

WASTE MANAGEMENT SECTION

WASTE ENFORCEMENT POLICY

10 MAY 2017

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WASTE ENFORCEMENT POLICY

1.0 **Background**

- 1.1 The Council's policy is to promote the responsible management of waste from householders, businesses and visitors to the Island.
- 1.2 The Council enforces legislation relating to municipal waste on Anglesey. This Waste Enforcement Policy sets out the general principles and approach that the Council will follow when enforcing legislation and other waste management policies.
- 1.3 The waste enforcement function covers multiple areas including the inadequate storage of refuse, littering, fly-tipping, trade waste abuse and failure to comply with the Council's waste policies. Non-compliance by users can lead to a detrimental effect on the quality of the local environment, how an area is perceived, affect local economy and endanger health and safety of all its residents and visitors.
- 1.4 In order to ensure the proper management of waste there is a need for a combination of adequate education and enforcement activities. Securing compliance with statutory requirements and Council's waste policies is an important part of this Waste Enforcement Policy. All the Waste Management Policies are available on the Council's Website and if so requested copies of the relevant policies can be made available.
- 1.5 The Council will ensure that all appointed officers are competent and are trained in the use of this Waste Enforcement Policy. In addition, the Council will work with other local authorities, professional bodies including the North Wales Police and the National Resource Wales.
- 1.6 The Council regards prevention as better than cure and, as such, will continuously offer information and advice to householders, businesses and visitors to secure compliance avoiding bureaucracy or excessive cost.

2.0 Purpose and Method of Enforcement

2.1 The purpose of the Council's waste enforcement function is to ensure that service users comply with relevant legislation and the Council's waste policies. In summary, it is to:

- promote and achieve sustained compliance with the law;
- ensure that businesses, householders and visitors take action to deal with waste issues affecting their environment;
- ensure that those individuals that breach waste laws and the Council's waste policies, be held to account, which may include bringing alleged offenders before the courts.
- aim to change the behaviour of the offender
- aim to eliminate any financial gain
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- be proportionate to the nature of the offence and the harm caused
- aim to restore the harm caused by regulatory non-compliance, where appropriate
- aim to deter future non-compliance

2.2 The type of enforcement action taken will depend on all the circumstances and merits of each individual case. The following are examples of enforcement options available to the Council:

- I. To give advice regarding compliance;
- II. To issue a written warning letter;
- III. Recovery of costs;
- IV. To serve an enforcement notice;
- V. To offer a Simple Caution;
- VI. To issue a Fixed Penalty Notice;
- VII. To pursue a prosecution through the courts;
- VIII. To refer the issue to another body for enforcement action, e.g. Environment Agency, Health & Safety Executive, Trading Standards, Police, DVLA etc;
- IX. To agree restorative measures wherever applicable
- X. To use sanctions in combination

2.3 It is recognised that in many areas the law is complex and that offences may result from unintentional transgression through a failure to appreciate the precise requirements of the law. Officers will deal sympathetically with infringements in such circumstances and will give advice regarding

compliance, particularly where the infringement is considered to be of a minor nature.

- 2.4 Enforcement action will take place in accordance with recognized guidelines including the Codes of Practice made under the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigations Act 1996.
- 2.5 The Council, if appropriate and in strict adherence with legislation may apply for an authorization under the Regulation of Investigatory Powers Act 2000 in order to carry out directed surveillance.
- 2.6 The Council will gain evidential documents and information from both internal and external agencies.
- 2.7 The Council will work in partnership with local business and residents to resolve problems through discussions and guidance on good practices.

3.0 Principles of Effective Enforcement

- 3.1 The Council believes in the firm but fair enforcement of the relevant legislation and Council waste policies. This should be informed by five key principles as listed below:
 - 3.1.1 Proportionality: The Council will ensure that any enforcement action taken will be proportionate to any risks to the local environment and human health.
 - 3.1.2 Targeting: The Council will ensure that any enforcement action taken is directed primarily towards those whose activities give rise to the most serious of risks. Enforcement action will be primarily focused on breaches of the law or those directly responsible for the risk and who are best placed to control it.
 - 3.1.3 Consistency: The Council will carry out enforcement duties in a fair, equitable and consistent manner. Householders, businesses and visitors can expect a consistent approach from the Council in the advice provided; the use of enforcement powers; decisions on whether to prosecute; and in the response to incidents and complaints.
 - 3.1.4 Transparency: The Council will help individuals to understand what is expected of them and what they should expect from the Council. It also means making clear to individuals what their responsibilities are and distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory. Individuals also need to know what to expect when an officer calls and what rights of complaint are open to them.

3.1.5 Accountability:- The Council take responsibility for its decisions and will justify them where appropriate. Notices and enforcement documents include information on how to appeal and complain.

4. **Formal Interview - Police and Criminal Evidence Act**

4.1 Suspected offenders where implicating evidence is found will be requested to attend a formal interview.

4.2 The interviews will be carried out in accordance with the Police and Criminal Evidence Act 1984 (PACE) Codes of Practice.

4.3 Members of the public who are requested to attend an interview are strongly advised to present themselves as requested to enable their version of the facts to be considered prior to making an enforcement decision.

4.4 Interviews will be recorded on either tape cassette or DVD (disk) and a master copy of the interview will always be sealed and stored securely.

4.5 Copies of the interview will be made available by written request addressed to:

Waste Management Section
Highways, Waste Management and Property
Council Offices
Llangefni
Anglesey
LL77 7TW

4.6 Master copies will be kept securely unless requested by the court, for seven years. Following which time they will be destroyed.

4.7 Failure to attend an interview, under some circumstances may result in police arrest.

5.0 **Prosecution**

5.1 The Council will use its discretion in deciding whether to bring a prosecution.

5.2 The decision whether to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may go ahead unless the Council finds there is sufficient evidence to provide a realistic prospect of conviction.

While the primary purpose of the Council is to ensure that individuals manage their waste effectively, thus preventing harm, prosecution is an essential part of enforcement. Where in the course of an investigation the Council has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account of the Code for Crown Prosecutors that it is in the public interest to prosecute, then that prosecution will go ahead. Where the circumstances warrant it and the evidence to support a case is available, the Council will prosecute without warning or recourse to alternative sanctions.

5.4 The Council will consider the following factors in deciding whether or not to prosecute (this is not an exhaustive list - each incident will be assessed on a case by case basis):

- the seriousness of the offence;
- if there is sufficient evidence to provide a realistic prospect of conviction;
- if the offence is considered to be the result of a deliberate intent to gain advantage by breaking the law.
- the history of offending;
- the attitude of the offender;
- if the alleged offender refuses to accept advice, warnings, a simple caution or a Fixed Penalty Notice;
- Fixed Penalty Notices are not appropriate with repeat offenders and the Council will seek to prosecute through the court system.
- if the breach occurs through reckless or negligent behavior and, in particular, where this has an adverse affect on others.
- where the prosecution is in the public interest;

5.5.1 Where there is sufficient evidence, the Council will seek to prosecute in any of the following circumstances:

- persistent breaches of statutory requirements in relation to the same undertaking;
- failure to comply with formal remedial requirements. It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply;
- failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information. It is essential that lawful requests for information by the Council or its Officers are complied with and that accurate information is always supplied to enable informed regulation to be exercised;

- obstruction of Council Officers in carrying out their duty. The Council regards the obstruction of, or assaults on, its Officers while lawfully carrying out their duties as a serious matter.

6.0 **Written Warnings and Advice**

6.1 If deemed appropriate, for some waste related issues the offender will be sent a firm but polite letter clearly identifying the contravention. Advice will be given and a deadline to remedy the contravention may also be added. Failure to comply with the advice or the deadline could result in further enforcement action being taken.

7.0 **Simple Cautions**

7.1 The Council will consider a simple caution in the following circumstances:

- if there is sufficient evidence to prove the case;
- if the offender has admitted the offence;
- if the offender has agreed to be cautioned;
- if the offence has not been committed by the offender before.

7.2 If appropriate, the Council will seek to recover costs in addition to the simple caution. The offender will receive a breakdown of the costs charged.

7.3 The Council will also make the offender aware that a simple caution is not a criminal conviction but details may be kept on national convictions databases.

7.4 The Council reserves the right that if new evidence comes to light suggesting that the offence was more serious, the Council may still take legal action against the offender.

7.5 If there are any victims as a result of these offences, the victims might still take civil action against the offender and the Council may give details of the offender to the victim(s) for that purpose.

7.6 If the offender is charged with a further, similar offence and face a court hearing, the Council will provide the court with details of the simple caution. Details of a simple caution are held on record for a period of 5 years.

7.7 Simple caution may affect other aspects of the offender:

- Decision whether to issue certain licenses connected with businesses

- Notifiable occupations may ask for details about the simple caution
- Certain jobs requiring CRB checks
- Some countries will not allow individuals with simple cautions to live there permanently and in some cases might not allow visits to the country

8.0 Fixed Penalty Notices

- 8.1 Where it is in the public interest to do so the Council will endeavor to give the offender an opportunity to avoid prosecution by the payment of a Fixed Penalty Notice if appropriate.
- 8.2 The issuing of Fixed Penalty Notices will be considered by the Council in the following circumstances where the offence has been admitted to by the offender:
- where the offence has not been committed by the offender before;
 - where there is sufficient evidence to prove the case.
 - where it is stipulated in legislation
- 8.3 Following public consultation in March 2017 the Council will implement a 12 month trial with Kingdom Security Ltd. This company will be providing experienced and professional officers to issue Fixed Penalties for littering and dog fouling offences.
- 8.4 Fixed Penalty Notices are not appropriate with repeat offenders and the Council will seek to prosecute through the court system.
- 8.5 Any receipts received in relation to Fixed Penalty Notices will be ring fenced and will be used to promote and improve the local environment.
- 8.6 Any non payment will result in prosecution for the offence.
- 8.7 The Council may provide a 7 day enforcement service which will include weekends and evening work. Enforcement monitoring activities will be based on hotspot areas across the island.
- 8.8 The Council employees may wear body worn video cameras which will record the interaction between officers and the persons they are speaking to. The officers will inform/may caution the person that they are being recorded both visually and aurally.

- 8.9 A Fixed Penalty Notice is a way of discharging liability for the offence. If the fee is not paid the offender should be summoned to court. The evidence required before issuing a Fixed Penalty Notice should be the same level of evidence that would be required to prove the offence at court.
- 8.10 The Council will issue Fixed Penalty Notices as stipulated within relevant legislation. Please note that the table below is not an exhaustive list and is given as guidance only:

9 Serving of Notices

There are several pieces of legislation that allow the Council to serve a notice on the occupier/owner of premises etc. Some examples are shown below. Please note these are provided as guidance only.

OFFENCE

Littering/Dog Fouling - £75

Failure to produce a waste transfer note - £300

10.0 Recovery of Costs

- 10.1 The Council will always seek to recover the costs of all investigations and the costs associated with any court proceedings.
- 10.2 The costs will include officers' time investigating and preparing case files, mileage and any vehicle costs incurred, the collection and disposal costs of removing the waste plus all legal costs that may be incurred. The Council will not inflate costs.