

Report of: Environmental Action Service Manager

Report to: Director of Environment and Housing

Date: 28th July 2016

Subject: Proposal to use the option of Fixed Penalty Notices for flytipping offences using the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016

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| Are specific electoral Wards affected? If relevant, name(s) of Ward(s): | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

1.0 SUMMARY OF MAIN ISSUES

- 1.1 Fly tipping is a significant and widespread problem with over 12,000 reports logged across Leeds in 2015.
- 1.2 Section 33 of the Environmental Protection Act 1990 sets out the offence of fly tipping, allowing cases to be presented at court with penalties incurred upon conviction. With that course of action, the Council must prove beyond all reasonable doubt that the accused did the act of flytipping. This can involve lengthy and complicated evidence gathering and time at court presenting the case.
- 1.3 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 introduce the option to serve a Fixed Penalty Notice for flytipping, with a fine set between £150 and £400.
- 1.4 Payment of the FPN allows the offender to discharge any liability to conviction for the offence of fly tipping.

2.0 RECOMMENDATIONS

- 2.1 The Director of Environment and Housing is asked to note the content of this report and approve the enforcement of the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016

- 2.2 The amount of fixed penalty notice for offences under section 33(1) (a) of the Environmental Protection Act 1990 be set at £300 with reduction to £200 for early payment.

3 PURPOSE OF THE REPORT

- 3.1 The purpose of this report is seek approval to enforce the 'Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016' to allow Fixed Penalty Notices to be used as an additional enforcement tool to address offences of fly tipping.

4 BACKGROUND INFORMATION

- 1.1 Section 33 of the Environmental Protection Act 1990 provides the definition of flytipping as controlled waste (household, commercial, industrial or clinical waste) being deposited on land without a permit to do so. This activity is different to littering and dumping waste on private land (including waste left in gardens) for which different legislation is used to control those activities.
- 1.2 In 2015, the Council received 12,442 notifications of fly tipping. The highest number came from City & Hunslet ward (12% of all reports) followed by Gipton & Harehills (8%) and then Beeston & Holbeck & Armley (both 7%).
- 1.3 The Council has a number of existing enforcement options available for dealing with fly tipping offences. Under the current enforcement policy these are:-
- Informal warning
 - Formal warning
 - Formal caution
 - Prosecution
- 1.4 Under Section 33 of the Environmental Protection Act 1990, the Council may take someone who has fly tipped on public land to court. In such courses of action, the Council must prove beyond all reasonable doubt that the accused was indeed the person who had fly tipped. If the evidence is accepted, the Court can fine the offender up to £50,000 and sentence them to 5 years in prison, or unlimited sentencing if the issue appears before Crown Court (i.e. on appeal).
- 1.5 In reality the average fines are much lower. Since 2013, Leeds City Council has presented 97 cases to court for incidents of fly tipping with average fines in the region of £450. Whilst costs are usually awarded, it is rare that they actually cover the cost incurred by the Authority in undertaking the investigation and presenting the case at court.
- 1.6 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 introduce another enforcement tool in the form of a Fixed Penalty Notice. These can be issued when an authorised officer has reason to believe that a person has committed a waste deposit offence within the areas of their Authority. By issuing a

Fixed Penalty Notice, the legislation allows the recipient to discharge their liability to conviction for the offence. Failure to pay the Fixed Penalty Notice can result in prosecution.

5 MAIN ISSUES

- 1.1 The Regulations provide an additional way of taking formal action against those considered to have fly tipped. The Fixed Penalty Notice route avoids the need to involve the courts and the administrative and legal work involved is significantly reduced.
- 1.2 Fixed Penalty Notices would be issued for most first time offences and for flytipping involving relatively small quantities of waste or waste which would not pose a risk of serious harm such as asbestos. A Fixed Penalty Notice is unlikely to be used where the offence committed is clearly part of a commercial enterprise. In those situations, a penalty limited to £300 might be considered a reasonable risk.
- 1.3 The Council retains the discretion to prosecute more serious offences and the Fixed Penalty Notice does not have to replace court action. If a person fails to pay the Fixed Penalty Notice, this could be pursued through the Courts at that point.
- 1.4 The Regulations allow Authorities to set a predetermined level of fine between £150 and £400. A level of £300 with a reduction to £200 for early payment is proposed in Leeds. The fines set by other Local Authorities contacted to date, including core cities, ranges from the maximum £400 to £150 and under with early payment.

6 CORPORATE CONSIDERATIONS

1.1 Consultation and Engagement

- 1.1.1 The Executive Member has been consulted on the use of this additional enforcement tool and the level of fine to be applied.

1.1.2 Equality and Diversity / Cohesion and Integration

- 1.1.1 An equality impact assessment has been completed and has identified no significant implications for diversity, cohesion or integration.

6.1 Council Policies and City Priorities

- 1.1.1 The issuing of Fixed Penalty Notices provides an additional way to sanction those considered to be guilty of having flytipped waste. It serves as a deterrent to that activity and allows the Council to process such cases in a more cost effective way than presenting cases at court.

6.2 Resources and Value for Money

- 1.1.1 Issuing a Fixed Penalty Notice for certain fly tipping offences provides a more cost effective way to deal with flytipping offences through a formal route. The Fixed

Penalty Notice fee would be payable to the Council, however the amounts involved are anticipated to be insubstantial. The main benefit is of reducing the time to bring formal action and a penalty to deal with an offence of flytipping.

- 1.1.2 Some changes to the Uniform database and payment system will need to be commissioned. These can be implemented internally but will have a development lead in time of about 3 months.

1.2 Legal Implications, Access to Information and Call In

- 1.2.1 The legal implications are referred to in this report.

1.2.2 Risk Management

- 1.2.1 The level of fine for this type of Fixed Penalty Notice is higher than for other environmental offences such as for dog fouling and littering. It may be that the offender would choose to have the case tested in court, but would risk the probability of a higher fine being awarded..

7 CONCLUSIONS

- 1.1 In introducing the option for authorised officers to issue Fixed Penalty Notices for fly tipping, an additional route is made available to deal formally with the more minor fly tipping offences that occur in the city.

8 RECOMMENDATIONS

- 1.1 The Director for Environment and Housing is recommended to approve the use of Fixed Penalty Notices for fly tipping offences and to agree the level of fine to be set at £300.

9 BACKGROUND DOCUMENTS¹

- 1.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.