

SUBJECT	Delegation of Enforcement powers for Waste and Street Services
DIRECTORATE:	Operations / Waste & Street Services
MEETING:	Cabinet
DATE:	August
DIVISION/WARDS AFFECTED:	All

PURPOSE:

1. To seek Cabinet approval to give delegated authority of waste enforcement powers, as set out within this report to the Head of Waste & Street Services. This delegated authority would provide additional support to those waste enforcement powers already delegated to the Head of Democracy and Regulatory Services as set out in the Schedule of Delegated Functions in the Council's Constitution.
 - 1.1 For the Head of Waste and Street Services to authorise individual officers "Authorised Officers" within the service area to serve notices, issue Fixed Penalty Notices and lead subsequent prosecutions where necessary and in accordance with the Statutory Provisions of the Control of Pollution Act 1974, Refuse Disposal (Amenity) Act 1978, Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and to ensure all Authorised Officers are fully trained and work within the parameters of the Enforcement Concordat.

RECOMMENDATIONS

2. For the Head of Waste and Street Services to authorise individual officers "Authorised Officers" within the service area to serve notices, issue Fixed Penalty Notices and lead subsequent prosecutions where necessary and in accordance with the Statutory Provisions of the Control of Pollution Act 1974, Refuse Disposal (Amenity) Act 1978, Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and to ensure all Authorised Officers are fully trained and work within the parameters of the Enforcement Concordat.
 - 2.1 To make changes to the council's Schedule of Delegated Functions to reflect the changes referred to in the report.

KEY ISSUES – THE BUSINESS CASE FOR CHANGE

3. 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, fly tipping, 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.

- 3.1 Waste and Street Services work closely with Environmental Health Officers when dealing with waste, litter and dog fouling related complaints. This proposal will provide additional resource to support Environmental Health Officers in the enforcement against these environmental crimes.
- 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 fly tipping but there is currently limited capacity to deal with domestic waste accumulations not reported as fly tipping. These normally relate to one or two bags deposited close to the property but without regard for collection or appropriate containment of the waste. These smaller incidents make up over 90% of all reported waste issues but at present there is no delegated authority to enforce on these issues within Monmouthshire County Council.
- 3.3 There is a waste enforcement protocol between Environmental Health and Waste and Street Services for fly tipping which has worked well over the years. Recent changes to service provisions within waste management have highlighted resource issues in meeting targets for removal of fly tipped waste and working within the protocol. This has led to a small number of potential enforcement actions against businesses and individuals not being investigated.
- 3.4 At present the powers to serve notices on businesses and householders that do not comply with Duty of Care legislation are not enforced by any department. . The duty of care requirements apply to household, industrial and commercial waste and requires that anyone that imports, produces, carries, keeps, treats or disposes of waste should makes provision for the safe management of waste to protect human health and the environment. A code of practice issued under section 34 of the Environmental Protection Act 1990 sets out practical guidance on how to meet your waste duty of care requirements. Following the guidance does not replace your obligation to comply with the duty of care itself but is admissible as evidence in legal proceedings. Failure to comply with the duty of care is an offence subject to an unlimited fine on conviction.
- 3.5 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. Waste and Street Services (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

4. To delegate powers of enforcement to the Head of Waste and Street Services. 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 and will consider the Enforcement Concordat whenever making decisions on enforcement.

- 4.1 The majority of waste related reports by the public come directly to W&SS. W&SS have the responsibility to collect the material and it is measured against the performance indicators associated with cleanliness of open spaces and highways, collection of fly tipped waste within 5 days, reductions in waste to landfill and increasing recycling. Granting delegated powers of enforcement to the Head of Waste and Street Services will add to the existing suite of tools W &SS use to engender behavioural change.
- 4.2 The further powers will ensure the efforts of residents and businesses that fully comply with recycling and waste legislation are not undermined by a small minority of individuals and to ensure that as W&SS implement further changes to waste collections services and charges there are sufficient resources to respond to the public perceptions of increases in environmental crime.
- 4.3 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:-

Fly tipped waste –

Following a report of the unlawful deposit of waste, pass to EHOs to investigate and remove waste within 5 days.

Where waste is found on routine cleansing schedules, search and accurately record evidence, complete Witness Statement and pass evidence to EHO for prosecution.

Domestic/business accumulations resulting in Fixed Penalty Notices and Prosecutions

The Council regards prevention as better than cure, 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 Fixed Penalty Notices and these will be issued where possible to reduce prosecution and ensure compliance.

Where the incident is smaller, W&SS to fully investigate, serve notice, issue FPN and where necessary 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. Where the crimes are deemed serious or continual breaches W&SS will seek prosecution 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 Environmental protection Act 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 – support EHOs to work with Police, DVLA and other agencies to tackle the illegal transport of waste. Waste crime is closely linked to 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

Where residents continually deposit waste inappropriately following repeated education and awareness interventions for example waste receptacles contaminated, bags left out on wrong weeks, non-containment of waste, bulky items left in public spaces etc. These offences are contained with Section 46, 47, 47ZA, 47ZB EPA 1990 and can lead to FPN and/or prosecution and the process is similar to Section 34A.

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

4.5 For the Delegations of Authority to be contained within the Constitution as set out in the table below.

LEGISLATION	DESCRIPTION	DELEGATED AUTHORITY
S46 (1) Environmental Protection Act 1990	Serve notice to require household waste for collection to be placed in receptacles of a kind and number specified.	Delegated authority to be given to the Head of Waste and Street Services
S46 (6)	Offence to comply with notice (not exceeding level 3 on the standard scale)	
S47 (2) Environmental Protection Act 1990	Serve notice to require commercial / industrial waste to be put in receptacles of the kind and number specified.	Delegated authority to be given to the Head of Waste and Street Services
S47 (6)	Offence to comply with notice (not exceeding level 3 on the standard scale)	
S47ZA Environmental Protection Act 1990 (as amended by s48 Clean Neighbourhoods and Environment Act 2005)	Authorised officer may serve a fixed penalty notice for an offence under S46 and S47 EPA 1990.	Delegated authority to be given to the Head of Waste and Street Services. This power has already been

	Default £100	delegated to the Head of Public Health and Protection.
S4 Dogs (Fouling of Land) Act 1996	<p>Authorised officer may serve a fixed penalty notice for an offence committed when a dog is allowed to defecate on land which has been designated by the Council under the 1996 Act</p> <p>NB Land designated under Monmouthshire County Council (Fouling of Land by Dogs)(Monmouthshire) Designation Order (No 1) 1998</p> <p>The agreed fixed penalty notice amount is £75 within 14 days reducing to £50 if paid within 10 days.</p>	Delegated authority to be given to the Head of Waste and Street Services. This power has already been delegated to the Head of Public Health and Protection.
S88 Environmental Protection Act 1990 (as amended by Part 3 Section 19 Clean Neighbourhoods and Environment Act 2005)	<p>Authorised officer may serve a fixed penalty notice for an offence committed when a person throws down, drops or otherwise deposits litter in any place which is open to the air and to which the public have access.</p> <p>The agreed fixed penalty notice amount is £75 within 14 days reducing to £50 if paid within 10 days.</p>	Delegated authority to be given to the Head of Waste and Street Services. This power has already been delegated to the Head of Public Health and Protection.
S34 Environmental Protection Act 1990, regulation 35(6) of the Waste (England & Wales) Regulations 2011	Requirement for transfer notes to be kept on the transfer of controlled waste to an authorised person for at least 2 years and to be produced on demand from an officer of a waste collection authority within 7 days.	Delegated authority to be given to the Head of Waste and Street Services and the Head of Public Health and Protection.

S34A Environmental Protection Act 1990	<p>Authorised officer may serve a fpn for an offence of failing to furnish documents under S34(5) Environmental Protection Act 1990 and regulations made thereunder: 35(6) of the Waste (England & Wales) Regulations 2011.</p> <p>Section 34A (9) itself provides that FPN is £300.</p>	Delegated authority to be given to the Head of Waste and Street Services and the Head of Public Health and Protection.
S33 Environmental Protection Act 1990	Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste	Delegated authority to be given to the Head of Waste and Street Services. This power has already been delegated to the Head of Public Health and Protection.
S34 (6) Environmental Protection Act 1990	Duty of care offence etc. as respects waste	Delegated authority to be given to the Head of Waste and Street Services. This power has already been delegated to the Head of Public Health and Protection.
S1 Control of Pollution (Amendment) Act 1989	Offence for any person who is not a registered carrier of controlled waste, to transport any controlled waste to or from any place in Great Britain.	No authorisations needed

5. Financial Implications:

- 5.1 Training costs will be managed through existing training budgets and there is sufficient expertise in Environmental Health to provide in house training. Two of the Waste Education Officers have attended the Bond Solon - Advanced Professional Certificate in Investigative Practice (BTEC Level 7) - Enforcement Training courses. All Waste Officers have attended the NRW/CIWM Duty of Care Legislation Training. Fly-tipping Action Wales and Natural Resources Wales offer training and this is usually provided free or at minimal cost to Local Authorities.
- 5.2 It is not intended that the issuing of Fixed Penalty Notices is seen as an income generation opportunity but revenue raised from FPNs could be reinvested in preventative measures that reduce environmental crime for example provision of signage, additional dog waste bins etc.

5.3 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.

6. **Sustainable Development & Equalities Implications**

Covered through Well-being and Future Generations Assessment

7. **Consultees**

Strong Communities Select Committee

Senior Management Team

8. **Author**

Carl Touhig, Recycling Strategy & Business Manager

9. **Contact Details**

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Well-being and Future Generations Assessment

<p>Name of the Officer Carl Touhig</p> <p>Phone no: 07580 362 121</p> <p>E-mail: cartouhig@monmouthshire.gov.uk</p>	<p>Please give a brief description of the aims of the proposal</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 Environmental Health</p>
<p>Name of Service</p> <p>Waste & Street Services</p>	<p>Date Future Generations Evaluation September 2017</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>A prosperous Wales</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>A resilient Wales</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 land owners to highlight their responsibilities as custodians of the land.</p>
<p>A healthier Wales</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>A Wales of cohesive communities</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>A globally responsible Wales</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>A Wales of vibrant culture and thriving Welsh language</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>A more equal Wales</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>

	Describe any positive impacts your proposal has on safeguarding and corporate parenting	Describe any negative impacts your proposal has on safeguarding and corporate parenting	What will you do/ have you done to mitigate any negative impacts or better contribute to positive impacts?
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	November 15	Waste Team	Completed
Draft Report	December 15	Waste Team	Ongoing
Select Committee Consideration	January 16	Waste Team	
Cabinet Approval	August 16	Waste Team	
Training of staff	October 16	EHOs, NRW,	
Implementation	November 16	Waste Team	
Review	September 17	Waste Team, EHOs, Scrutiny	

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:	September 17
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Signed

Carl Touhig

Designation

Recycling Strategy & Business Manager

Dated 28/07/2016