

The Unauthorised Deposit of Waste (fixed penalties) Regulations 2016

Cabinet	17 January 2017
Report Author	Trevor Kennett, Operational Services Enforcement Manager
Portfolio Holder	Councillor Brimm, Cabinet Member for Operational Services
Status	For Decision
Classification:	Unrestricted
Key Decision	No
Reasons for Key	N/A
Ward:	All Wards

Executive Summary:

On 9th May, 2016 the above legislation came into force. It allows for a fixed penalty notice (FPN) to be issued for the offence of fly-tipping, a contravention under section 33 (1)(a) of the Environmental Protection Act 1990 (EPA 1990). The new fine is to be set by a local authority at a level not less than £150 and not more than £400 with a default of £200 if no amount is set by the authority.

Recommendation(s):

The Council introduce fixed penalty notices in accordance with section 33 (1) (a) of the EPA 1990 for small scale fly-tipping and the level of the fine is £400 with a reduced early payment of £300 if paid within 10 days.

CORPORATE IMPLICATIONS

Financial and Value for Money	There is an income generation possibility and cost saving in taking all cases to court for prosecution also saving officer time, allowing this to be redirected to further enforcement action.
Legal	We are required to stay within the recommended fine levels being no lower than £150 and no higher than £400. There will also be less reliance on the legal team for prosecutions of small fly-tips if we are able to issue FPNs for them instead, unless unpaid. The regulations are inserted as an amendment into the Environmental Protection Act 1990 as section 33ZA. The section allows for giving FPNs for contravention of section 33(1)(a). Officers authorised to investigate fly tipping under section 33(1)(a) are authorised to give FPNs under section 33ZA.
Corporate	The priorities that have impact on the enforcement activities of Operational Services are: Priority 1, Clean and welcoming environment - Maintaining zero tolerance

	to encourage positive behaviour to help improve our environment Priority 2, Supporting neighbourhoods - Continuing to work with partners to improve community safety								
Equalities Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p> <table border="1"> <tr> <td colspan="2">Please indicate which aim is relevant to the report.</td> </tr> <tr> <td>Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,</td> <td></td> </tr> <tr> <td>Advance equality of opportunity between people who share a protected characteristic and people who do not share it</td> <td></td> </tr> <tr> <td>Foster good relations between people who share a protected characteristic and people who do not share it.</td> <td></td> </tr> </table> <p>There are no Equalities Act implications for this report.</p> <p>Use of FPN's for small fly tipping offences will give staff more flexibility and to be better able and equipped to address fly-tipping. All officers will receive training and be monitored.</p> <p>Effective enforcement of small fly tipping benefits the environment as we will have an additional deterrent to fly-tipping and further consequences in place. Effective use of these FPN's will help to reduce this crime and anti-social behaviour by way of deterrent and consequence.</p>	Please indicate which aim is relevant to the report.		Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,		Advance equality of opportunity between people who share a protected characteristic and people who do not share it		Foster good relations between people who share a protected characteristic and people who do not share it.	
Please indicate which aim is relevant to the report.									
Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,									
Advance equality of opportunity between people who share a protected characteristic and people who do not share it									
Foster good relations between people who share a protected characteristic and people who do not share it.									

CORPORATE PRIORITIES (tick those relevant)✓	
A clean and welcoming Environment	✓
Promoting inward investment and job creation	
Supporting neighbourhoods	✓

CORPORATE VALUES (tick those relevant)✓	
Delivering value for money	✓
Supporting the Workforce	✓
Promoting open communications	

1.0 Introduction

- 1.1 The Environmental Protection Act 1990 (EPA 90) has been amended to allow a waste collection authorities in England to issue a fixed penalty notice for fly-tipping, a contravention under section 33 (1) (a) of the Act.
- 1.2 This provides local authorities with a more efficient and proportionate response to small scale fly tipping of waste, this is defined as a person depositing controlled waste in or on any land shall be guilty of an offence. Controlled waste means household, industrial and commercial waste or any such waste.

- 1.3 At the present time all fly tipping where sufficient evidence has been found requires court proceedings and the time and costs associated with that. Large scale offences for which the issue of an FPN is not considered appropriate would still be dealt with by way of prosecution at court.

2.0 Background

- 2.1 Where an authorised officer has reason to believe that a person has committed a waste deposit offence in the area of the authority, the officer may give the person a notice under this section 33 (1) (a) of the EPA 90 in respect of the offence.
- 2.2 A fixed penalty notice offering the opportunity of discharging any liability to conviction for the offence to which it relates by payment can now be made. The purpose of this is to make it easier for the offender to dispose of their liability swiftly without the need to go to court.
- 2.3 This also reduces the burden on the Council as all investigations have to be carried out in accordance with the Police and Criminal Evidence Act 1984 (PACE) and makes it easier to effect justice in such cases without the resource heavy, cumbersome and bureaucratic necessities of the court process.
- 2.4 In 2015 to 2016 the Council issued 283 enforcement notices under section 46 of the Environmental Protection Act 1990, which places a requirement on the household to place their controlled waste in the receptacles provided by the authority and failure to comply with this notice can result in court proceedings. However the Council only prosecuted 6 cases in the Magistrates court for Fly-tipping in the same period. The use of Fly-tipping fixed penalty notices allows for a more flexible and cost efficient model of enforcement.

3.0 Benefits

- 3.1 The fixed penalty notice level must not be set lower than £150 and not more than £400. If no amount is specified by that authority, the level will be automatically set at £200. The fine must be paid within 14 days, if not it could be referred to the Magistrates Court.
- 3.2 Small scale fly tipping and the dumping of rubbish is an increasing problem in the District, with over 900 reported cases in the last ten months and of these only 6 cases were prosecuted.
- 3.3 It should be also noted that; monies paid for FPN's comes to the Council, whilst fines imposed at court go to the government.
- 3.4 The issue of FPNs for small scale fly tipping would send a strong message to offenders that they face prompt and robust action should they offend and free up valuable resources to deal with other enforcement issues.

4.0 Options

- 4.1 **Option 1:** Introduce this FPN for small fly-tips using the default level of fine of £200 with an early reduced payment of £150 if paid before the end of the period of 10 days following the date of the notice.

4.2 **Option 2:** Introduce this FPN for small fly-tips at the maximum level of the fine of £400 with or without an early payment discount. There is a risk of some not paying the fine because it is at the highest level which would result in court process.

4.3 **Option 3:** Introduce this FPN for small fly-tips setting the level of the fine at £400 with a reduced early payment of £300 if paid within 10 days. This would provide the incentive towards early payment and more likelihood of offenders paying and therefore less resort to the court.

5.0 Recommendation

That Option 3 is implemented because the issuing of Fixed Penalty Notices for small fly-tipping will be a more effective power to stop the dumping of rubbish. The Council's existing powers only allow for us to issue a warning enforcement notice to stop placing their controlled waste other than in the receptacles provided by the authority or for us to prosecute them for this offence.

Contact Officer:	Trevor Kennett, Operational Services Enforcement Officer
Reporting to:	Geoff Dunne, Head of Operational Services

Annex List

None	N/A
------	-----

Background Papers

Title	Details of where to access copy
None	N/A

Corporate Consultation

Finance	Sue Little, Finance Officer
Legal	Ciara Feeney, Head of legal Services