

REPORT

SUBJECT: Fixed Penalty Notices for Fly Tipping
DIRECTORATE: SOCIAL CARE & HEALTH
MEETING: Individual Cabinet Member Decision – Cabinet Member for Social Justice & Community Development
DATE: 28th February 2018.
DIVISIONS/WARDS AFFECTED: All Wards

1. PURPOSE:

- 1.1 To inform the Cabinet Member of new legal powers introduced by The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 and consider the Council's approach in using these powers.
- 1.2 To obtain additional authorisation for Officers under The Unauthorised Deposit of Waste (Fixed penalties) (Wales) Regulations 2017.

2. RECOMMENDATIONS:

- 2.1 That Officers within the Public Protection division and Waste & Street Services be authorised under Section 33ZB Environmental Protection Act 1990 as amended by The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017, in order to enforce the legislation and carry out their duties. The specific officers to be authorised are set out in Appendix 1.
- 2.2 That the Scheme of Delegation to Officers in the Council's Constitution is amended by the Monitoring Officer to reflect the changes in 2.1.
- 2.3 Agree the Fixed Penalty Notice enforcement charges set out in Appendix 1.
- 2.4 To adopt the general approach to serving Fixed Penalty Notices under the provisions of the Regulations, as set out in the Authority's existing enforcement policy for dog fouling / littering provided in Appendix 2.
- 2.5 That the Cabinet Member for Social Justice & Community Development agrees the recommendations above in consultation with the Cabinet Member for Operations.

3. KEY ISSUES:

- 3.1 The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 came into force on the 25th October 2017.
- 3.2 These Regulations insert a new section into Part II (Waste on Land) of the Environmental Protection Act 1990. This enables an authorised officer of a Local Authority to issue a fixed penalty notice for contravention of section 33(1)(a) of the Act. This, subject to certain exemptions, prohibits the deposit of controlled waste or extractive waste in or on any land, other than in accordance with an environmental permit. In simple terms this section enables persons who are caught fly tipping to be prosecuted.

- 3.3 **Fixed Penalty Notices (FPNs)** are encouraged by Welsh Government as part of an effective and efficient enforcement approach for dealing with environmental offences. The Regulations enable this Council to specify a fixed penalty of not less than £150 and not more than £400, payable within 14 days, for contravention of section 33(1)(a) Environmental Protection Act 1990. If no amount is specified by a Council the default amount of the fixed penalty is £200.
- 3.4 In addition the Council may also make provision for a discount for early payment of a fixed penalty within 10 days, which may not be less than £120.
- 3.5 In discharging any enforcement powers it is good regulatory practice for an authority to set out its approach in an 'enforcement policy'. The Authority has a Corporate Enforcement Policy which applies good regulatory principles in line with the Enforcement Concordat and has a specific policy for dog fouling/littering which includes for the service of FPN's.
- 3.6 The proposed approach for issuing FPN's introduced by the Regulations is to adopt the general principles of the existing fouling/littering policy which is provided in Appendix 2 and specifically:
- A distinction in the approach dependent upon the age of the offender.
 - For persons aged 18 or over, where appropriate a FPN to be issued to give the opportunity to discharge liability to conviction;
 - For persons under 18 the FPN to be commuted to a warning in the first instance. FPNs issued for second offences following a warning, with the intervention of the Council's Youth Offending Service to be invited prior to consideration of any case for prosecution
- It should be noted that fly tipping offences are invariably committed by persons aged 18 or over.
- The FPN amount payable within 14 days to reduce if paid within 10 days to encourage early payment.
 - Prosecution proceedings to be taken in cases of non-payment by an offender aged 18 or over
- 3.7 The proposed FPN level for contravention of section 33(1)(a) Environmental Protection Act 1990 is the maximum permitted of £400 payable within 14 days, discounted to £300 for early payment within 10 days, as set out in Appendix 1.
- 3.8 For context, a significant number of the Local Authorities in Wales that have set their FPN levels have also done so at the maximum, although there are varying discounted levels. The proposed £300 discounted level will reflect the seriousness of the offence of small scale fly tipping incidents such as several refuse bags or one or two items of furniture.
- 3.9 It is proposed that the decision to issue a FPN to give the opportunity to discharge liability for the offence or otherwise recommend to the Councils Legal section that the matter proceeds directly to prosecution in court, will be a matter for the investigating officer to consider on a case by case basis. FPNs provide the opportunity in cases of small scale fly tipping for first time non-habitual offenders to avoid court and a possible criminal record. They offer a more efficient and proportionate response to tackling small scale fly tipping incidents while helping to ease the burden on the court system. However in the case of larger scale fly tipping incidents it may be proportionate to prosecute the offender in court.

4. REASONS:

- 4.1 To ensure fair, transparent, efficient and effective discharge of the Council's obligations under the Act.

5. RESOURCE IMPLICATIONS:

- 5.1 None directly arising from the authorisation of Officers under these Regulations. Detection rates for fly tipping offences are very low with 8 cases prosecuted by this Council since 2014. Any revenue obtained from the payment of FPN's will be very limited which are to be punitive and not of significance in terms of income generation.

6 Future Generations Evaluation:

- 6.1 The Future Generations Evaluation, including equalities and sustainable impact assessments, is provided in Appendix 3. The revisions have a positive impact for the reasons provided.

7. CONSULTEES:

**SLT
Cabinet Members
Chairs of Select Committees
Monitoring Officer and Head of Legal Services
Head of Finance
Chief Officer Social Care & Health
Head of Operations
Youth Offending Team Manager (J Richards)
Head of Waste and Street Services
Head of Public Protection**

Results of Consultation

No adverse comments have been received

8. BACKGROUND PAPERS:

None

9. AUTHOR:

Huw Owen, Principal EHO

11. CONTACT DETAILS:

**TELEPHONE 01873 735433
huwowen@monmouthshire.gov.uk**