

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 Council's Waste Enforcement Team, in accordance with the Dorset Council's waste 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 serving of statutory notices, issuing fixed penalty notices, 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

Dorset Council's Waste Enforcement Team will routinely consult and work with other agencies including the Police, Environment Agency, DVLA and the Highways Agency.

2. Key pieces of legislation

Dorset Council's Waste Enforcement Team 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 Dorset Council's Waste Enforcement Team to fulfil the duties for which it is responsible.

All enforcement action taken by Dorset Council's Waste Enforcement Team will be regarding 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 Environment, 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, 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 in England 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, without reasonable excuse, 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 level of charge has also been reduced from £100 to a scale of between £60 and £80, with an early payment amount of no less than £40. Unpaid FPNs are recovered summarily 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 Dorset Council's Waste Enforcement Team 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 Dorset Council's Waste Enforcement Team 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 a simple caution or Fixed Penalty Notice.</p> <p>A written warning should contain the following information:</p> <ul style="list-style-type: none">• Date• Time and location of the alleged offence• Personal details of the alleged offender• The nature of the offence and relevant legislation• Be signed and dated upon issuing by an authorised officer.

<p>Simple cautions</p>	<p>The decision whether to issue a simple 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 simple caution and this will be kept on record for 5 years.</p> <p>Dorset Council's Waste Enforcement Team can issue simple cautions (previously known as 'Formal Cautions') as an alternative to prosecution for less serious offences and where a person admits an offence and accepts the simple caution. If a simple caution is offered and declined, prosecution will be considered.</p> <p>Simple 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 (appendix 16) which also includes the signature of the offender agreeing to accept a caution.</p>
<p>Fixed Penalty Notices (FPN)</p>	<p>An FPN will be issued to persons who are alleged to have committed an offence where it is considered to be the most appropriate enforcement action. This gives the alleged offender the opportunity of discharging any liability to conviction for the 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, Dorset Council's Waste Enforcement Team 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 14 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"> • An FPN is issued to an alleged offender is returned unpaid after the 14 day payment period • Three FPNs have been issued to a person • An offence is of a size or nature where an FPN is considered to be insufficient • It is an offence where an FPN cannot be issued. <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, Dorset Council's Waste Enforcement Team. Once signed off, it will be passed to the Dorset 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:

Type of evidence	Activities to be undertaken
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

	<p>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> <p>No juvenile (a person aged under 18) 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 regarding 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 intended 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 informal warnings will be issued. The next course of action will be to consider the use of an FPN, simple caution or prosecution.

Where a simple 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 go to prosecution.

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 18)

Fixed penalties are issued in lieu of prosecution. A valid fixed penalty therefore cannot be issued to a child under 10, as they are below the age of criminal responsibility, however contact should be made with the child's parents or legal guardian to make them aware of the offence.

Fixed penalties may be issued to young people between the ages of 10 to 17. Different considerations apply to juveniles aged 10-15, and those aged 16-17.

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. If the fixed penalty must be issued by post, the alleged offender's parent or legal guardian should be notified at the same time.

For offenders aged 16 or 17 years old, an FPN can be issued. Enforcement Officers should obtain all of the following details, the name, address, age and date of birth of the suspected offender, together with the name and address of his or her parent or legal guardian.

The young offender should be informed that this information will be shared with their local youth offending team.

If it is necessary to interview a young person under 18 under caution, an appropriate adult must be present.

6. Core offences and procedures

Dorset Council's Waste Enforcement Team has the power to take enforcement action against persons that commit a variety of environmental crimes. The following are the core offences covered by these procedures:

- Abandoned vehicles
- Fly tipping
- Dropping litter
- Powers to prevent littering
- Duty of care compliance checks
- Devolved powers from the Driver and Vehicle Licensing Agency (DVLA)

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 or in such circumstances for such a period that it may reasonably be assumed to be abandoned. 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. If the vehicle is on private land, we require a request for removal from the landowner 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 Dorset Council's Waste Enforcement Team 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.
- Any vehicles reported which are on public roads that are untaxed for 2 months and 1 day or more or are SORN Vehicles on the public highway (except in certain exempt circumstances as set out by this policy) will be dealt with under the Dorset Council Untaxed Vehicle Enforcement Policy as at 6.1.1 below.
- Visually inspect the vehicle on site and complete an abandoned vehicle report using a Dorset Council's Waste Enforcement Team 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 Dorset Council's Waste Enforcement Team 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 Dorset Council's Waste Enforcement Team 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 wasteteam@dorsetcouncil.gov.uk and to the contractor, 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 Dorset Council's Waste Enforcement Team 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, Dorset Council's Waste Enforcement Team have the discretion to issue an FPN for abandoning a vehicle under the Refuse Disposal (Amenity) Act 1978.

6.2 Untaxed vehicles

Dorset Council have been granted devolved powers from the Driver and Vehicle Licensing Agency (DVLA) and they are entitled to remove untaxed vehicles from the highway in accordance with the Vehicle Excise and Registration Act 1994 and related regulations.

6.2.1 Applicable legislation and guidance:

- The Removal and Disposal of Vehicle Regulations 1986
- The Excise Duty (Immobilization, Removal and Disposal of Vehicles) Regulations 1997
- DVLA: Code of Practice and Guidance notes for those authorized by DVLA to deal with vehicles that are not taxed 2017
- The Road Traffic Regulation Act 1984

6.2.2 Vehicles that can be clamped and removed:

- Vehicles reported on public roads that are untaxed for 2 months and 1 day or more or are SORN Vehicles on the public highway (except in certain exempt circumstances as set out by this policy).
- GOV.uk should be used to check the tax status of a vehicle.

Example: A vehicle's tax runs out on 1st January 2019 – Enforcement action may be taken on or after the 2nd March 2019.

6.2.3 This policy does not apply to vehicles that are:

- Abandoned unless they meet the untaxed vehicle criteria as at 6.2.2
- Parked in a hospital
- Parked on land associated with a dwelling
- Being used by the emergency services
- Being used under a valid trade license
- Exempt from having to have vehicle tax
- Public service vehicles being used for the carriage of passengers for fare or reward
- Being used by utility companies for legitimate statutory business needs; or,
- Being used by the Post Office in connection with the delivery or collection of postal packets and each side of the vehicle is clearly marked with the words "Post Office" or "Royal Mail"

The burden of proof for all land issues lies with Dorset Council, Waste Enforcement Team.

Procedural guide

6.2.4 Wheelclamping procedures:

Enforcement action must be taken within 30 minutes of checking the tax status of the vehicle. (See 6.2.2 for vehicles that can be removed):

- Place a clamp on the vehicle
- Complete a CLE2/6 form and send it to Workflow Team, D12 Enforcement, Swansea, SA99 1AH. The CLE2/6 must be completed correctly as it may be used as evidence in court.
- Place the yellow untaxed vehicle sticker for clamped vehicles on the driver side windscreen.
- Place the information leaflet (INF32) on the windscreen – contact number must be placed on the back of the leaflet, either written, stamped or stickered.
- Take photographs of the vehicle (front/back/both sides) including wheel arch and wheel on which the clamp is affixed. Photos of any existing damage and location should also be taken.
- Complete a Vehicle Condition Report on site which highlights vehicle details/damage.
- Where a vehicle is clamped, it must be left in situ for a minimum of 24 hours before removal of the vehicle can be requested.
- If the vehicle keeper does not pay the appropriate release fee, it must be impounded within 48 hours.
- If release fee is paid, the clamp must be removed within 2 hours.

6.2.5 Administration:

- Send Vehicle Condition Report and Wheelclamping Case Update Form to:

DVLA: wheelclampingcaseupdates@dvla.gsi.gov.uk

Police: enquiries@dorset.pnn.police.uk

Lifting contractor: Simon@wsrecycling.co.uk

- Forms should be sent same day as enforcement action, or no later than 9.00am next working day.
- Completing a Wheelclamping Case Update Form
- Upon return to the office, complete a Wheelclamping Case Report and email the form to: wheelclampingcaseupdates@dvla.gsi.gov.uk on the same day or by 9.00am the next working day.
- Sections 1-4 of the Wheelclamping Case Update Form MUST be completed for the initial enforcement action.
- After the vehicle is lifted into the pound or a vehicle is released – Section 5 should be completed and re-sent to DVLA via the email mentioned above.

6.2.6 Vehicle at pound procedures:

Once a vehicle is impounded, the recovery agent must physically check the vehicle against the vehicle condition report, which was completed at the roadside. The recovery agent must evaluate all vehicles impounded as follows:

- Use a traceable guide to obtain an initial valuation.
- Make reasonable adjustments to the value where relevant, and record these on the Vehicle Valuation form. (Reasonable adjustments include deduction for damage or condition/no keys/ no documents or known history/ no knowledge or mechanical soundness or an addition for rareness/desirability.

- Send only the final valuation to DVLA on the wheel-clamping case update form.
- The pound must keep the valuation form as DVLA may ask for it.
- The pound are required to conduct a weekly physical pound check listing every DVLA vehicle held. They must email wheelclamping@dvla.gsi.gov.uk by 5pm every Friday.

Until the vehicle is authorised for disposal by DVLA (timeframes specified in 6.2.2), the recovery agent does not have authority to access the vehicle. The keeper is the only person entitled to remove personal items. The keeper will need to provide documentation as required to release the vehicle and sign the Vehicle Content Removal form to confirm what possessions they have taken. The Enforcement Team must deal with all telephone calls from the public in relation to enforcement action e.g., land issues and payment of fees.

6.2.7 Fees:

	Release Fee	Surety Fee
Within 24 hours of offence	£100	£160 for motorcycles, light passenger and light goods vehicles. £330 for buses, recovery, haulage and goods vehicles. £700 for exceptional loads and heavy goods vehicles such as a large lorry or bus.
Release from pound 24 hours or more after offence	£200	
Storage	£21 per complete day at the pound	

- The release fees are statutory fees and are not subject to VAT. Payment to be made by calling the Income Payable Team on 01305 228622.
- Customers who have paid a surety fee can claim it back by producing a valid tax receipt within 15 days of vehicle release. Declaring a vehicle SORN does not entitle the customer to a surety refund.
- Customers will need to bring a copy of the receipt to the pound or provide a transaction reference number if they used the Electronic Vehicle Licensing (EVL) service.
- If the customer used the EVL service, The Enforcement team will need to confirm with DVLA wheel clamping that the transaction was successful on 0300 300 1496 (option 2) prior to authorising a refund. A surety refund is paid back to the payee only.

6.2.7 Release of vehicle:

Procedure for vehicle release from highway - CLE1214:

- Customer will call for the release.
- Confirm that the vehicle has been taxed online or at the Post Office (See 6.2.7) and that they need to produce that evidence before the clamp can be removed. If vehicle not taxed, inform that they need to pay £160 surety on top of the £100 release fee. They have 15 days on release to claim that surety fee back. Add 15 days from the date of the release on section 3, payment, surety fee box
- Before you go to site, fill in Vehicle Release Receipt confirm that the keeper, the payer and collector details are the same and tick appropriate boxes. If they are not you will need to fill in correct details.
- Whilst in the office, confirm with Income that the £100 release fee (and where applicable the surety fee) has been collected and complete payment method section. (Complete boxes on top section with pound details, vehicle details and clamp date).

- When the Enforcement Officer arrives on site, see evidence of vehicle tax status, take evidential photograph and you can use section 2 of the release receipt, Evidence provided, tick valid tax box at release.
- Section 4- customer's name completed along with the date and time of release. Get customer to confirm no damage to vehicle before release (advise photographs taken before and after clamp has been attached). Tick appropriate box either confirm no damage or damage and advise customer that they will need to contact DVLA (if they believe there is damage). Circle the appropriate signatory and that they understand they may be contacted by the DVLA regarding the enforcement action taken.
- Customer to sign and print their name at bottom on both copies.
- Release date and time upper section needs to be completed by us also complete item 4, statement date and time and date in box, where customer signs.
- Send (scan) documents to DVLA and form Annex F, with release date and time filled in.

Procedure for vehicle release from the pound:

- Where a vehicle has been clamped and no owner has been forthcoming within 48 hours.
- Contact W&S to tow the vehicle away to compound, email Vehicle Condition Report to them.
- W&S to take photos of the vehicle before the SOFT lift
- Vehicle Condition Report form to be completed by W&S and emailed to Local Authority.
- W&S to take further photos once the vehicle has arrived at pound and in storage.
- Owner of vehicle contacts Dorset Council. Dorset Council Income team to take payment over the phone (to include £21 for each day in storage and where applicable the surety fee).
- Once payment has been collected, Dorset Council arranges with W&S and customer to meet at the pound.
- Complete the Vehicle Release Receipt which the customer will sign before release

6.2.9 Disposal of vehicle:

W&S is responsible for ensuring that all notifications of scrapping or certificates of destruction are submitted to DVLA within 4 weeks of disposal. It is assumed that all disposals by scrapping comply with current legislation. If the keeper wishes to disclaim all rights of ownership, they must complete and sign a Vehicle Disclaimer Declaration form CLE1206. Completed forms should be emailed to: wheelclamping@dvla.gsi.gov.uk.

If Dorset Council wishes to auction the vehicle a request must be submitted to the DVLA via email: wheelclampingcauseupdates@dvla.gsi.gov.uk within seven days of receiving disposal authorisation. AUSTION REQUEST must be placed in the subject field.

Summary of process for clamping of untaxed or SORN vehicles

6.2.10 Report of untaxed vehicle received:

- The vehicle status is checked to see if it has current tax and if enforcement action can take place.
- Vehicle immobilised (clamped): If enforcement action can take place and the vehicle is untaxed, or is on the public road with a SORN, then Dorset Council may clamp the vehicle. The clamp should be attached within 1 hour of the check undertaken to identify that enforcement action is needed.
- Vehicle logged: Photographs are taken of the untaxed/SORN vehicle and a vehicle inspection report is completed. A completed Wheelclamping Case Update Form for each vehicle enforced must be emailed to wheelclampingcauseupdates@dvla.gsi.gov.uk by 9.00am the next working day.

- Removal: If payment is not made within 24 hours from the clamp being attached then the vehicle may be removed to the designated storage pound.
- DVLA notification: The Council will inform the DVLA of the removal and the DVLA will then write to the registered keeper within 24 hours informing them of the removal.
- Storage: Removed vehicles will be kept in storage with W&S for a minimum of 14 days if they are valued at over £1000 or 7 days if they are valued under £1000.
- Release, or; If the relevant identification, payment and surety are provided the vehicle can be claimed and released.
- Disposal If the vehicle is not claimed within the given timeframes then it may be scrapped or dismantled or auctioned according to its value.

6.2.11 Instant removal of untaxed vehicle

Dorset Council reserves the right to conduct an instant removal of a vehicle which satisfies the criteria outlined in 1.2. Such a decision will be made on a case-by-case basis authorised by the Waste Enforcement Team Leader.

Instant Removal operations may be undertaken in circumstances such as, but not limited to: Problematic repeat offenders and partnership working with agencies such as the police, DVLA and or the Environment Agency. A decision to instantly lift an eligible vehicle does not in any way affect the fees (as specified in 6.2.7), owed to Dorset Council.

6.2.13 Associated forms:

DVLA Devolved Powers - Wheelclamping case update form

- This form to be completed when initial enforcement action is taken, clamped or immediate lift and sent to DVLA the same day or no later than 9am next working day.
- When returning after the initial time has lapsed (48 hrs), complete other sections of the form (No.5) if it is released, lifted, or vehicle not there. This is known as 'Stolen Clamp'.

Vehicle release receipt - CLE1214

- To be completed when releasing the vehicle to the owner.
- Must provide evidence
- Payment details completed as appropriate
- Owner must sign declaration at the bottom of the form
- If released on the side of the road to be completed if cash, cheque given. Payment by card must be acknowledged before clamp removed. (Cash not accepted due to safety of officer(s))

Incident report

- Complete this regarding any incidents that may occur during the stages of clamping etc. Any verbal or physical confrontation, damage to vehicles sustained by owner or any other occurrences.
- Any issues that may occur at the pound, report form to be completed by pound manager.

Weekly pound check

- Completed by pound on a weekly basis regarding vehicles they have stored. Emailed to DVLA and Dorset Council.

Vehicle content removal form

- To be completed by the pound or officer if the owner removes anything from the vehicle (clamped at the roadside or in the pound)
- Clamping officer/ W+S not permitted to remove any goods from the vehicle at any time.

Vehicle condition report - CLE1213

- To be completed at the roadside by clamping officer
- W&S also to complete the same form when impounding which needs to be signed by clamping officer and W&S operative.

CLE2/6LAP

- Completed by clamping officer at the roadside when the vehicle is untaxed, whether within the two months one day period or beyond.
- Must be sent to DVLA in the post.
Workflow Team 012
DVLA
Swansea
SA99 IAH

6.3 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.

Local councils have the discretion to choose whether to investigate such incidents on private land but have no obligation to clear fly-tipped waste. Dorset Council's Waste Enforcement Team will endeavour to investigate fly tipping incidents on private land where resources permit and the severity warrants investigation.

Where there is evidence that a landowner is 'knowingly permitting' unlawful waste activities on their land by failing to address them, Dorset Council's Waste Enforcement Team may serve and enforce a notice under section 59 of the Environment Protection Act 1990 requiring the occupier of the land to remove material fly-tipped and/or reduce the consequences of the deposit of that fly-tipped material, i.e., secure the site. Under section 59, Dorset Council's Waste Enforcement Team may remove fly-tipped material and can seek to recover the necessary costs of doing so from the occupier of the land or any person who deposited, knowingly caused or knowingly permitted the deposit of the controlled waste.

The Clean Neighbourhoods and Environment Act 2005 applies a penalty for a person found guilty of a fly tipping offence to be a fine of up to £50,000- or 12-months imprisonment if convicted in a Magistrates Court. If convicted in a Crown Court, it is an unlimited fine, 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, Dorset Council's Waste Enforcement Team 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

- 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 or 7a as appropriate)

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
- The importance of the caution will be explained and/or that the person being interviewed fully understands the caution.

- Decide on what enforcement action will be taken (i.e. written warning, simple caution, FPN and/or prosecution). If a prosecution is taken through the court, use Dorset Council's Waste Enforcement Team case file template (appendix 8).

6.4 Seizing vehicles for suspected waste crime

Under the Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015, Dorset Council's Waste Enforcement Team can seize a vehicle, trailer or mobile plant and their contents if they think it is being or will be used in the waste crimes

The Dorset Council's Waste Enforcement Team will only seize a vehicle if they suspect it is:

- been used to illegally dump waste (e.g., fly tipping) in a way that could cause pollution to the environment or harm to human health
- driven by someone not registered as a waste carrier
- breaking the rules of duty of care, e.g., it's been used to transfer waste to someone not registered as a waste carrier

The procedure as quoted in the .gov website will be followed (Local authorities: seizing vehicles for suspected waste crime).

6.5 Dropping litter

Pedestrians

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 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 under this legislation, 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, Dorset Council's Waste Enforcement Team can issue an FPN of £100 reduced to £75 if paid within the first 7 days.

Procedural guide – pedestrians

- Dorset Council's Waste Enforcement Team's 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.

Vehicles

Littering from vehicles can be dealt with using the Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018. These regulations allow a civil penalty notice to be issued to the keeper of the vehicle from which litter is thrown. This removes the need to identify precisely who threw the litter before taking enforcement action.

Under these regulations, the penalty can be levied between £50 - £150, with a default level set at £100. The civil penalty charge must be at the same level as the fixed penalty charge for littering. Therefore, Dorset Council’s Waste Enforcement Team will issue a civil penalty charge of £100, reduced to £75 if paid within 14 days, if the civil penalty is not paid within the 28-day payment period the fine level liable will double.

Any income from these civil penalties will only be used for functions relating to litter and refuse, graffiti and flyposting, controlling and enforcing against the unauthorised distribution of free literature.

Procedural guide - vehicles

- Evidence will be gathered to be able to issue a civil penalty notice. This will include:
 - The circumstances alleged to constitute the littering offence, including the registration mark (if known) of the vehicle concerned.
 - The make of vehicle, model and colour
 - The opening from which the litter was thrown (e.g., driver’s side window)
- If there is sufficient evidence and either a S9 witness statement or a report from a council employee, then the DVLA WEE system will be accessed to obtain details of the registered keeper of the vehicle.
- The civil penalty notice (appendix 8a) will be issued to the registered keeper of the vehicle unless it can be proven that the vehicle was ‘kept’ by someone else at that time.
- Dorset Council’s Waste Enforcement Team will take enforcement action on the basis of evidence supplied by members of the public provided that the evidence is sufficient to meet the relevant standards of proof.
- If Dorset Council’s Waste Enforcement Team use evidence from a recording device (such as a CCTV camera or dash-cam in one of our own vehicles) in appeal proceedings, we will produce the recording(s) and a certificate stating the circumstances in which the record was produced must be provided (signed by a person authorised to do so by the litter authority which installed the device).

- When using recording devices, Dorset Council's Waste Enforcement Team will ensure that we are compliant with other relevant legislation, such as the Regulation of Investigatory Powers Act 2000, and the Protection of Freedoms Act 2012. The recording devices must be able to produce a record of the presence of a particular vehicle on the litter authority's land, and the date and time at which the vehicle is present.
- The registered keeper of the vehicle has 28 days in which to either pay the civil penalty notice or submit an appeal (i.e., a written representation) to Dorset Council's Waste Enforcement Team.
- Dorset Council's Waste Enforcement Team will respond to written representations within 56 days of receiving them. If Dorset Council's Waste Enforcement Team rejects the written representation, the registered keeper has a right to appeal to an independent adjudicator within 28 days from the day the notice of rejection is given. The independent adjudicator is the Traffic Penalty Tribunal, and they operate an online appeals system (FOAM).

If it can be proved which specific individual was responsible for littering from a vehicle, then the criminal proceedings will be followed under the Environment Protection Act 1990 (EPA 1990) section 87.

6.5 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.

Procedural guide

- 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.

6.7 Duty of care compliance checks for commercial premises

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, Dorset Council's Waste Enforcement Team can request to see evidence of a waste collection from a licensed waste disposal company (i.e., Waste Transfer Notes).

Regulation 35 of the Waste (England and Wales) Regulations 2011 imposes requirements in relation to the retention and furnishing of the waste transfer notes. Regulation 35(6) states that the transferor and the transferee must keep the written information, or a copy of it, for at least 2 years and produce it to an officer of the appropriate body or of a waste collection authority on demand within 7 days.

If a person is not able to produce the relevant waste disposal documents, Dorset Council's Waste Enforcement Team will allow that person 7 days within which to produce the documentation. Failure to produce any documentation after 7 days can result in a fixed penalty fine of £300 (reduced to £180 for early payment) or prosecution where the maximum fine is unlimited. The maximum fine for illegally dumping waste is unlimited and/or a term of imprisonment not exceeding five years.

Procedural guide for Duty of Care visits and complaints

Stage one:

The first visit should be one of education rather than straight to enforcement. When visiting an area (or conducting a 'sweep' of an area) the enforcement officers will not be specifically asking at that point for a copy of the WTN. They will explain to businesses what their responsibilities are and what arrangements they should have in place for waste collection. They will also explain that we may be back to check this information and ask for copies of WTNs. This gives the business the opportunity to do the right thing before we officially ask for a copy of the WTN.

The duty of care leaflet and letter one (education and information) is given to the business.

Stage two:

If a complaint/report of suspected non-compliance is reported to enforcement, then the process may start at stage two.

Further visits will be conducted if we suspect that a business or businesses are not complying with the legislation, and at that point we will ask to see the WTN for their current waste collections. This will then comply with the following advice from KBT 'the authority should only visit when they have sufficient information to suggest that an offence may have been committed'.

Letter two (request to see waste transfer notes within 14 days) will be given to the business at the visit. If it is a response to a complaint and this is the first contact the enforcement team have had with the business, then the duty of care leaflet will be given as well.

Stage three:

When requesting WTNs for businesses, enforcement officers will request to see copies of those relating to current waste arrangements that are in place and we will give 14 days to produce this evidence – we will not ask to see a full 2-year historic information. If a business does not have a waste collection arrangement in place but then arranges one within the 14 days, we will not take the matter any further.

Stage four:

If after 14 days, the business does not possess the relevant duty of care paperwork and the business has not organised a waste collection arrangement, an FPN will be issued. The FPN will be for not providing information on waste that has already been taken away i.e. not providing any information on historic WTNs. Non-payment of this FPN will lead to court proceedings.

6.8 Duty of care compliance checks for householders

Section 34 (2A) 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, Dorset Council's Waste Enforcement Team 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.

Section 5 of the Control of Pollution Act 1989 states that a waste carriers' licence is required if a person:

- transport waste
- buy, sell or dispose of waste
- arrange for someone else to buy, sell or dispose of waste

Failure to produce documentation after 7 days can result in a fixed penalty fine of £200 (reduced to £120 for early payment) or prosecution where the maximum fine is unlimited.

An FPN will be given when an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990 in England. For example:

- where fly-tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person
- where an unauthorized carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property
- where an individual is found to have transferred their household waste to an unauthorized person at a site that does not have a permit or exemption

If fly-tipped waste is traced to an individual and they are unable to identify who took their waste, or the carrier they identify is unauthorized, then it is reasonable to believe their duty of care was not met.

7 Record Keeping

Information regarding enforcement cases will kept in secure electronic folders and any hard copies will be kept in a locked cabinet in a secure room. Cases that result in an enforcement action will be

kept for a maximum of 5 years. Where an investigation does not result in an enforcement action, the record will be for 3 years.

Appendices

Appendix 1	S9 Witness statement form Appendix 1 - S9 Witness Statement.docx
Appendix 2	PACE interview procedure Appendix 2 - PACE
Appendix 3	Dorset Council's Waste Enforcement Team abandoned vehicle report sheet Appendix 3 - Dorset Council Waste Services ABV Sheet.pdf
Appendix 4	Dorset Council's Waste Enforcement Team abandoned vehicle letter to registered keeper Appendix 4 - Dorset Council Waste Services ABV Template Letter.doc
Appendix 5	Abandoned vehicle spreadsheet W:\Operations\Enforcement Team\ABV\Spreadsheets\Abandoned Vehicle 2020 - 21.xlsx
Appendix 6	ABV Form A Appendix 6 - ABV Blank Form A .xls
Appendix 7	Fly tipping warning letter Appendix 7 - Fly tip template letter.doc
Appendix 7a	S108 invitation to interview Appendix 7a - S108 Invitation To Interview.doc

Appendix 8	Dorset Council's Waste Enforcement Team case file template Appendix 8 - Dorset Council Waste Services Case file template.docx
Appendix 8a	Civil penalty notice Appendix 8a - Civil penalty notice.docx
Appendix 9	Community Protection Notice Appendix 9 - Dorset Council Waste Services CPN WARNING.docx
Appendix 10	Community Protection Warning Appendix 10 - Dorset Council Waste Services CPN NOTICE.docx