



Buckinghamshire Council

Fly-Tipping Enforcement Policy (2023)

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1. Introduction

This document sets out the Buckinghamshire Council Fly-Tipping Enforcement Policy ("the Policy") which details what residents, businesses, and individuals of Buckinghamshire can expect from Buckinghamshire Council ("the Council") when it carries out its regulatory and enforcement functions.

This Policy takes into account current principal legislation, including: -

- (a) The European Convention on Human Rights and,
- (b) The Human Rights Act 1998,
- (c) The Regulation of Investigatory Powers Act 2000,
- (d) The Police and Criminal Evidence Act 1984,
- (e) Criminal Procedure and Investigations Act 1996,
- (f) The Regulatory Enforcement and Sanctions Act 2008, and
- (g) Equality Act 2010

In applying this Policy, the Council will take account of the Buckinghamshire Council overarching Regulatory Enforcement Policy, any new relevant legislation that applies any amendments to existing legislation and guidance policies from the secretary of state.

This Policy also takes into account current statutory guidance or schemes, including: -

- (a) The Regulators' Code,
- (b) The Code for Crown Prosecutors, and
- (c) Primary Authority Principle.

2. Scope

This Policy applies to all legislation included in Parts 3 and 4 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, as amended, and including the following list of Statutes and successor legislation: -

- (a) Environmental Protection Act 1990,
- (b) Clean Neighbourhoods and Environment Act 2005,
- (c) Control of Pollution (Amendment) Act 1989,
- (d) Environment Act 1995,
- (e) Local Government Act 1972, *and*
- (f) ***The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023.***

3. Guiding Principles of Legislative and Regulatory Enforcement

The Council is committed to the principle of good enforcement as set out in the Legislative and Regulatory Reform Act 2006 and believes that the purpose of enforcement action should be to achieve compliance with legislation enforced by the Council.

The Council believes that the majority of businesses, individuals, consumers and residents of Buckinghamshire wish to comply with the law. The aim of this Policy is: -

- To protect those businesses, individuals, consumers, and residents from unlawful activity,
- To work with them to promote economic growth in Buckinghamshire, and
- To ensure that the small number of businesses and individuals who intentionally or repeatedly engage in unlawful activity are subject to appropriate enforcement activity.

The Council will deliver regulatory services in a way which is: -

- (a) **Transparent:** The Council will give advice and information in plain language and ensure that those it regulates are able to understand what is expected of them. The Council will distinguish between legal requirements and good practice recommendations.
- (b) **Accountable:** The Council's activities will be open to public scrutiny, with clear and accessible policies, and a fair and efficient complaints procedure.

- (c) **Consistent:** The Council will carry out its duties in line with relevant service standards where possible and will endeavour to ensure that enforcement action is applied consistently within Buckinghamshire and, where appropriate, in similar ways to other local authorities.
- (d) **Proportionate:** Enforcement activities will reflect the risk and harm in particular to the environment, alongside victims (whether to businesses, individuals, consumers and residents of the area or the wider community) and will reflect the seriousness of the breaches and any previous action taken by the Council or any other organisation.

Our primary objective is to secure legislative and regulatory compliance. The Council aims to use the most appropriate approach from the available enforcement responses. Those responses will range from advice and guidance through to litigation depending on the individual circumstances of the breach. The Council will target its enforcement activity based on threat, risk, harm, and intelligence information in order to address those areas causing greatest detriment or concern to businesses, individuals, consumers, residents and other users of services in the area, or which address national priorities impacting on these groups.

Where a business or an individual is found to be in breach of legislation the Council will work with that business or individual and any other person to put right the problem. However, it is recognised that, in the majority of cases, formal enforcement action will be taken.

In exceptional circumstances, or where required by legislation, the Council may depart from this Policy. Any decision to do so will be properly rationalized, based on the evidence, and fully documented.

4. Enforcement actions

There is a wide range of advice, guidance, and enforcement actions available to the Council from those intended to inform and support those it regulates, to formal legal proceedings with the potential for a financial or custodial penalty. These include, but are not limited to, the following:

Advice and Guidance

Verbal and Written Advice

The Council will provide advice on compliance and issue guidance and support where appropriate, at the Council's discretion. The objective of this action is to assist individuals and businesses to comply without the need to resort to more formal action.

Verbal and written advice will be appropriate in the most minor examples of offending and where the offence is not serious enough to warrant other forms of enforcement. For example, where a resident has disposed of a large quantity of waste to fill a street litter bin, blocking its use for passers-by, and they have not previously received a warning.

Notices

- **Notices under section 34(5) Environmental Protection Act 1990 (“the EPA 1990”).**

Where a notice is issued under s34(5) of the EPA 1990, the recipient is under a duty to furnish a waste transfer note to the requesting officer within seven days of the Notice being issued. It is a criminal offence not to respond to a request for information under this section.

- **Notices under Section 5 Control of Pollution (Amendment) Act 1989**

Where a notice is issued under this section, the recipient is under a duty to evidence that they are an authorised waste carrier, or to evidence that they are not required to be registered as an authorised waste carrier. The notice can be complied with by producing the evidence on demand, by producing it at a specified place and within a specified period, or by sending the evidence to a specified place within a specified period. It is a criminal offence to fail to comply with the notice.

- **Notices under Section 108 Environment Act 1995 (“EA 1995”)**

Notices under s.108 of the Environment Act 1995 can be used to require production of extracts from records which an officer believes a company holds and which are necessary for the purposes of the investigation of a potential criminal offence. It is a criminal offence not to respond to a request for information under this section. A Notice sent will set out details of the specified records held and allow a period of time for the recipient to respond in writing to the request for extracts from those records in the Notice e.g. the name, address and date of birth of a bank account holder to whose numbered account a waste producer has paid for the removal of waste from their p. The Notice must specify that if the recipient does not respond within the time period allowed, they will be prosecuted. When serving a Notice under these powers the officer executing the power is obliged to and will produce evidence of their authority to exercise the power at the time of service.

The Council may also use powers under s.108 EA 1995 when inviting a member of the public to an interview under caution and may consider prosecution action against those who refuse to attend or ignore requests to attend.

Formal Enforcement Actions

Buckinghamshire Council has a ‘zero tolerance’ policy towards fly-tipping. The Council will consider prosecuting fly-tipping offences at court as well as contributory failures in duty of care by waste holders.

Simple Cautions

A Simple Caution may be offered as an alternative to **a Fixed Penalty Notice (FPN)** for some minor offences, or for first time offences, to a business or individual where there is a realistic prospect of conviction, and where that business or individual has admitted the offence. **Where a Simple Caution is declined, a prosecution will normally ensue.**

To be eligible for a Simple Caution there must be an admission of guilt by the offender. A Simple Caution will be endorsed in the Council records and may be admissible in subsequent Court proceedings for a similar offence.

Where a Simple Caution is declined, a prosecution will usually follow.

Simple Cautions administered by Buckinghamshire Council are not the same as those issued by police services and details are not entered on to the Police National Computer. Simple cautions in this context are a specific formal warning to an offender (who has admitted the offence) that if they re-offend a court could take the caution into account and on re-offending a larger sentence could be imposed on conviction.

Fixed penalty notices ("FPNs")

Where the Council believes a business or an individual is in breach of certain legislation, it may issue a financial penalty requiring that business or individual to pay the Council within a specified period. Payment of the penalty discharges liability for the alleged offence. If the penalty is not paid **within 14 days (as stated on the FPN documentation)**, a prosecution will normally follow. Any subsequent prosecution will be for the alleged offence, not for the non-payment of the FPN.

FPNs are usually the most appropriate enforcement for a first-time offenders, for low level examples of fly-tipping. When considering whether an FPN is appropriate, the location that the waste has been deposited, the amount of waste and the nature of the waste will be relevant. Hazardous waste, such as asbestos, will not be suitable for an FPN.

An FPN will not usually be offered to offenders unless they make admissions, however each case will be considered on its own merits and the circumstances presented.

On 31st July 2023, the Government introduced increased upper limits for FPNs for the offences of Fly-tipping and failure in Householder Duty of Care. The revised upper limits are as follows:

- **Under section 33ZA - Fly-tipping: from £400 to £1000**
- **Under section 34ZA – Failure of Householder Duty of Care: from £400 to £600**
- **Under section 34A - Failure by Business to Furnish Duty of Care Documents: No Change**
- **Under section 5B – Control of Pollution (Amendment) Act 1989: No Change**

Offence

Fixed Penalty

<i>Fly-Tipping</i>	<i>£1000</i>
<i>Failure in householder Duty of Care</i>	<i>£600</i>
<i>Failure by business to furnish Duty of Care documents</i>	<i>£300</i>
<i>Failure to provide evidence of waste carrier registration</i>	<i>£300</i>

Where a business is required to furnish the Council with documents which they are required to keep under their Duty of Care, or where a waste carrier is required to provide evidence of their waste carrier registration, the Council may issue a fixed penalty of £300 if they fail to comply.

Anyone under the age of 17 will not ***normally*** be prosecuted ***nor receive an FPN*** and will be managed through the ***use of*** appropriate cautions and/or formal warnings.

Buckinghamshire Council issues FPNs only where it believes that both the Evidential Test (Does the evidence in the case provide a realistic prospect of conviction?) and Public Interest Test (Is it in the public interest to prosecute?) has been satisfied. This gives consideration to the seriousness of offence, takes into account any harm caused to the victim, the community impact and whether prosecution is a proportionate response). Should this test be fulfilled they default position will be to prosecute the offence at court if the fixed penalty is not paid.

Seizure

Relevant legislation allows the Council to seize vehicles, goods, equipment, documents, or other articles required as evidence in potential court proceedings. Where goods are seized, we will give the person whom they are seized from a receipt.

Where vehicles have been used for fly-tipping, the Council may seize the vehicle subject to the provisions of the relevant legislation. The Council may release the vehicle to the owner on presentation (within 15 working days) of the original vehicle registration document together with evidence that valid insurance is held, and that the vehicle has a valid MOT. Where these conditions are not met the Council will take possession of the vehicle and may safely destroy or sell it to defer costs as appropriate. Alternatively, the Council may choose to retain the vehicle if appropriate until such time as a court may determine whether the vehicle should be returned to the owner or forfeited to the Council. This would normally be part of a prosecution for the fly-tipping offence.

Prosecution

A prosecution will result in the matter being decided before a Criminal Court. If convicted this could result in a fine, community order or even a sentence of imprisonment in fly-tipping cases. A conviction will also create a criminal record.

Buckinghamshire Council will seek full cost recovery, including officer time, legal costs and any clearance costs incurred, and will always prosecute where appropriate and proportionate to do so.

A prosecution will be the most appropriate disposal where fly-tipping is taking place for profit and where waste is illegally deposited in the course of business, such as by a construction company.

Restraint and Confiscation Proceedings

Where a business or an individual has enjoyed substantial financial gain as a result of criminal activity, the Council may seek to prevent the access to assets, such as bank accounts, property and investments and may seek confiscation of those assets under the Proceeds of Crime Act 2002.

Appeals

An FPN is offered in lieu of prosecution, and as such, there is no formal right of appeal. If an alleged offender does not accept their liability for the offence, there is no requirement on them to pay the fixed penalty. The assumption should always be that if a fixed penalty is unpaid, the case should be prosecuted, giving the alleged offender the opportunity to defend their case in court. This is consistent with schedule 11N.14 of the DEFRA Codes of Practice on Litter & Refuse.

5. The interests of Council stakeholders

The Council does not want its enforcement activities to have a negative effect on businesses nor individuals who comply with the law. The Council will undertake its work to ensure, as far as possible, that the circumstances of each case are taken into consideration to make sure that compliant businesses or individuals are not affected.

6. Enforcement Policy implementation

This policy *was* implemented *in April 2020* and *was amended on <<Insert Date Upon Approval>> to reflect the Government changes to upper limits to fixed penalties on 31st July 2023.*

It is available for viewing on the Council's website. Braille, large type, audio recording or other language versions will be considered on request.

7. Information Sharing

Personal and business information held by the authority will only be shared in accordance with the relevant information sharing protocol or legislation. Individuals or businesses that are successfully prosecuted will be publicised through appropriate communication methods to promote the enforcement activity taken by Buckinghamshire Council.

The authority will take a proactive approach to data matching and the sharing of information via agreed secure mechanisms with other regulatory agencies and local authorities about businesses and individuals to help target resources and activities and to minimise duplication of enforcement activity. Any sharing of information will be in compliance with the previous paragraph and the authority's data sharing procedures.

8. Comments and complaints about enforcement activity

If you wish to comment on this Policy or make a complaint about enforcement activity, please contact the Council by emailing:

complimentsandcomplaints@buckinghamshire.gov.uk

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