



# Buckinghamshire Council

## Fly-Tipping Enforcement Policy

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Approved by (Director)	<i>Richard Barker</i>	Date approved	5 March 2020
Member/ Partnership Board Approval	Cabinet Policy Group	Date approved	7 April 2020

## 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 the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, as amended from time to time, 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

This Policy is supported by the Buckinghamshire Council Enforcement Policy, which sets out Buckinghamshire Council's approach to enforcement activities.

## 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: -

- (a) To protect those businesses, individuals, consumers and residents from unlawful activity,
- (b) To work with them to promote economic growth in Buckinghamshire, and
- (c) 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 rationalised, 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 which range 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**

- (a) **Verbal and written advice**

The Council will use advice on compliance, guidance and support where appropriate and will seek to do so in appropriate circumstances, 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.

##### **Formal Enforcement Actions**

(a) **Fixed penalty notices ("FPN's")**

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. There will normally be a period for an appeal should that business or individual disagree with the penalty. If the appeal is unsuccessful and the penalty is not paid, enforcement action in a criminal court or a civil debt recovery process will normally follow.

The Council may increase the penalty in default and may take action for the recovery of unpaid penalties.

A penalty notice will not normally be issued to a person under the age of 17 years.

(c) **Simple Cautions**

A Simple Caution may be offered as an alternative to prosecution for some less serious 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 be instituted.

(d) **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.

(e) **Notices under Section 108 Environment Act 1995**

Notices under s.108 of the Environment Act 1995 can be used to gather information when an officer believes a member of the public holds and will help in 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 ask specific questions and allow a period of time for the recipient to respond in writing to the request for information in the Notice e.g. the name of the driver of a vehicle on a specific occasion, the name of the person the waste was passed to. 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 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.

(f) **Prosecution**

A prosecution will result in a criminal record, and may result in a fine or, in the case of more serious offences, a prison sentence, community service and/or some other penalty as the court may decide. 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.

(g) **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.

## **5. The interests of Council stakeholders**

The Council does not want its enforcement activities to have a negative effect on businesses or 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 is implemented from 1<sup>st</sup> April 2020 and will be reviewed as appropriate.

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](mailto:complimentsandcomplaints@buckinghamshire.gov.uk)