

Report of:	Head of Environmental Health
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Portfolio Leader:	Environment
Key Decision:	No
Report Track:	Cabinet: 21/7/2016

CABINET
21 JULY 2016
FLY TIPPING – FIXED PENALTY NOTICES

1 Purpose of Report

- 1.1 To inform Cabinet of the introduction of Regulations empowering officers to issue Fixed Penalty notices in relation to fly tipping incidents.
- 1.2 To seek Cabinet approval for the level of Fixed Penalty fee that may be charged to the suspected offender identified in relation to a fly tipping incident.

2 Recommendations

- 2.1 That Cabinet notes the contents of the report.
- 2.2 That Cabinet approves the selection of the maximum level of Fixed Penalty charge of £400 with no discount for early payment.

3 Key Issues and Reasons for Recommendation

- 3.1 Fly-tipping is a significant problem to local communities and a risk to the environment. It is a drain on the Council's resources and also undermines legitimate waste businesses where unscrupulous operators undercut those that operate within the law.
- 3.2 The new Fixed Penalty provision introduces a less costly option to deal with small scale fly tipping incidents than the conventional route of prosecuting offenders in the Courts.

- 3.3 FPNs act as a deterrent to offenders and councils using them are expected to see a decrease or a slow-down in growth, in the number of small scale fly-tipping incidents.
- 3.4 The Act enables the Council to issue a Fixed Penalty Notice (FPN) for offences involving a breach of Section 33(1)(a) of the Environmental Protection Act 1990 in order to discharge a liability to conviction. The level of penalty that can be imposed is between £150 and £400 which must be paid within 14 days of service of the FPN with a default level of £200 where a local authority does not specify a level.
- 3.5 A lesser penalty may be imposed for early payment and it is for each authority to decide their penalty in the absence of statutory guidance. However, this is likely to give rise to a degree of confusion that will result in an additional administrative burden on the Council in connection with under or overpayment of the Penalty Fees.
- 3.7 The maximum level of fine is considered likely to provide the most appropriate penalty for actual fly tippers and greatest deterrent to would-be fly tippers. A single Fixed Penalty fee of £400 with no discount for early payment is therefore recommended.

4 Relationship to Corporate Priorities

- 4.1 This report supports the Council's Corporate Priorities as follows:
 - (i) **Cleaner and Safer Environments:** Striving for cleaner, greener and attractive public environments across the District.

5 Report Detail

- 5.1 Nationally statistics indicate that fly tipping is on the increase the reasons being that it provides the perpetrator with a financial gain/saving, there is a lack of disposal facilities, laziness and the attitude that someone else will clear up the mess.
- 5.2 The costs of investigation, bringing prosecutions and ultimately clearance and disposal of fly-tipping are considerable. Where fines are issued as a result of successful prosecutions, they are paid to the Court and prosecuting authorities must seek to recover their costs as a separate process.
- 5.3 The situation in the district reflects the national picture and the following table summarises the situation over the last few years.

Year	2012-13	2013-14	2014-15	2015-16
Fly Tip Reports	318	334	416	363
Budget	£7090	£5510	£5510	£5510
Spend	£18091	£17051	£23846	£40716
Offenders charged and fined	0	0	1	Prosecution cases being pursued against 3 offenders

NOTE The “Spend” details are derived from the Governments Fly Capture/ Waste Data Flow reporting systems and are “indicative” values rather than actual ones. This Council does not currently have the capacity to record the actual spend on fly tipping (clearance and enforcement) because these activities form only part of the duties undertaken on a daily basis by Cleansing collection teams and the officers involved in its investigation and enforcement.

- 5.4 There has been an acknowledgement by Government that whilst significant penalties exist for offenders found guilty of fly tipping and costs incurred by Councils pursuing offenders can be recovered, the financial burden and resource commitments often outweigh the benefits and do not always provide a sufficient deterrent.
- 5.5 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 amend the Environmental Protection Act 1990 and came into force on 9th May 2016, providing councils with the power to issue a Fixed Penalty Notice (FPN) on those committing the offence fly tipping.
- 5.6 The Fixed Penalty is served as a criminal penalty in lieu of prosecution for a criminal offence. It is not a civil penalty as is the case with some other waste – related issues, which have recently been decriminalised. Where the Fixed Penalty is paid within 14 days of its issue, the offenders liability to prosecution is discharged and no further legal action is taken against them.
- 5.7 The level of Penalty may be set by each Council as it sees fit between a minimum of £150 and a maximum of £400. Where no level is set the default level of £200 is applied. In addition an early payment discount may be applied whereby offenders paying within 10 days may do so at a specified reduced rate of no less than £120.
- 5.8 Where the offender refuses to give details of their name and address, or provides false or inaccurate information to an officer seeking to issue them with an FPN, an offence is committed and the person is liable to prosecution and a fine of up to £ 1000.
- 5.9 The new power is intended to provide a cost effective alternative to the prosecution of offenders in the case of small-scale fly tipping incidents. It is anticipated that larger scale incidents and more serious incidents involving hazardous waste would be subject to prosecution, as would serial offenders.

6 Implications**6.1 Financial**

The potential income from the payment of Fixed Penalty Notices would offset the costs incurred by the Council in relation to waste-related enforcement activity.

6.2 Legal

In the absence of the selection of a level of Fixed Penalty the default level of £200 will be applied to any Notices issued. The Head of Environmental Health has delegated authority to authorise officers to issue and enforce fixed penalty notices under the Environmental Protection Act 1990.

6.3 Human Resources

None

6.4 Section 17 (Crime Prevention)

The introduction of the FPN will provide another measure in the toolkit for tackling fly tipping and is expected to lead to a reduction in incidents across the district.

6.5 Human Rights Act

None

6.6 Data Protection

None

6.7 Risk Management

None

6.8 Equality & Diversity

None

6.9 Best Value

It is anticipated the use of FPNs for small scale fly tipping incidents will streamline action and improve the cost effectiveness of enforcement activity.

7 Appendices to the Report

None

Previous Consideration

None

Background Papers

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016

“Fly-tipping - the illegal dumping of waste” - Briefing Paper CBP05672, 9 May 2016