continued non-compliance following the issue of a s46 notice, the documents below will be issued in consecutive order by the enforcement team:
  - Written warning under s46 which will include a date for compliance (appendix 13).
  - If the non-compliance continues to be continuous, then a Notice of intent under s46 will be issued (appendix 14). If the failure to comply is not continuous, only if an individual commits another same or similar offence within one year of the first offence can a Notice of Intent be issued.
  - Allow 28 days for appeal.
  - If the representations are rejected by the council, issue a final notice that a FPN of £75 (reduced to £50 if paid within 7 days) will be issued (appendix 15).
  - The FPN is payable within 28 days or the individual can appeal. There is a reduced amount if paid within 14 days.



- Appeal possible to a first-tier tribunal, which either confirms FPN is payable or rejects it. There is then 28 days to pay from ruling.
- Further appeal possible. If it reaches the High Court or county court, it is recoverable as a civil debt.

### 7.5 Overfilled or overweight bin

The 'Recycle for Dorset' service policy says:

- Bins should not be overfilled or too heavy for the collection vehicles and crew to move and lift safely.
- The householders should make sure that the bin is not overfilled so that the lid can close completely.

### Procedural guide

- First occurrence - The operative will not empty the container attaching a rejection hanger and/or sticker on the bin/box/sack. Bins too heavy letter 1 (appendix 12) will also be sent out by the depot. Details of the event will be recorded on a relevant management system (LAGAN).
- Second non-compliance - The operative will not empty the container attaching a rejection hanger and/or sticker on the bin/box/sack. The enforcement team will make contact with the householder clearly outlining the householder's responsibilities and referring to possible action under an s46 notice (bins too heavy letter 2 (appendix 12)). Details of the event will be recorded on a relevant management system (LAGAN).
- Third non-compliance - The operative will not empty the container attaching a rejection hanger and/or sticker on the bin/box/sack. The enforcement team will make contact with the householder to issue an s46 notice (Appendix 11) for repeated non-compliance and notify the depot. Details of the event will be recorded on a relevant Management system (LAGAN).
- In cases of continued non-compliance following the issue of a s46 notice, the documents below will be issued in consecutive order by the enforcement team:
  - Written warning under s46 which will include a date for compliance (appendix 13).
  - If the non-compliance continues to be continuous, then a Notice of intent under s46 will be issued (appendix 14). If the failure to comply is not continuous, only if an individual commits another same or similar offence within one year of the first offence can a Notice of Intent be issued.
  - Allow 28 days for appeal.
  - If the representations are rejected by the council, issue a final notice that a FPN of £75 (reduced to £50 if paid within 7 days) will be issued (appendix 15).
  - The FPN is payable within 28 days or the individual can appeal. There is a reduced amount if paid within 14 days.
  - Appeal possible to a first-tier tribunal, which either confirms FPN is payable or rejects it. There is then 28 days to pay from ruling.
  - Further appeal possible. If it reaches the High Court or county court, it is recoverable as a civil debt.

### 7.6 Contaminated bins and containers

The 'Recycle for Dorset' service policy says:

- Any other material found in the bin and containers will be deemed as contamination and the container may not be collected.

### Procedural guide

- First occurrence - The operative will not empty the container attaching a rejection hanger and/or sticker on the bin/box/sack. Contaminated household recycling bin letter 1 (appendix 12) will also be sent out by the depot. Details of the event will be recorded on a relevant management system (LAGAN).
- Second non-compliance - The operative will not empty the container attaching a rejection hanger and/or sticker on the bin/box/sack. An education officer will make contact with the householder clearly outlining the householder's responsibilities and referring to possible action under an s46 notice (contaminated household recycling bin letter 2 (appendix 12)). Details of the event will be recorded on a relevant management system (LAGAN).
- Third non-compliance - The operative will not empty the container attaching a rejection hanger and/or sticker on the bin/box/sack. The enforcement team will make contact with the householder to issue an s46 notice (Appendix 11) for repeated non-compliance and notify the depot. Details of the event will be recorded on a relevant Management system (LAGAN).
- Continued non-compliance:
  - The operative will not empty the container attaching a rejection hanger and/or sticker on the bin/box/sack.
  - An option to pay a 'waste collection charge' to the DWP, under the Controlled Waste Regulations 2012, may be given to the householder. This will provide them with a method to clear the waste.
- In cases of continued non-compliance following the issue of a s46 notice, the documents below will be issued in consecutive order by the enforcement team:
  - Written warning under s46 which will include a date for compliance (appendix 13).
  - If the non-compliance continues to be continuous, then a Notice of intent under s46 will be issued (appendix 14). If the failure to comply is not continuous, only if an individual commits another same or similar offence within one year of the first offence can a Notice of Intent be issued.
  - Allow 28 days for appeal.
  - If the representations are rejected by the council, issue a final notice that a FPN of £75 (reduced to £50 if paid within 7 days) will be issued (appendix 15).
  - The FPN is payable within 28 days or the individual can appeal. There is a reduced amount if paid within 14 days.
  - Appeal possible to a first-tier tribunal, which either confirms FPN is payable or rejects it. There is then 28 days to pay from ruling.
  - Further appeal possible. If it reaches the High Court or county court, it is recoverable as a civil debt.

### 7.7 Communal properties – contamination

The 'Recycle for Dorset' service policy says:

- Where shared bins are used and the DWP experiences problems of persistent contamination, recycling facilities may be restricted, changed or withdrawn. The DWP reserves the right to charge to clear bins of contaminates.

- Wheeled bins and containers must be clearly visible with no restrictions to access. All wheeled bins and food containers must be presented with closed lids. For residual waste no extra bags, boxes or loose residual waste (side waste) will be collected.

**Procedural guide**

- First occurrence - The operative will not empty the container attaching a rejection hanger and/or sticker on the bin/box/sacks. Contaminated communal recycling bin letter 1 (appendix 12) will also be sent out by the depot to the householders and management agency / landlord / housing association. Details of the event will be recorded on a relevant management system (LAGAN).
- Second non-compliance - The operative will not empty the container attaching a rejection hanger and/or sticker on the bin/box/sacks. An education officer will make contact with the management agency / landlord/ housing association clearly outlining the householder's responsibilities and referring to possible action under an s46 notice (contaminated communal recycling bin (appendix 12)). Details of the event will be recorded on a relevant management system (LAGAN).
- Third non-compliance - The operative will not collect DWP authorised sacks but will not remove unauthorised bags/waste attaching a rejection hanger and/or sticker on the bin/box/sacks. The enforcement officer will make contact with the householder to issue an s46 notice (Appendix 11) for repeated non-compliance and notify the depot. Details of the event will be recorded on a relevant Management system (LAGAN).
- Continued non-compliance:
  - The operative will not empty the container attaching a rejection hanger and/or sticker on the bin/box/sacks.
  - An option to pay a 'waste collection charge' to the DWP, under the Controlled Waste Regulations 2012, will be given to the management company/landlord/housing association. This will provide them with a method to clear the waste. This charge will be issued for all collections of contaminated waste following the issue of the s46 notice.

**Appendices**

Appendix 1	S9 Witness statement form  <a href="#">Appendix 1 - Witness statement Form 2.doc</a>
Appendix 2	PACE interview procedure  <a href="#">Appendix 2 - PACE</a>
Appendix 3	DWP Abandoned vehicle report sheet  <a href="#">Appendix 3 - DWP ABV Sheet.pdf</a>

## APPENDIX 2

Appendix 4	DWP Abandoned vehicle letter to registered keeper  <a href="#">Appendix 4 - DWP ABV Template Letter.doc</a>
Appendix 5	Abandoned vehicle spreadsheet  <a href="#">Appendix 5 - Copy of abandoned Vehicle spreadsheet 2017 - 18.xls</a>
Appendix 6	ABV Form A  <a href="#">Appendix 6 - ABV Blank Form A .xls</a>
Appendix 7	Fly tipping warning letter  <a href="#">Appendix 7 - Fly tip template letter.doc</a>
Appendix 8	DWP Case file template  <a href="#">Appendix 8 - DWP Case file template.doc</a>
Appendix 9	Community Protection Notice  <a href="#">Appendix 9 - DWP CPN WARNING.docx</a>
Appendix 10	Community Protection Warning  <a href="#">Appendix 10 - DWP CPN NOTICE.docx</a>
Appendix 11	S46 Notice  <a href="#">Appendix 11 - Section 46 Notice v1.doc</a>

Appendix 12	<p>R4D letters</p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Bins too heavy letter 1.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Bins too heavy letter 2.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Collection point for emptying containers and sacks letter 1.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Collection point for emptying containers and sacks letter 2.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Containers left on highway between collections letter 1.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Containers left on highway between collections letter 2.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Contaminated communal recycling bin letter 1.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Contaminated communal recycling bin letter 2.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Contaminated household recycling bin letter 1.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Contaminated household recycling bin letter 2.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Non DWP sacks or containers letter 1.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Non DWP sacks or containers letter 2.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Side waste letter 1.doc</a></p> <p><a href="#">Appendix 12 - R4D Letters\Appendix 12 - Side waste letter 2.doc</a></p>
Appendix 13	<p>S46 Written warning</p> <p><a href="#">Appendix 13 - Written Warning v1.doc</a></p>
Appendix 14	<p>S46 Notice of intent</p> <p><a href="#">Appendix 14 - Notice of Intent v1.doc</a></p>
Appendix 15	<p>S46 Final notice</p> <p><a href="#">Appendix 15 - Final Notice v1.doc</a></p>