

## **Flytipping in Midlothian**

**Report by: Dr Mary Smith**  
**Director Education, Communities & Economy**

### **1.0 Purpose of Report**

This report is to inform Cabinet of the enforcement powers available regards flytipping under the Environmental Protection Act 1990 (as amended) and to advise on the measures that are available to a variety of agencies including Midlothian Council, Police Scotland and Scottish Environment Protection Agency (SEPA) under that Act.

### **2.0 Background**

- 2.1** Fly-tipping is the illegal dumping of waste and can vary significantly in quantity from a single bag of household waste to tonnes of construction and demolition waste, tyres etc. It is a serious criminal offence under the Environmental Protection Act 1990 (EPA) which, upon conviction, carries a fine of up to £40,000 and/or imprisonment.

Section 33 of The EPA, as applies in Scotland, states that a person shall not:

- (a) 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 place and the deposit is in accordance with the licence;
- (b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of—
  - (i) in or on any land, or
  - (ii) by means of any mobile plant,except under and in accordance with a waste management licence;
- (c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

- 2.2** Where an individual is identified as having caused, or permitted flytipping to occur, Section 33A of the EPA1990 states that the following persons may take enforcement action and issue fixed penalty notices;

- an authorised officer of the local authority in the area of that authority
- a police constable
- an authorised officer of a waste regulation authority i.e., SEPA

- 2.3** A fixed penalty notice for flytipping, offers the opportunity to the recipient of discharging any liability to conviction for the offence, by payment of a monetary penalty of £200. The recipient of a fixed penalty notice has 14 days in which to pay the fine. The legislation also allows for fines up to £40,000 and / or imprisonment for a period up to six months upon summary conviction.

The Regulatory Reform (Scotland) Act 2014 gives SEPA the power to issue fines of between £500 and £40,000 in relation to environmental crimes without having to take offenders to court. SEPA also has powers to accept 'enforcement undertakings' in a wider range of circumstances, giving environmental offenders the opportunity to make an offer to correct their behaviour and make amends.

### **3.0 Current Enforcement Position**

- 3.1** Fly-tipping is unsightly and can pose a significant threat to people, wildlife, the environment and the local economy and undermines legitimate waste businesses where unscrupulous operators undercut those operating within the law. Midlothian Council regularly receives reports of flytipping from a variety of sources including directly from members of the public and via the Dumb Dumpers hotline etc.
- 3.2** Fly-tipping costs significant sums of money to clear up every year and the Council actively investigates reported instances of fly-tipping on public ground to seek to establish evidence of who dumped the waste and / or who it originally belonged to, and then take appropriate action. The local authority deal with most cases of fly tipping on public land, whilst SEPA will investigate and enforce against larger, more serious and organised illegal waste crimes.
- 3.3** Environmental Health work closely with Waste Management services. Many incidents of flytipping involve materials where there is no opportunity to find any evidence of the perpetrator e.g., tyres, rubble, house building materials or garden waste and these are removed from public land at the earliest opportunity. Environmental Health focus on those events where it may be possible to detect evidence regards the perpetrator / source and investigate 100% of those cases.

In some instances there may be limited evidence identified, e.g., a single incidence of a name or address, and whilst this provides some indication of the potential perpetrator it offers limited opportunity for successful enforcement.

Information on the numbers of cases investigated are given in Table 1 below.

Table 1: Flytipping cases reported to Midlothian Council

<b>Period</b>	<b>Cases reported to the LA</b>	<b>Cases investigated by Env. Health</b>	<b>Enforcement Action</b>
2016	447 (March to December)	289 [ full year]	16 fixed penalties 29 warning letters
2017	651	195	8 fixed penalties 24 warning letters
2018	503	94	8 fixed penalties 18 warning letters
2019 (up to 15.08.09)	381	56	5 fixed penalties 7 warning letters

Incidents may be dealt with in a variety of ways depending on the level of evidence available including;

- by issue of a £200 fixed penalty notice (FPN), or
- in more serious cases referral to the Crown Office Procurator Fiscal Service with a view to prosecution.
- writing to the individual(s) requiring them to explain why material with their name on it has been found. This may result in either a FPN being issued or alternatively the local authority requiring the individual to collect and remove the flytipped material and deliver it to a civic amenity site; thereby providing an opportunity for education, and removing the direct cost to the Local Authority for clearance.

The Local Authority has a responsibility to undertake the removal of flytipped material from public ground.

### **3.4 In terms of flytipping on private ground;**

- rubbish deposited on private property becomes the responsibility of the land owner to ensure it is removed.
- landowners / occupiers that remove waste (including waste dumped illegally by a third party) from their property to another's land, unless that land has a waste management licence, authorising the depositing of such waste, are committing the offence of flytipping in terms of Section 33 of the Act.
- Section 59 of the EPA provides the waste regulation authority, (SEPA) or the waste collection authority, (the Council) powers to serve notice and require the occupier, or in certain circumstances the owner of land on which flytipping has taken place to remove the waste from the land and/ or take steps to eliminate or reduce the consequences of the waste. In such circumstances the landowner / occupier has the right of appeal and the court shall quash a notice if satisfied that the appellant neither deposited, nor knowingly caused, nor knowingly permitted the deposit of the waste.

## 4. Moving forward

- 4.1** The reported incidents of flytipping in Midlothian remain at a significant level. The Council's Environmental Health Service has limited resources to address this.

Currently the Council is developing a programme with regards to flytipping that will seek to reinforce and inform Midlothian residents and visitors that flytipping in Midlothian is unacceptable and that all possible steps will be taken to identify and deal with offenders. Information includes:

- i) enforcement action will be taken where there is sufficient evidence,
- ii) the need for householders to ensure that anyone engaged to remove waste is a licensed carrier and that full company details and a written receipt are obtained,
- iii) the fact that deposited waste which can be traced back to an individual will be held as their responsibility unless they can provide full evidence of who they transferred this waste to,
- iv) the erection and / or replacement of signage at identified problem hot spots,
- v) investigation of the wider use of CCTV in hot spots to deter and subsequently identify and prosecute perpetrators,
- vi) the solutions for waste disposal that exist in Midlothian; civic amenity sites / bulky uplifts,
- vii) informing the public, regards how to report witnessed incidents of flytipping,
- viii) seeking to identify any underlying causes of increased dumping and thereafter put any available steps in place to mitigate illegal behaviour, and
- ix) ensuring landowners and occupiers are aware of their legal responsibilities.

Co-operation from all relevant agencies including Police Scotland and the Crown Office Procurator Fiscal Service (COPFS) with a view to securing and thereafter publicising prosecution cases will be critical to success. Engagement has taken place with Police Scotland to strengthen our joint working and maximise our limited resources. Engagement with COPFS is ongoing in relation to two potential enforcement cases.

## 5.0 Report Implications

### 5.1 Resource

Within Midlothian Council the primary enforcement responsibility for flytipping offences rests with Environmental Health.

Where flytipping contains or may contain evidence leading to the identification of suspects the investigation of flytipping is principally undertaken by the Environmental Wardens although all officers within

Environmental Health are authorised for all enforcement tasks where qualifications, training and competencies allow.

The Council's approved financial strategy resulted in a reduction in Environmental Health's field inspection capacity of almost 35%. This coupled with the fact that Midlothian Council is the fastest growing local authority area and the significant increase in reports of out of control dogs leaves limited Environmental Warden resources to devote to flytipping cases.

## **5.2 Risk**

It is recognised that the presence of flytipping has the potential to attract additional flytipping and there is a risk that if locations are not addressed promptly the situation will deteriorate.

## **5.3 Single Midlothian Plan and Business Transformation**

Themes addressed in this report:

- Community safety
- Getting it right for every Midlothian child
- Improving opportunities in Midlothian
- Sustainable growth

## **5.4 Key Priorities within the Single Midlothian Plan**

The management of flytipping across the Midlothian area will contribute to the principal aim "Midlothian - a great place to grow".

## **5.5 Impact on Performance and Outcomes**

Performance criteria will require to be reviewed in accordance with the flytipping campaign, criteria to continue to include:

- investigation / assessment of 100% of reported cases of flytipping on public ground
- removal of flytipping and proper disposal of material from public land with an agreed timescale.

## **5.6 Adopting a Preventative Approach**

As indicated above the Council are currently developing a campaign with the aim of reducing fly-tipping through information and enforcement and will adopt measurement criteria to assess the success.

## **5.7 Involving Communities and Other Stakeholders**

Community Councils and other organisations will be kept informed.

## **5.8 Ensuring Equalities**

An EqIA has not been completed for the report but will be conducted as part of the above mentioned review of flytipping management and enforcement.



## **5.9 Supporting Sustainable Development**

A reduction in flytipping would significantly contribute to ensuring the wellbeing and quality of life for people in Midlothian whilst improving the natural and built environment. It would also assist legitimate waste businesses to thrive.

## **5.10 IT Issues**

There are no identified IT issues arising from this report.

## **6. Recommendations**

Cabinet is recommended to;

- i) note the legislative powers available to Midlothian Council, Police Scotland and SEPA regards flytipping, and
- ii) note the current programme to reduce the impact of flytipping, and ensure limited resources are effectively used to target the most serious cases.

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