

**WASTE AND RECYCLING SERVICES
ENFORCEMENT POLICY**



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AMENDMENT RECORD

ISSUE	DATE	APPROVED	SUMMARY OF CHANGE
1	Nov 2011	HoLES & Portfolio Holder	First document
2	September 2015	HoHTR & Portfolio Holder	Second document – general updates

RELEVANT LEGISLATION

Environmental Protection Act 1990
Police and Criminal Evidence Act 1984 (and Codes of Practice),
Criminal Procedure and Investigation Act 1996 (and Codes of Practice)
Legislative and Regulatory Reform Act 2006
Regulatory, Enforcement and Sanctions Act 2008
Regulation of Investigatory Powers Act 2000 (RIPA)
Human Rights Act 1998 (HRA)
Clean Neighbourhoods and Environment Act 1990
Proceeds of Crime Act 2002
Environment (Wales) Bill

INTRODUCTION

This is the Enforcement and Prosecution policy of Powys County Council's Waste and Recycling Service which includes all waste related activities. It provides information on:

- The purpose of the enforcement policy
- Our principles of inspection and enforcement
- Our compliance with the 'home authority' and 'primary authority' principle
- Our enforcement actions
- What you can expect from the council
- Our accessibility and advice details
- Our commitment to you
- Complaints, compliments and comments about the Service

We are committed to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006, the Enforcement Concordat and the Regulators' Compliance Code, along with the Regulatory, Enforcement and Sanctions Act 2008.

Within the context of this Policy, the term '**enforcement**' includes any action taken by officers aimed at ensuring that businesses or individuals comply with the law. These actions may range from offering advice, information and issuing public warnings, to cautioning and instituting legal proceedings/prosecutions.

Compliance with the Policy will ensure that we will strive to be fair, impartial, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

1. The Purpose of our Enforcement Policy

Our functions within the Waste and Recycling Service are to carry out our duties in various ways, including: inspection, investigation and prosecution, but also by informing, advising and educating businesses, charities, organisations and the public.

The purpose of this enforcement policy is to provide a framework to make sure that we work in an equitable, practical and consistent manner.

We recognise that prevention is better than cure and that most businesses, charities, organisations and members of the public want to comply with the law. We will endeavour to help these groups and individuals to meet their legal obligations without unnecessary expense or burden. When a group or individual does break the law, we will consider all the surrounding circumstances before deciding whether formal action is appropriate.

A prosecution will only be brought if it is in the public interest to do so.

2. Our Principles of Inspection & Enforcement

Targeting

We aim to prioritise and direct our regulatory effort effectively using intelligence and risk assessment schemes.

We will give due consideration to the combined effect of the potential impact and likelihood of non-compliance. This approach will enable us to focus our resources on the areas that need them most and to ensure that persistent offenders are identified quickly.

Proportionality

We will ensure that enforcement action is proportionate to the risks involved, and that the sanctions applied are meaningful.

Accountability

We will be accountable for the efficiency and effectiveness of our activities as outlined in the Regulators Compliance Code.

Fairness and Consistency

We will treat all individuals, businesses and stakeholders fairly.

We will ensure that our enforcement practices are consistent – this means that we will adopt a similar approach in similar circumstances to achieve similar ends though subsequent legislative changes may require us to adopt a different stance for future enforcement action.

We will operate robust prosecution procedures through a prosecution manual including an authorisation process involving senior managers for issuing surveillance as an operational tool only in cases of real need.

We will have a clear audit trail for all our decisions on prosecutions undertaken, including engagement with the prosecutor.

We will endeavour to ensure that enforcement decisions in relation to Local Authority run establishments are free from any conflict of interest. (Any serious breaches shall be brought to the attention of the Chief Executive without delay)

Openness and Transparency

We are committed to the open provision of information and advice in a format that is accessible, easily understood and implemented.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law and those which we recommend as best practice but which are not compulsory.

Where groups or individuals have acted against the law we may use publicity in order to raise awareness, to increase compliance and to improve monitoring of working practises.

We may also publish the results of court actions and certain undertakings.

Supporting the local economy

We recognise that a key element of our activity will be to facilitate and encourage economic progress against a background of protection. Wherever possible, we will work in partnership with small businesses and with voluntary/community organisations, to assist them with meeting their legal obligations without unnecessary expense or burdens being put upon them.

Reducing enforcement burdens

If there is a shared enforcement role with other agencies, e.g. Natural Resources Wales or the Police we will co-ordinate our actions with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

3. Compliance with Home Authority and Primary Authority Principle

The Home Authority Principle enables Powys based businesses, where they trade or provide services that impact beyond Powys, to get advice and support from us on matters such as legal requirements, changes to law and so forth. This usually takes the form of a semi-formal relationship.

In Powys we support the Home Authority Principle, which has been developed to promote good enforcement practise and to reduce burdens on business. The main objective is to create a partnership, which will provide positive benefits to both parties.

We will therefore:

- Provide businesses for whom we are the 'home authority' with appropriate guidance and advice
- Maintain records of our contacts with the 'home authority' businesses to reduce the amount of information they have to provide to us
- Support efficient liaison between local authorities
- Provide a system for the resolution of problems and disputes

In April 2009, the Regulatory and Enforcement Sanctions Act 2008 introduced the Primary Authority Principle – in contrast to the Home Authority Principle, this is a formal relationship.

A Primary Authority is a local authority registered by the Local Better Regulation Office (LBRO) as having responsibility for giving advice and guidance to a particular business or organisation that is subject to regulation by more than one authority. We will give due consideration to any business, based in Powys, that wishes to enter into such an arrangement.

4. Our Enforcement Actions

In deciding what enforcement action to take against an offender we will have regard to the following aims:

- To change the behaviour of the offender
- To eliminate any financial gain or benefit from the non compliance
- To be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned

- For the action to be proportionate to the nature of the offence and the harm/potential harm caused or anticipated to be caused
- To restore the harm caused by regulatory non compliance, where appropriate
- To deter future non compliance

The range of enforcement options available includes the following:

No action

In certain circumstances, e.g. where the risk to, or detrimental impact on the community or environment is small, contravention of the law may not warrant any action though offenders will be provided with sufficient information in identifying their wrong-doing and actions to undertake to avoid further offending.

Indirect action

This may include referral to another authority or agency for information or action.

Written warning

If deemed appropriate, for some waste related issues the offender will be sent a firm but polite letter clearly identifying the contravention. This may apply where an offence has been committed but is not thought appropriate to take any further action, in which case the suggested corrective action and a timescale will be given together with access to clear guidance notes. Failure to comply with the advice or the deadline could result in further enforcement action being taken.

Statutory Notice

These are used as appropriate in accordance with relevant legislation (they usually require offenders to take specific action or to cease certain activities) e.g. suspension, seizure, forfeiture or voluntary surrender of documents.

Fixed Penalty Notices

Certain offences are subject to Fixed Penalty Notices (FPN's) - they are recognised as a low-level enforcement tool. Where legislation permits an offence to be dealt with by way of a FPN, we may choose to administer a FPN on a first occasion, without issuing a warning. This avoids the requirement of an offender being brought before the Court.

The issuing of Fixed Penalty Notices will be considered by the council in the following circumstances:

- where the offence has been witnessed by an officer of the council, and
- where there is sufficient evidence to prove the case should the matter proceed to the Courts

Caution in accordance with the current Home Office circular

This is used to deal quickly and simply with less serious offences and to avoid appearances in criminal courts.

A formal or simple caution may be given to an offender who has admitted the offending. For Waste and Recycling Services a record of the caution will be sent to other bodies that are required to be notified.

The council will consider a formal 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.

Prosecution

A prosecution will only follow when the threshold of the 'Evidential Test' and the 'Public Interest Test' have both been crossed. We will have regard to the relevant parts of the Crown Prosecution Service Code of Practice.

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
- Failure to pay a Fixed Penalty Notice

Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation (and relevant Codes of Practice), including the requirements of:

- Police and Criminal Evidence Act 1984 (PACE)
- Criminal Procedure and Investigations Act 1996 (CPIA)
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Human Rights Act 1998 (HRA)

As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible,

- Be requested to attend a formal interview in accordance with PACE
- Have the opportunity to give an explanation or make any additional comments about the alleged breach
- Be entitled to be accompanied by their legal representative

Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, a report compiled by the investigating officer for review by a manager and legal services.

We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, including potential harm and loss and its significance in making the decision.

Proceeds of Crime Actions

Their purpose is to recover the financial benefit that the offender has obtained from criminal conduct.

Applications may be made under the Proceeds of Crime Act 2002 for confiscation of assets in serious cases. Proceedings are conducted according to the civil standard of proof.

Costs

The council should always seek to recover the costs of investigation and court proceedings as part of any prosecution.

All investigations must be conducted in accordance with the requirements of the Police and Criminal Evidence Act 1984 (and Codes of Practice), the Criminal Procedure and Investigation Act 1996 (and Codes of Practice) and other relevant enactments related to the conduct of criminal investigations.

5. What You Can Expect of Us

We will draw up clear service standards for our stakeholders, including customer care, and publicise our performance to those standards.

You are entitled to expect our staff to:

- be courteous and helpful
- identify themselves by name and produce identification if requested
- provide a contact point for any further dealings
- give clear and simple advice
- confirm advice in writing on request, explaining what particular action is required and over a realistic time-scale
- clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- minimise the cost of compliance by requiring proportionate action
- give you reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost)
- notify you if the matter is to be reported for legal proceedings
- advise you of the procedure for making a complaint or representations in cases of dispute
- maintain confidentiality (subject to exchange of information with our enforcement partners through statutory information gateways)

Officers Powers

Our officers have a wide variety of powers which include, but are not limited to, the power to enter premises and inspect goods, requiring the production of documents or records, and to seize and detain such goods and documents that they believe may be required as evidence.

Officers may also take with them such other persons and equipment as may be necessary when exercising powers of entry.

In certain cases they may exercise an entry warrant issued by Magistrates' in order to gain access to premises.

If individuals obstruct officers, they may be liable to prosecution.

Legal Action

Before any legal action is taken there will be an opportunity to discuss the case, although if we are considering a prosecution it will be by way of a formal interview.

Where a right of appeal against a formal action exists other than through the courts, advice on the appeal mechanism will be clearly set out in writing at the time the action was taken.

6. Advice and Accessibility

We will constantly look to improve our service delivery through examination of our delivery processes including contact points.

All details of our offices and service contact points, in all sections of Waste and Recycling Services are available by contacting the Powys Access to Services number 0845 602 7035 or via the details below.

Website: <http://www.powys.gov.uk/en/bins-rubbish-recycling>

Email: waste.awareness@powys.gov.uk

In Writing: Waste and Recycling Services
County Hall
Llandrindod Wells
Powys
LD1 5LG

The Head of Service is: Nigel Brinn, who is available at:
nigel.brinn@powys.gov.uk

Our Commitment to You

This policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is given to:

- right to a fair trial
- right to respect for private and family life, home and correspondence

We are committed to providing open, equal and timely access to our services. If you are unhappy with the service you have received, or we have failed to live up to our promises, managers are always willing to discuss with you the cause of your dissatisfaction, and will endeavour to find a solution.

If you wish to make a complaint or send us a compliment or comment about our service:

- please contact the Head of Service at the address above, or
- you can use Powys County Council's complaints procedure which has a three step guide to disputes, or
- you can talk directly to your Councillor.

If you are still not satisfied, and feel you have been caused injustice, we will tell you how to complain to the Local Government Ombudsman. The relevant ombudsman for Wales is available at <http://www.ombudsman-wales.org.uk>. Decisions by the Court Service are not subject to referral to the Ombudsman.

We will continually review our position regarding the use of enforcement options and additional sanctions under the Regulatory Enforcement and Sanctions Act 2008.

Furthermore, as we are continually seeking to improve our standards, this policy is subject to regular review.



FLY TIPPING AWARENESS AND ENFORCEMENT PROCEDURE

Introduction

This is the Fly Tipping Awareness and Enforcement Procedure for Powys County Council's Waste and Recycling Service.

Fly-tipping is the illegal dumping of waste and can vary in scale from a single bin bag of rubbish to large quantities of waste dumped from vehicles. The prime reason for this is to avoid paying for the legitimate disposal of waste with the cost of cleaning it up falling on taxpayers and private landowners.

Fly-tipped waste can be found anywhere, such as pavements, car parks, next to waste bins or lay-bys as well as private land.

Every household, business, organisation and charity must, by law, make sure their waste is disposed of correctly.

The illegal dumping of waste can be prompted by an attempt to avoid the usual controls and charges that are associated with the handling and disposal of waste.

There are large environmental, social and financial impacts associated with fly-tipping and the illegal dumping of waste.

The penalties for fly-tipping were increased through the Clean Neighbourhoods and Environment Act 2006. It is now a criminal offence punishable by a fine of up to £50,000 or 12 months imprisonment if convicted in a Magistrates' Court. The offence can attract an unlimited fine and up to 5 years imprisonment if convicted in a Crown Court.

The purpose of this Awareness and Enforcement Document

The purpose of this education and enforcement procedure is to ensure that the waste and recycling services department within Powys County Council work in a reasonable, practical and consistent manner.

Adequate service provision is a key factor in the prevention of fly tipping. This is applicable to waste collection services, and to HWRC/Community Recycling Site facilities. These should be suitable for local requirements in terms of capacity and accessibility and be based entirely on local needs. Services should be well-publicised to ensure they are utilised. There will always be those who fail to use the facilities available and in this case well publicised prosecution may be the only deterrent.

A prosecution will only be brought if it is in the public interest to do so, and is done so within the Waste and Recycling Services Enforcement Policy guidelines.

Approach

Powys County Council has legislative powers under section 33 of the Environmental Protection Act 1990 to take enforcement action against individuals who are found guilty of fly tipping.

Due to the severity of fly tipping and the cost implications involved with collection and clean-up Powys County Council will, depending on the severity of the offence, issue the perpetrator with a notice to pay the clean-up costs or will be given a caution or prosecution.

To date there is no FPN for fly tipping, however a FPN can be issued under EPA 1990 section 88, Fixed penalty notices for leaving litter, depending on the circumstances.

Relevant Legislation

Environmental Protection Act 1990

Police and Criminal Evidence Act 1984 (and Codes of Practice),

Criminal Procedure and Investigation Act 1996 (and Codes of Practice)

Regulatory Reform Act 2006

Regulatory, Enforcement and Sanctions Act 2008

Regulation of Investigatory Powers Act 2000 (RIPA)

Human Rights Act 1998 (HRA)

Clean Neighbourhoods and Environment Act 1990

Proceeds of Crime Act 2002

Environment (Wales) Bill

Awareness and Enforcement Process

FLY TIPPING REPORT RECEIVED



WASTE & RECYCLING SUPERVISOR FOR AREA TO LOG REPORT AND ARRANGE FOR STREET OPERATIVE TO VISIT SITE OF OFFENCE - PHOTOGRAPH TAKEN FOR EVIDENCE OF OFFENDING REFUSE



STREET SCENE OPERATIVE TO SEARCH BAGS FOR EVIDENCE TO IDENTIFY OFFENDER



IDENTITY OF POTENTIAL OFFENDER FOUND?

YES



NO



CLEAR SITE AND UPDATE

EVIDENCE BAGGED AND FORWARDED TO WASTE AWARENESS AND ENFORCEMENT ADVISOR



INPUT INFORMATION ONTO DATABASE ALONG WITH PHOTOGRAPH. EVIDENCE KEPT IN LOCKED FILING CABINET



DECISION TO BE MADE ON NECESSARY ENFORCEMENT DEPENDING ON SEVERITY OF INCIDENT AND NUMBER OF PREVIOUS OFFENCES

CLEAN UP COSTS ISSUED

PAID?

YES

NO

LOG ON DATABASE AND CLOSE FILE

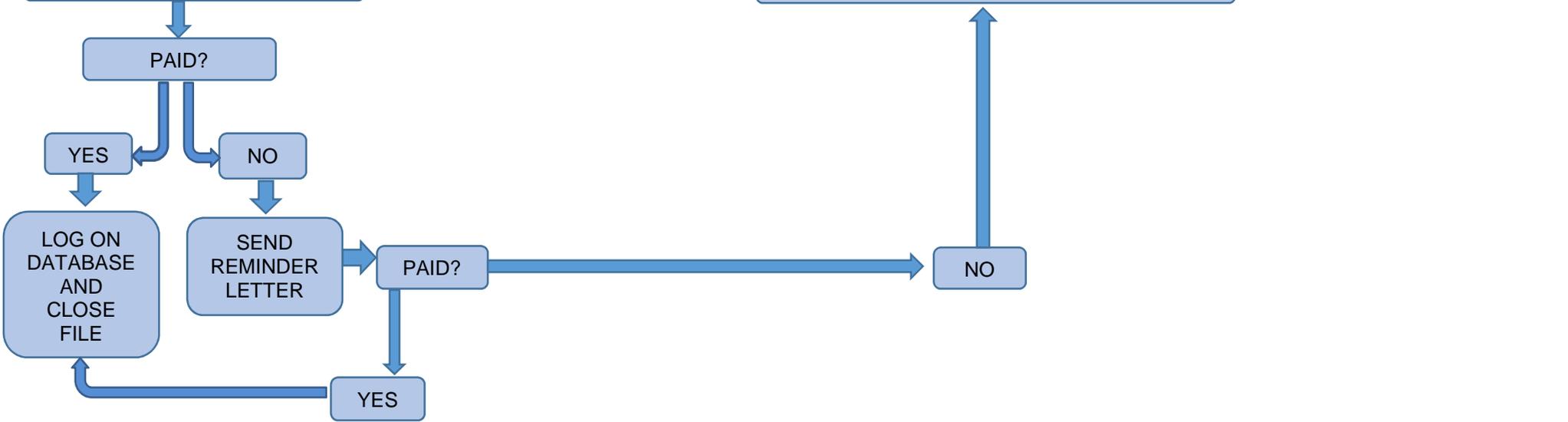
SEND REMINDER LETTER

PAID?

YES

PROSECUTION OR CAUTION

NO





DOMESTIC SIDE WASTE AWARENESS AND ENFORCEMENT PROCEDURE

Introduction

This is the Domestic Side Waste Awareness and Enforcement Procedure of Powys County Councils' Waste and Recycling Service which will be used together with the current Waste and Recycling Services Enforcement Policy.

Under the collection system, households are issued with either a wheeled bin or a limited number of purple sacks equivalent to a 180 litre wheeled bin collected at a specified interval. The principle of limiting the amount of residual waste that can be put for collection is to encourage householders to use the recycling service and encourage behavioural change. With only limited exceptions (which are catered for with other policies) there should be enough capacity within the 180 litre bin providing all recyclables are removed from the residual containers.

If the stringent Welsh Government targets are to be achieved and fines avoided, it is essential that only residual waste contained within the identified receptacle is collected. However it is recognised that this may present problems in itself in terms of waste not being collected and remaining on the streets. It is therefore imperative that we work with the public to ensure that they are fully aware of their responsibility for the waste that they produce.

The Welsh Government's 'Collections Blueprint', which is their preferred method of collection, is being followed by Powys County Council and specifies 'no side waste collected for residual waste', this includes any bags left next to the bin or where the bin lid cannot be closed. In addition to the above the Blueprint also cites as benefits the savings on collection and landfill costs.

The purpose of this Awareness and Enforcement Procedure

The purpose of this awareness and enforcement procedure is to ensure that the Waste and Recycling Service within Powys County Council work in a reasonable, practical and consistent manner.

The council recognises that prevention is better than cure and will strive to ensure that awareness is used rather than enforcement as much as possible. With this in mind, a two stage awareness process will be used before any enforcement is considered.

A prosecution will only be brought if it is in the public interest to do so, and is done so within the Waste and Recycling Services Enforcement Policy guidelines.

Approach

The council does have legislative powers under Section 46 of the Environmental Protection Act 1990 to take enforcement action against householders who do not use the correct receptacles for their residual waste. Whilst this can be an effective method of achieving compliance with the council's requirements in order to reach the statutory WG targets, an approach based more on education and encouragement is most likely to obtain buy in from the public and stakeholders.

With this in mind an approach where householders are given effectively two chances in any twelve month period before any actual enforcement is carried out is in place. At each of these stages the opportunity to seek advice and assistance from council officers is promoted and encouraged. In the majority of incidents this will solve the problem. There will however be a minority of cases where further enforcement is necessary and it is important that the correct steps are followed in each and every case should further action be required. It is important that the council is willing and able to progress to enforcement should the need arise to ensure that the process is taken seriously by the public.

Relevant Legislation

Environmental Protection Act 1990

Police and Criminal Evidence Act 1984 (and Codes of Practice),

Criminal Procedure and Investigation Act 1996 (and Codes of Practice)

Legislative and Regulatory Reform Act 2006

Regulatory, Enforcement and Sanctions Act 2008

Regulation of Investigatory Powers Act 2000 (RIPA)

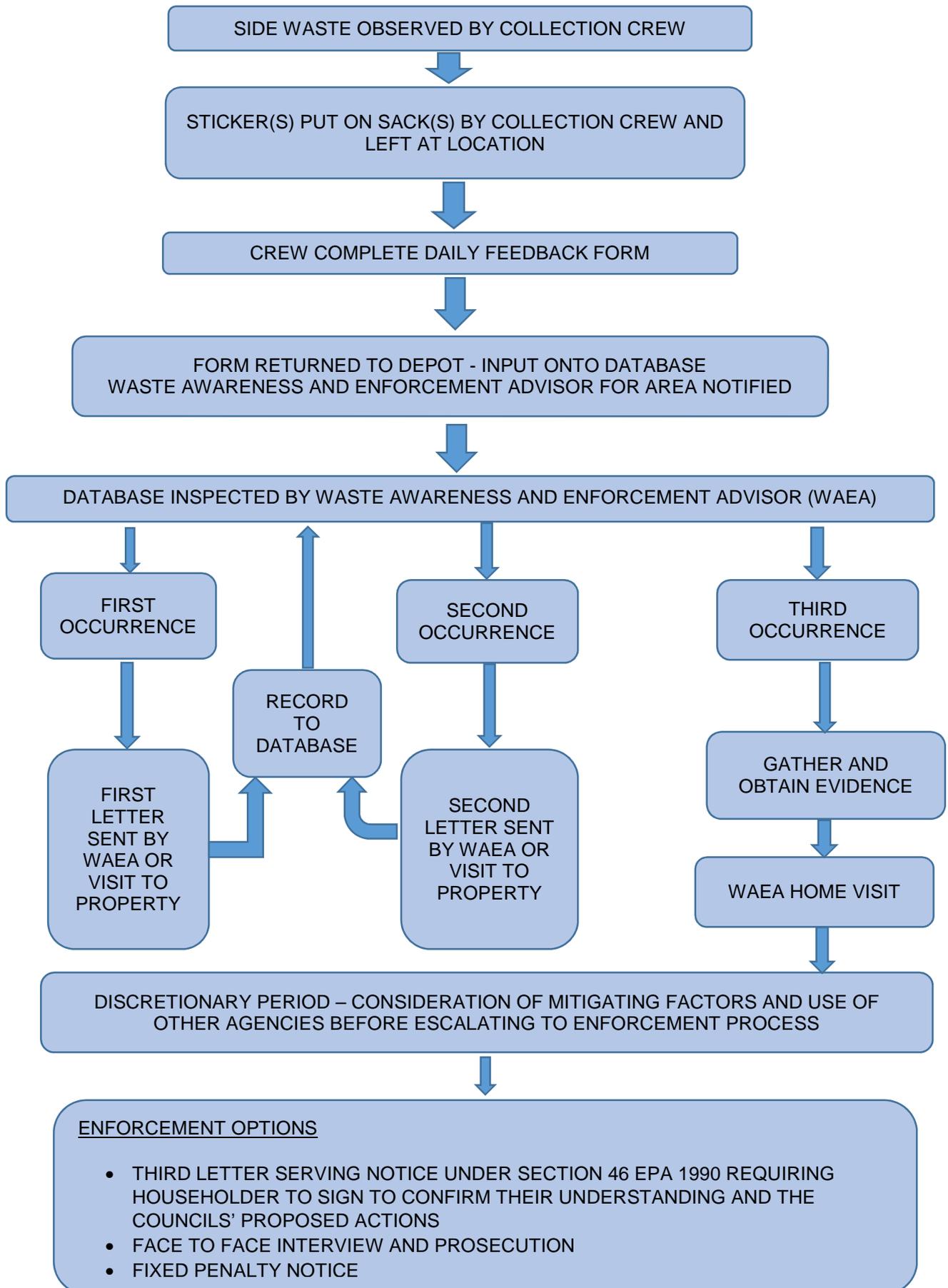
Human Rights Act 1998 (HRA)

Clean Neighbourhoods and Environment Act 1990

Proceeds of Crime Act 2002

Environment (Wales) Bill

Awareness and Enforcement Process





AWARENESS AND ENFORCEMENT AT BUSINESS PREMISES PROCEDURES

Introduction

This is the Awareness and Enforcement at Business Premises Procedures for Powys County Council's Waste and Recycling Services, which will be used together with the current Waste and Recycling Services Enforcement Policy.

Every household, business, organisation and charity must, by law, make sure their waste is disposed of correctly.

It is against the law to get rid of business waste by pretending it is household waste – by using household waste or recycling collections, using the Household Waste and Recycling Centres (HWRC) or Community Recycling Sites. If businesses are depositing waste at the HWRC they will need a waste carrier's licence. Businesses can deposit of recyclable materials at Bring Sites and HWRC Sites as long as they hold a correct and valid Trade Recycling Permit.

Duty of care for waste lasts from the moment it is produced until it is given to a licensed waste business to deal with.

The waste producer is still responsible to check how that business deals with the waste if they suspect it's not following the duty of care.

If waste is transported as part of a business, the business will need to be registered as a waste carrier.

The purpose of this Awareness and Enforcement Document

All businesses must have in place a valid and current duty of care transfer note with a licensed waste collector to deposit of their residual waste and recycling. Waste that is taken to a licensed waste site must be transported to and disposed of either by the producer themselves or have it collected by:

- the local council
- a licensed waste collection company

Regulations governing waste collection and disposal are primarily aimed at ensuring all waste is controlled following the stage at which it is discarded.

The purpose of this Awareness and Enforcement Document is to ensure that all businesses have the correct procedures in place for their waste and recycling.

Approach

The councils Trade Waste and Recycling Team have the power to write to or visit business premises on an ad hoc basis to request their paper work to ensure that a current and valid contract is in place between the business and the waste collector they choose.

The actions proposed in this document are centred on the powers that the council can use under the EPA1990 Section 34, with additional powers for FPNs from the Clean Neighbourhoods and Environment Act 1990.

If a business does not hold appropriate paperwork to demonstrate the Duty Of Care it is legally obliged to keep regarding its waste, the penalty is a fine of £5000 in a Magistrates Court – a business can discharge its liability for conviction as above by paying a Fixed Penalty Notice (FPN) of £300.

Relevant Legislation

Environmental Protection Act 1990

Police and Criminal Evidence Act 1984 (and Codes of Practice),

Criminal Procedure and Investigation Act 1996 (and Codes of Practice)

Legislative and Regulatory Reform Act 2006

Regulatory, Enforcement and Sanctions Act 2008

Regulation of Investigatory Powers Act 2000 (RIPA)

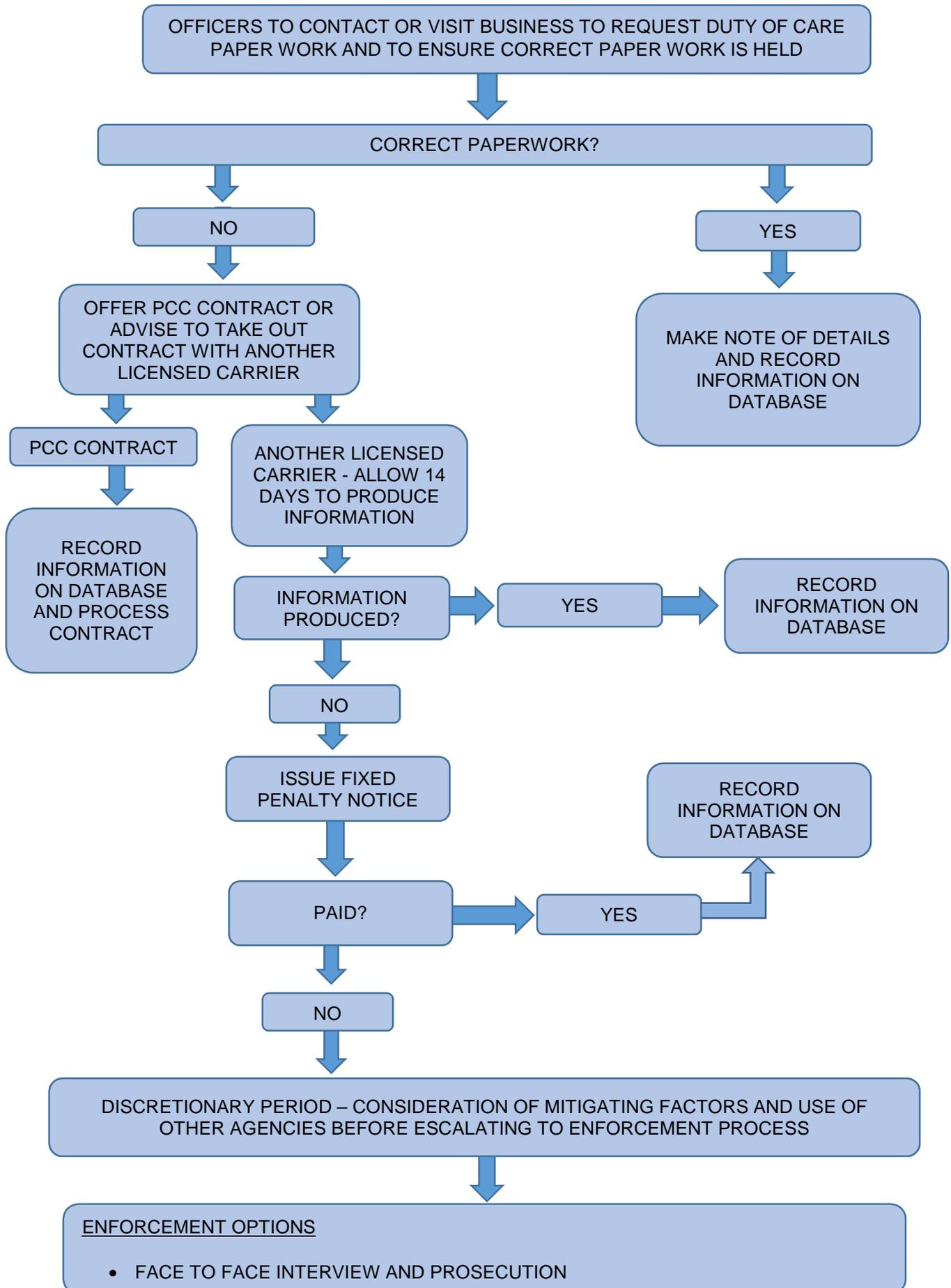
Human Rights Act 1998 (HRA)

Clean Neighbourhoods and Environment Act 1990

Proceeds of Crime Act 2002

Environment (Wales) Bill

Awareness and Enforcement Process





AWARENESS AND ENFORCEMENT AT COMMUNITY RECYCLING SITES PROCEDURES

Introduction

This is the Awareness and Enforcement at Community Recycling Site Procedures for Powys County Council's Waste and Recycling Services, which will be used together with the current Waste and Recycling Services Enforcement Policy.

Every household, business, organisation and charity must, by law, make sure their waste and recycling is disposed of correctly.

It is against the law to get rid of business waste by pretending it is household waste – by using household waste or recycling collections, or using the Community Recycling Sites.

Businesses and organisations can deposit recyclable materials at Community Recycling Sites and as long as they hold a correct and valid Trade Recycling Permit and do so in accordance with the terms and conditions of the permit.

The purpose of this Awareness and Enforcement Document

Waste that is taken to a licensed waste site must be transported to and disposed of either by the producer themselves or have it collected by:

- the local council
- a licensed waste collection company

Regulations governing waste collection and disposal are primarily aimed at ensuring all waste is controlled following the stage at which it is discarded.

The purpose of this Awareness and Enforcement Document is to ensure that all businesses and organisations who take business recycling to the Community Recycling Sites do so in accordance with a trade recycling permit purchased from Powys County Council.

Approach

Trade recycling permits are available to purchase from the council - These entitle traders to take recyclable materials to any of the council's Community Recycling sites. Permits are valid for a year from the date of issue.

The actions proposed in this document are centred on the powers that the council can use under the EPA1990 Section 34, with additional powers for FPNs from the Clean Neighbourhoods and Environment Act 1990.

If a business does not hold appropriate paperwork to demonstrate they have a current and valid permit, or are breaking the terms and conditions, the penalty is a fine in a Magistrates Court – a business can discharge its liability for conviction as above by paying a Fixed Penalty Notice (FPN.)

Relevant Legislation

Environmental Protection Act 1990

Police and Criminal Evidence Act 1984 (and Codes of Practice),

Criminal Procedure and Investigation Act 1996 (and Codes of Practice)

Legislative and Regulatory Reform Act 2006

Regulatory, Enforcement and Sanctions Act 2008

Regulation of Investigatory Powers Act 2000 (RIPA)

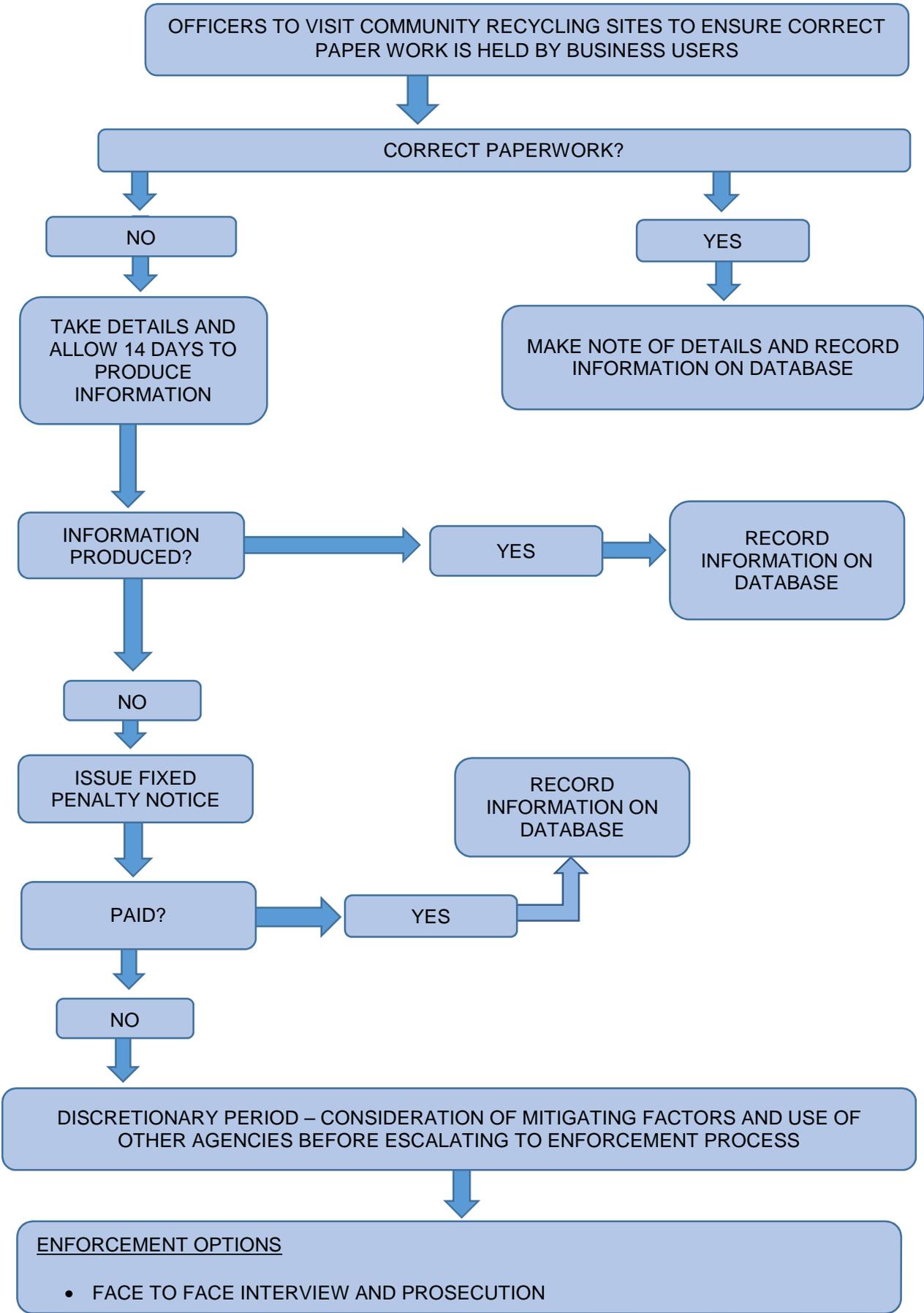
Human Rights Act 1998 (HRA)

Clean Neighbourhoods and Environment Act 1990

Proceeds of Crime Act 2002

Environment (Wales) Bill

Awareness and Enforcement Process





AWARENESS AND ENFORCEMENT AT HOUSEHOLD WASTE AND RECYCLING CENTRES PROCEDURES

Introduction

This is the Awareness and Enforcement at Household Waste and Recycling Centre Procedures for Powys County Council's Waste and Recycling Services, which will be used together with the current Waste and Recycling Services Enforcement Policy.

Every household, business, organisation and charity must, by law, make sure their waste and recycling is disposed of correctly.

It is against the law to get rid of business waste by pretending it is household waste – by using household waste or recycling collections or using the Household Waste and Recycling Centres (HWRC). If businesses are depositing recycling at a HWRC they will need a Trade Recycling Permit from the council.

If waste producers pass their waste on to someone else, they must check that the company are authorised to take it, a waste transfer note must also be completed and copy given to the producer.

Registration as a waste carrier, broker or dealer does not just apply to businesses that transport waste produced by other people, for example skip operators or waste disposal companies. Recent changes to regulations mean that anyone who transports waste whilst going about their normal business activities will need to be registered as a waste carrier by January 2014. All companies licenced to carry or accept waste are listed on the Environment Agency website.

A producer's duty of care for waste lasts from the moment it is produced until it is given to a licensed waste business to deal with. The waste producer is still responsible to check how that business deals with the waste if they suspect it's not following the duty of care.

If waste is transported as part of a business, the business will need to be registered as a waste carrier.

Businesses and organisations can deposit recyclable materials at HWRC Sites as long as they hold a correct and valid Trade Recycling Permit.

The purpose of this Awareness and Enforcement Document

Waste that is taken to a licensed waste site must be transported either by the producer themselves or have it collected by:

- the local council
- a licensed waste collection company

Regulations governing waste collection and disposal are primarily aimed at ensuring all waste is controlled following the stage at which it is discarded.

The purpose of this Awareness and Enforcement Document is to ensure that all waste carriers are registered and hold a valid waste carriers licence along with a trade recycling permit, if they are using the services at the Household Waste and Recycling Centres to deposit business waste or waste that has been delivered on behalf of an individual.

Approach

Trade recycling permits are available to purchase from the council- these entitle traders to take recyclable materials to any of the council's household waste and recycling centres. Permits are valid for a year from the date of issue but also have set terms and conditions.

The actions proposed in this document are centred on the powers that the council can use under the EPA1990 Section 34, with additional powers for FPNs from the Clean Neighbourhoods and Environment Act 1990.

In addition to the misuse or absence of a Trade Recycling Permit, if a business does not hold appropriate paperwork to demonstrate the Duty Of Care it is legally obliged to keep regarding its waste the penalty is a fine in a Magistrates Court – a business can discharge its liability for conviction as above by paying a Fixed Penalty Notice (FPN).

The operators at the HWRC's are paid a management fee for the year, not per tonne of material they receive, so it is in their interest to refuse trade waste without a valid and current permit.

Set within the contract between the operators and the council are 'performance failures' which can be applied if the operators are allowing commercial use of the site in contravention with the contract.

The HWRC sites have 'disclaimer forms' which they ask site users to complete if they suspect their waste may be commercial, this is a declaration by the public stating that it is household waste. These forms are sent to the council at the end of each month and state their name, address, description of waste etc. Copies are also held on each site for reference if the same people are repeatedly bringing the same material.

Once these disclaimers are received by the council they will be logged. If there are apparent 'repeat offenders' then further action by way of letter or FNP, if it is proven to be business waste, can then be taken.

Relevant Legislation

Environmental Protection Act 1990
Police and Criminal Evidence Act 1984 (and Codes of Practice),
Criminal Procedure and Investigation Act 1996 (and Codes of Practice)
Legislative and Regulatory Reform Act 2006
Regulatory, Enforcement and Sanctions Act 2008
Regulation of Investigatory Powers Act 2000 (RIPA)
Human Rights Act 1998 (HRA)
Clean Neighbourhoods and Environment Act 1990
Proceeds of Crime Act 2002
Environment (Wales) Bill



TRADE WASTE AWARENESS AND ENFORCEMENT PROCEDURE

Introduction

This is the Trade Waste Awareness and Enforcement Procedure for Powys County Council's Waste and Recycling Services, which will be used together with the current Waste and Recycling Services Enforcement Policy.

Section 34 of the Environmental Protection Act 1990, states that all businesses, charities and organisations must exercise a duty of care by obtaining a waste transfer note for waste, including recyclables, transferred to a third party. The waste transfer note must be retained for at least two years. The waste and recycling must be removed by someone who is legally allowed to do so and it must be disposed or recycled at a site licensed to accept commercial waste.

Powys County Council currently offers a waste and recycling collection for trade waste, however Powys are not the sole providers of this service. Business owners have a choice as to which trade waste collection company they use.

The council currently offers trade refuse and recycling collections using a range of containers to suit every businesses needs from 240 litre wheeled bins to 1280 litre containers. If space is limited the council can provide commercial pre-paid sacks.

To date there are in excess of 6500 businesses in the county, Powys County Council currently have trade waste contracts with 1500 of these.

The purpose of this Awareness and Enforcement Document

The new kerbside recycling service has now been rolled out which is intended to improve recycling rates by restricting options for householders to discard recyclable waste. It has been recognised that, if ongoing Welsh Government targets are to be met a similar emphasis will be required regarding trade waste.

Not only can effective separation of components of trade waste contribute to the councils recycling performance, but the actions described below will also assist the councils budgetary demands – it is recognised that a significant quantity of trade waste and recycling is being put through the household waste stream, in effect being subsidised by the householder. Reductions in residual wastes from trade origin assist with achieving year on year improvements in recycling.

Regulations governing trade waste collection and disposal are primarily aimed at ensuring all trade waste is controlled following the stage at which it is discarded. If a business has not put in place correct disposal systems, their waste is outside regulatory control and the business has not acted within its Duty of Care.

Such disregard for waste procedures has several implications which are summarised below:

- For the business – not having in place appropriate paperwork, in the form of a Waste Transfer Note to demonstrate their Duty of Care, is a criminal offence under Environmental Protection Act 1990 Section 34.
- For the council – if trade waste is being put out without the business having secured a suitable collection/disposal system, the impact is three-fold:
 1. The council will be collecting and disposing of waste for which it has not received appropriate payment
 2. Because the business might be reluctant to declare the discard of its waste, an opportunity to have the waste divided into recyclable elements is missed as the waste is often put into the household general refuse stream
 3. The council is not fulfilling its legal obligations by collecting the waste without the correct documentation

Approach

Powys County Council has legislative powers under Section 47 of the Environmental Protection Act 1990 to take enforcement action against business owners who do not use the correct receptacles for their residual waste or recycling. Whilst this can be an effective method of achieving compliance with the council's requirements in order to fully contribute to the statutory Welsh Government targets, an approach based more on awareness and encouragement should be utilised.

With this in mind business owners are given effectively one chance in any twelve month period before any actual enforcement is carried out. At this stage the opportunity to seek advice and assistance from council officers is promoted and encouraged. In the majority of incidents this will solve the problem. There will however be a minority of cases where further enforcement is necessary and it is important that the correct steps are followed in each and every case should further action be required. It is important that the council is willing and able to progress to enforcement should the need arise to ensure that the process is taken seriously by the business.

Relevant Legislation

Environmental Protection Act 1990
 Police and Criminal Evidence Act 1984 (and Codes of Practice),
 Criminal Procedure and Investigation Act 1996 (and Codes of Practice)
 Legislative and Regulatory Reform Act 2006
 Regulatory, Enforcement and Sanctions Act 2008
 Regulation of Investigatory Powers Act 2000 (RIPA)
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Awareness and Enforcement Process

