

<b>SUBJECT</b>	Delegation of Enforcement powers for Waste and Street Services
<b>DIRECTORATE:</b>	Operations / Waste & Street Services
<b>MEETING:</b>	Strong Communities Select Committee
<b>DATE:</b>	10 <sup>th</sup> December 2015
<b>DIVISION/WARDS AFFECTED:</b>	All

**PURPOSE:**

1. To seeks Select Committee's views on a proposal from Waste & Street Services to be given enforcement powers. Below is the draft Cabinet report for Member's consideration. Comments received from Members will feed into the final draft presented as a Single Member Decision in the New Year.
2. At the meeting officers will present examples of where we believe these additional tools would be beneficial in achieving the outcomes around local environmental quality and recycling.

**Draft Cabinet Report**

3. To seek Cabinet agreement for:
  - a) To delegate enforcement powers to individuals within Waste and Street Services (W&SS) to act in accordance within the Statutory Provisions of the Control of Pollution Act 1974, Refuse Disposal (Amenity) Act 1978, Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act (Wales) 2005
  - b) To make relevant officers within Waste and Street Services "Authorised Officers" within the Council's Scheme of Delegation for the above legislation to serve notices, issue Fixed Penalty Notices and lead prosecutions where necessary.

**RECOMMENDATIONS ON PROPOSED WAY FORWARD:**

4. The recommendations are:
  - a) To approve the delegated powers of enforcement to the relevant Waste and Street Scene Officers. These will include the, Waste Education Officers, Recycling and Business Strategy Manager, Technical and Policy Officer, Technical Policy Assistant, Waste and Street Services Area Managers. To ensure all authorised officers are fully trained and work within the parameters of the Enforcement Concordat

**5. KEY ISSUES – THE BUSINESS CASE FOR CHANGE**

Additional resource for enforcement for environmental crimes

3.1 The Council's functions regarding the environment are extensive, and it has a duty to enforce a wide range of 'environmental' legislation. This covers, public health, food safety, housing standards, flytipping, litter and dog fouling. The Council regards prevention as better than cure, and it offers

information and advice to those it regulates and seeks to secure co-operation avoiding enforcement action where possible.

3.2 Natural Resource Wales deal with the Big Bad and Nasty being very large quantities, organised crime and hazardous materials. At present the delegated powers to take enforcement action against businesses and individuals regarding environmental crimes sits with Environmental Health. Environmental Health Officers have a wide range of duties and public health protection is clearly the priority. They have been very successful with a number of prosecutions in regard to flytipping but the majority of small scale domestic dumpings are not reported as flytipping and therefore not investigated. Dumpings relate to one or two bags deposited close to the property but without regard for collection or proper containment of the waste. These smaller incidents make up over 90% of all reported waste issues but are rarely investigated and as such no enforcement action is taken.

3.3 There is a waste enforcement protocol between Environmental Health and Waste Services but this is no longer fit for purpose. The recent changes to service provisions within waste management have highlighted resource issues in taking enforcement action against businesses and individuals that do not comply with waste legislation. Sending several officers to check waste before it can be collected is time consuming and can result in evidence being burnt or added to by the time it is collected.

3.4 At present the powers to serve notices on businesses and individuals that do not comply with Duty of Care legislation are not enforced by any department. There is a growing concern amongst residents that some small sections of the community are not engaging in recycling or complying with waste collection policies and the local community and environment is suffering. Whilst this is a very small section of the community the challenging targets for waste recycling coupled with the budgetary constraints mean that everyone in the community needs to participate positively in sustainable waste management. W&SS provide advice and information regarding waste and recycling but currently have no power to enforce where education, awareness and encouragement fail to engender behavioural change.

## **THE PROPOSED CHANGES**

3.5 To delegate powers of enforcement to Waste and Street Services Officers. W&SS will ensure that all authorised enforcement officers carrying out enforcement work are trained and fully acquainted with the requirements of the Enforcement Concordat. All authorised enforcement officers will be fully trained and authorised in those aspects of legislation relevant to their duties All authorised officers will abide by the Enforcement Concordat whenever making decisions on enforcement.

3.6 The authority will ensure that officers are fully competent to carry out their duties and that the level of delegated authority for each officer will be included in the Council's Scheme of Delegations.

3.5 To work closely with Environmental Health officers and within the parameters of the Enforcement Concordat and develop a fit for purpose W&SS Enforcement Procedure list as set out below.

Procedure list

**Dealing with flytipped waste –**

Following a report of the unlawful deposit of waste, search and remove waste within 5 days, accurately record evidence and pass evidence to EHO for prosecution.

### **Dealing with domestic/business dumpings –**

Where the incidence is smaller, W&SS to fully investigate and where possible prosecute. Where a successful prosecution is unlikely, issue a warning letter, accurately record the details, inform the residents and businesses that the evidence is stored on file and any future incidences will be prosecuted in conjunction with Environmental Health

### **Business waste Duty of Care –**

Where offences relating to businesses not complying with waste legislation, visit business, agree suitable recourse and monitor. Where businesses continue with non-compliance serve formal Section 34 EPA 1990 Notice. Section 34A Notices require businesses to ensure their waste is contained securely, collected and treated by a registered waste carrier and comply with the principles of the waste hierarchy. This can lead to Fixed Penalty Notice (FPN) or prosecution.

Stop and search events – work with Police, DVLA and other agencies to tackle the illegal transport of waste. Waste crime is closely linked wider criminal behaviour including, stolen property, metal theft, benefit fraud, tax evasion, etc. The W&SS officers will support these events and check Waste Carriers License. Control of Pollution (Amendment) Act 1989 (c. 14), after section 5A, 5B, 5C

### **Household waste Duty of Care –**

As above, offences relating to waste receptacles, bags left out on wrong weeks, non-containment etc are contained with Section 46, 47, 47ZA, 47ZB EPA 1990 and the process is similar to Section 34A. Where residents continually fail to comply this can lead to FPN and/or prosecution.

### **Offence of dropping litter and Dog Fouling -**

W&SS will support EHOs and community safety officers in carrying out routine enforcement initiatives to reduce incidents of litter and dog fouling and where necessary issue Fixed Penalty Notices

### **Litter Clearing Notices and Street Litter Control Notices –**

Under Section 92A, 92B and 92C EPA 1990 it is the requirement of owner, occupier to ensure the land is clean and free from litter. This includes keeping frontages of business premises clean and provide and empty receptacles for litter. W&SS will work with landowners and businesses to ensure they understand their statutory duties regarding this and where necessary serve formal notice on the land owners to clear land or pay towards that clearance where the Councils has carried out that work.

### **Issuing Fixed Penalty Notices and Prosecutions**

The Council regards prevention as better than cure, and it offers information and advice to those it regulates and seeks to secure co-operation avoiding enforcement action where possible. Officers will always seek to educate, encourage and work with residents and businesses to comply with

environmental law and follow the principles set out in the Enforcement Concordat. Where this fails to engender behavioural change the officers may issue FPNs. FPNs will be issued where possible to reduce prosecution and ensure compliance. Where the crimes are deemed serious or continual breaches W&SS will seek prosecution in conjunction with Environmental Health.

## **REASONS**

- The majority of waste crimes reported by the public come directly to W&SS. W&SS have the responsibility to collect the material and is measured against the performance indicators associated with cleanliness of open spaces and highways, collection of flytipped waste within 5 days, reductions in waste to landfill and increasing recycling. Having delegated powers of enforcement will add to the existing suite of tools W &SS use to engender behavioural change.
- To ensure W&SS Officers are fully trained and able to support EHO colleagues in environmental crime enforcement
- To provide additional resource in tackling these crimes and recording offences where evidence is obtained.
- Ensure the efforts of residents and businesses that fully comply with recycling and waste legislation are not undermined by a small minority of individuals.
- To ensure that as W&SS implement further changes to waste collections services and charges we are also resourced sufficiently to respond to the public perceptions of increases in environmental crime.

## **4. FINANCIAL IMPLICATIONS:**

- 4.1 Training costs will be managed through existing training budgets and there is sufficient expertise in house to meet much of the training requirements. Fly-tipping Action Wales and Natural Resources Wales offer training and this is usually provided free or at minimal cost to local authorities.
- 4.2 Revenue raised from FPNs will be reinvested in preventative measures that reduce environmental crime eg provision of signage, additional dog waste bins etc.
- 4.3 The additional resources needed to take enforcement actions can be met by reducing the number of incidents. Issuing warning letters where residents and businesses' continually fail to comply or engage with awareness, education and encouragement should reduce the number of visits moving forward and increase resources to tackle other waste related issues.

## **5. Sustainable Development & Equalities Implications**

Covered through Well-being and Future Generations Assessment

## **6. Consultees**

Strong Communities Select Committee

Senior Management Team

**7. Author**

Carl Touhig, Recycling Strategy & Business Manager

**8. Contact Details**

[cartouhig@monmouthshire.gov.uk](mailto:cartouhig@monmouthshire.gov.uk)

07580 362121

## Well-being and Future Generations Assessment

<p><b>Name of the Officer</b> Carl Touhig</p> <p><b>Phone no:</b> 07580 362 121</p> <p><b>E-mail:</b> <a href="mailto:cartouhig@monmouthshire.gov.uk">cartouhig@monmouthshire.gov.uk</a></p>	<p><b>Please give a brief description of the aims of the proposal</b></p> <p>To give delegated powers of enforcement regarding environmental crimes to Waste and Street Services. To provide additional resource and support the work currently carried out by Env.Health</p>
<p><b>Name of Service</b></p> <p>Waste &amp; Street Services</p>	<p><b>Date Future Generations Evaluation</b> 20<sup>th</sup> September 2015</p>


1. **Does your proposal deliver any of the well-being goals below?** Please explain the impact (positive and negative) you expect, together with suggestions of how to mitigate negative impacts or better contribute to the goal.

Well Being Goal	How does the proposal contribute to this goal? (positive and negative)	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
<p><b>A prosperous Wales</b></p> <p>Efficient use of resources, skilled, educated people, generates wealth, provides jobs</p>	<p>This proposal ensures that the principle of polluter pays is delivered and responsible waste management and efficient use of resources is promoted to all residents and businesses.</p> <p>New businesses are more likely to be attracted to areas that are clean and green and where communities take pride in their environment.</p>	<p>We will advertise the additional resources widely and this should help reduce the number of environmental crimes as the fear of enforcement and the potential fines will be understood.</p>





Well Being Goal	How does the proposal contribute to this goal? (positive and negative)	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
<p><b>A resilient Wales</b></p> <p>Maintain and enhance biodiversity and ecosystems that support resilience and can adapt to change (e.g. climate change)</p>	<p>Fly tipping and litter have a very detrimental effect on the environment and biodiversity. The additional resource to enforce against the perpetrators of these crime will reduce the occurrence in the longer term.</p>	<p>Working closely with landowners to highlight their responsibilities as custodians of the land.</p>
<p><b>A healthier Wales</b></p> <p>People’s physical and mental wellbeing is maximized and health impacts are understood</p>	<p>Environments that are clean and green are more likely to be visited and enjoyed by residents. This will encourage use of the environments for leisure activities and can have a very positive effect on happiness and mental health.</p>	
<p><b>A Wales of cohesive communities</b></p> <p>Communities are attractive, viable, safe and well connected</p>	<p>Work with communities to ensure everyone is taking care of the environment and complying with their legislative duties. Litter and flytipping increase crime and the fear of crime making communities feel less safe.</p>	<p>Continuing to advise residents and businesses on their legislative duties and their responsibilities towards their communities in dealing with waste and recycling.</p>
<p><b>A globally responsible Wales</b></p> <p>Taking account of impact on global well-being when considering local social, economic and environmental wellbeing</p>	<p>Cleaner, greener, safer environments not only benefit local people directly but can benefit local people through inward investment, increased tourism and green infrastructure.</p>	

Well Being Goal	How does the proposal contribute to this goal? (positive and negative)	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
<p><b>A Wales of vibrant culture and thriving Welsh language</b></p> <p>Culture, heritage and Welsh language are promoted and protected. People are encouraged to do sport, art and recreation</p>	<p>The sense of community pride in a clean green safe environment is promoted and residents and businesses feel engaged with and empowered to look after this.</p>	<p>Promote cooperation with residents, community groups and businesses to help us tackle waste crimes.</p>
<p><b>A more equal Wales</b></p> <p>People can fulfil their potential no matter what their background or circumstances</p>	<p>neutral</p>	<p>neutral</p>

## 2. How has your proposal embedded and prioritised the sustainable governance principles in its development?

Sustainable Development Principle	How does your proposal demonstrate you have met this principle?	What has been done to better to meet this principle?
 <p>Balancing short term need with long term and planning for the future</p>	<p>This proposal looks to build capacity for the future in tackling environmental crime.</p>	



Sustainable Development Principle	How does your proposal demonstrate you have met this principle?	What has been done to better to meet this principle?
 <p>Collaboration</p> <p>Working together with other partners to deliver objectives</p>	<p>Advice will also be given to residents and businesses on appropriate waste management. Working closely with EHOs, NRW and Fly Tipping Action Wales to tackle environmental crimes.</p>	
 <p>Involvement</p> <p>Involving those with an interest and seeking their views</p>	<p>Engagement is ongoing with businesses to manage their waste correctly. Working with Tidy Towns and Keep Wales Tidy to empower communities to take pride in their environment.</p>	
 <p>Prevention</p> <p>Putting resources into preventing problems occurring or getting worse</p>	<p>Issuing warning letters to individuals suspected of environmental crimes and recording this will reduce future problems. Using Tidy Towns funding and working with the local communities to identify fly tipping hot spots and put in preventative measures to limit further incidences</p>	
 <p>Integration</p> <p>Positively impacting on people, economy and environment and trying to benefit all three</p>	<p>Cleaner, greener, safer environments have a very positive impact on people's health and happiness. Clean, safe communities are more likely to benefit from inward investment and tourism which has a direct beneficial impact on the local economy.</p>	

**3. Are your proposals going to affect any people or groups of people with protected characteristics?** Please explain the impact, the evidence you have used and any action you are taking below.

Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Age	The proposal does not have an impact on protected characteristics of individuals.		
Disability			
Gender reassignment			
Marriage or civil partnership			
Race			
Religion or Belief			
Sex			
Sexual Orientation			
Welsh Language			

4. **Council has agreed the need to consider the impact its decisions has on important responsibilities of Corporate Parenting and safeguarding. Are your proposals going to affect either of these responsibilities?** For more information please see the guidance note <http://hub/corporatedocs/Democratic%20Services/Equality%20impact%20assessment%20and%20safeguarding.docx> and for more on Monmouthshire’s Corporate Parenting Strategy see <http://hub/corporatedocs/SitePages/Corporate%20Parenting%20Strategy.aspx>

	<b>Describe any positive impacts your proposal has on safeguarding and corporate parenting</b>	<b>Describe any negative impacts your proposal has on safeguarding and corporate parenting</b>	<b>What will you do/ have you done to mitigate any negative impacts or better contribute to positive impacts?</b>
Safeguarding	Like 4 above, the proposals do not affect individuals and thereby do not affect or impact on the Council’s corporate parenting and safeguarding duties.		
Corporate Parenting			

5. **What evidence and data has informed the development of your proposal?**

**6. SUMMARY: As a result of completing this form, what are the main positive and negative impacts of your proposal, how have they informed/changed the development of the proposal so far and what will you be doing in future?**

We will continue to develop a coherent and workable enforcement policy alongside colleagues in Environmental Health and Community Safety Officers.

**7. Actions. As a result of completing this form are there any further actions you will be undertaking? Please detail them below, if applicable.**

What are you going to do	When are you going to do it?	Who is responsible	Progress
Draft policy	Novemberr 15	Waste team	Completed
Draft Report	December 15	Waste team	Ongoing
Select Committee Consideration			
Cabinet Approval			
Training of staff			
Implementation			
Monitoring businesses			

**8. Monitoring: The impacts of this proposal will need to be monitored and reviewed. Please specify the date at which you will evaluate the impact, and where you will report the results of the review.**

The impacts of this proposal will be evaluated on:

