

<b>SUBJECT:</b>	<b>FIXED PENALTY NOTICES HOUSEHOLD WASTE DUTY OF CARE</b>
<b>MEETING:</b>	<b>Individual Cabinet Member Decision – County Cllr Sara Jones</b>
<b>DATE:</b>	<b>26<sup>th</sup> June 2019</b>
<b>DIVISION/WARDS AFFECTED:</b>	<b>All</b>

**1. PURPOSE:**

- 1.1 To inform the Cabinet Member of new legal powers introduced under The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 and consider the Council's approach in using these powers.
- 1.2 To obtain additional authorisation for Officers under The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019

**2. RECOMMENDATIONS:**

- 2.1 That Officers within the Public Protection division be authorised under Section 34ZB Environmental Protection Act 1990 as amended by The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 , 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.

**3. KEY ISSUES:**

- 3.1 The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 came into force on the 21<sup>st</sup> February 2019.
- 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 34(2A) of the Act. This section places a duty on the occupier of any domestic property to take all such reasonable measures available to ensure that any transfer of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.

- 3.3 For example a fixed penalty notice may now be served where fly-tipped waste can be traced back to an occupier of a domestic property who has failed to check that the person or business they have asked to take their waste is a registered waste carrier. It is reasonable to expect the occupier to ask the person or business to show them proof that they are registered to carry or accept waste and to make a note of details such as their name (or business name), vehicle type and registration.
- 3.4 **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 issue a fixed penalty of £300 payable within 14 days, for contravention of section 34(2A) Environmental Protection Act 1990.
- 3.5 In addition the Council may also make provision for a discount for early payment of a fixed penalty within 10 days, which is £150.
- 3.6 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.
- 3.7 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.

Household waste 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
- 3.8 It is proposed that the FPN level of £300 payable within 14 days for contravention of section 34(2A) Environmental Protection Act 1990, is discounted to £150 for early payment within 10 days, as set out in Appendix 1.
- 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 will provide the opportunity for first time non-habitual offenders to avoid court and a possible criminal record. They offer a more efficient and proportionate response to tackling incidents where there is a breach of duty of care while helping to ease the burden on the court system. However in some instances it may be proportionate to prosecute the offender in court for example if there was the deliberate transfer of waste to an unauthorised person in the knowledge that it would be fly-tipped.

**4. EQUALITY AND FUTURE GENERATIONS EVALUATION, (includes social justice, safeguarding and corporate parenting):**

4.1 The completed 'Equalities & Future Generations Evaluation' form is provided as Appendix 3, attached. The revisions have a positive impact for the reasons provided.

**5. OPTIONS APPRAISAL:**

5.1 The use of fixed penalty notices afford a proportionate response for breach of household waste duty of care. The Authority would therefore wish to utilise these new powers introduced by the Regulations.

**6. EVALUATION CRITERIA:**

6.1 The proportionate use of FPNs to be monitored by the Principal Environmental Health Officer (Public Health) on a case by case basis.

**7. REASONS:**

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

**8. RESOURCE IMPLICATIONS:**

8.1 None directly arising from the authorisation of Officers under these Regulations. Detection rates for breach of household duty of care are very low. 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.

**9. CONSULTEES:**

SLT  
Cabinet Members  
Chair of Strong Communities Select  
Monitoring Officer and Head of Legal Services  
Head of Finance  
Head of Operations  
Youth Offending Team Manager  
Head of Waste and Street Services  
Head of Public Protection

**Results of Consultation**

No adverse comments have been received

**10. BACKGROUND PAPERS:**

Guidance for Welsh Local Authorities on Household Waste Duty of Care Fixed Penalty Notices

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**Appendices**

Appendix 1 Fixed Penalty Levels and Authorised Officers

Appendix 2 Existing Enforcement Policy for Dog Fouling and Littering

Appendix 3 Equality & Future Generations Evaluation