

Report of Chief Officer (Environment)**Report to Director of Communities and Environment****Date:** 6th May 2019**Subject:** Fixed Penalty Notice for Householders who fail to pass waste to an authorised person.

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s):		
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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

- 1.1 Since 2005, all domestic households have had a legal duty to dispose of waste in a responsible manner, including steps to ensure their waste doesn't end up being flytipped. Until recently, the only option for regulators to deal with such problems was to take legal proceedings against the individual, where an unlimited fine could be imposed and the perpetrator receive a criminal record.
- 1.2 Prosecutions are time consuming and costly both for the local authority and court system and could be considered to be overly punitive in certain situations.
- 1.3 In recognising that enforcement options were limited for Local Authorities, a period of consultation resulted in The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018, which came in to effect on 7th January 2019. Under this legislation, householders who do not pass their waste to an authorised person can be issued with a Fixed Penalty Notice, as an alternative to facing court action.
- 1.4 Guidance has been released for both Local Authorities and householders and Leeds City Council must now determine an approach to implementing the Fixed Penalty Notices where waste is not passed to an authorised person, a practice which can often result in the waste being flytipped.

Recommendations

1. The Director of Communities and Environment is recommended to:
 - Approve the implementation of the Fixed Penalty Notice for householders who fail to meet their duty of care with regards to the passing of their waste to an authorised person.
 - That the Fixed Penalty Notice is set at £200, reduced to £150 if paid within 10 days.
 - That the introduction of the Fixed Penalty Notice is accompanied by a publicity campaign.

1 Purpose of this report

- 1.1 To seek approval of the Director of Communities and Environment to implement a Fixed Penalty Notice of £200 (reduced to £150 if paid within 10 days) for householders who fail to fulfil their duty of care to pass their waste to an authorised person, as an alternative to facing court action.

2 Background information

- 2.2 The law places a duty on occupiers of domestic property (householders) to give their waste to an 'authorised person'. This is normally either the local authority collection service or a registered waste carrier. Householders are required to take all reasonable steps to ensure that any transfer of waste produced at their property is to an authorised person.
- 2.3 Householders can already be prosecuted or issued with an FPN if they fly-tip waste themselves. However, waste is often fly-tipped because a householder has allowed an unauthorised person to take it away and that operator flytips the waste to avoid the cost of proper disposal.
- 2.4 Every year there are successful prosecutions against householders who have broken the law by failing to make reasonable checks and giving their waste to an unauthorised person. However, these prosecutions are costly for the regulators and for the court, and leave the householder with a criminal record which can seem severe when a householder may have paid someone to remove waste in good faith.
- 2.5 In Leeds, as elsewhere, prosecution numbers for this offence have historically been low because of the reasons outlined above.
- 2.6 DEFRA recognised that it would be beneficial to Local Authorities in tackling fly tipping to allow Local Authorities to use Fixed Penalty Notices for householders rather than go through the courts system and receive a criminal record.
- 2.7 DEFRA undertook a consultation exercise with Local Authorities, businesses and other interested parties from Jan-March 2018, with a further consultation taking place around the accompanying guidance documents for the issuing of FPNs and guidance for householders in August 2018.
- 2.8 In November 2018, the amended Duty Of Care Code of Practice was published (which includes requirements for householders) and the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 were laid before parliament ready for their implementation on 7th January 2019. These regulations now allow Local Authorities to issue Fixed Penalty Notices to householders for failure to comply with their duty of care in giving their waste to an authorised person.
- 2.9 The Code of Practice was also accompanied by Guidance Documents for Local Authorities for issuing Fixed Penalty Notices. The guidance advises on issuing FPNs in a proportionate manner and also the circumstances when it may not be appropriate to issue FPNs or indeed may be more appropriate to go straight to prosecution.

- 2.10 The Guidance Document also recommends that Local Authorities actively publicise the Householders Duty of Care so that as many households as possible are aware of their responsibilities as well as the potential penalties should they fail to comply with the requirements.
- 2.11 The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations allow Local Authorities to set the Fixed Penalty Notice at anything between the following levels.

Default penalty of £200
Minimum full penalty of £150
Maximum full penalty of £400
Minimum discounted penalty of £120

3 Main issues

- 3.1 It is recognised that not all householders in Leeds are aware of their legal duty of care pass their waste only to an authorised waste carrier. Leaflets have previously been produced and distributed to households on a localised basis, but further publicity is needed.
- 3.2 A comprehensive publicity campaign is being developed which will include producing some updated, eye catching literature; a press release and a social media campaign to reach as many residents in Leeds as possible.
- 3.3 The Local Authority Guidance Document provides detailed and proportionate guidance for Officers in the use of the FPN and it is proposed that this guidance is broadly followed, with short training sessions being provided for all officers in relation to the guidance.
- 3.4 The level of Fixed Penalty needs to be determined within the parameters described in 2.10. Leeds already has a Fixed Penalty Notice in use for fly-tipping of £300 (£200 is paid within 10 days) and therefore it is recommended that the Fixed Penalty for breach of duty of care is set at £200 with a discount to £150 if paid within 10 days. This is the default rate set by the legislation, which generally indicates a preferred rate.
- 3.5 It is proposed that the FPN will go live on 1st June 2019. As the householder's duty of care has been a legal requirement for a number of years, it is not anticipated that an enforcement grace period is needed for when the FPN is introduced.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The Executive Member (Environment and Active Lifestyles) has been consulted and is supportive of the use of this additional enforcement tool, the publicity campaign and the level of fine to be applied.

4.2 Equality and Diversity / Cohesion and Integration

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

4.3 Council policies and the Best Council Plan

- 4.3.1 The issuing of Fixed Penalty Notices provides an additional way to sanction those considered to be guilty of having failed in their duty of care as a householder. It serves as a deterrent to that activity and encourages others to act responsibly. It allows the Council to process such cases in a more cost effective way than presenting cases at court.
- 4.3.2 Taking enforcement (by means of a Fixed Penalty Notice) on householders who fail to meet their duty of care in relation to waste will contribute to the Best Council Plan to live in good quality, affordable homes within clean and well cared for places as well as enjoy greater access to green spaces, leisure and the arts.

4.4 Resources and value for money

- 4.4.1 Issuing a Fixed Penalty Notice provides a more proportionate and cost effective way to deal with this matter than via a formal legal route.
- 4.4.2 The Fixed Penalty Notice fee would be payable to the Council, however the amounts involved are anticipated to be insubstantial. The main benefit of introducing this provision is in taking appropriate action whilst avoiding the time consuming process of a prosecution.
- 4.4.3 Some changes to the internal recording, reporting and payment system have been commissioned and can be implemented in time for 1st June 2019.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 As outlined in section 3E(f) of the Leeds City Council constitution, the Director of Communities and Environment is authorised to discharge the function of Public Health Protection and Control of Statutory Nuisance including rubbish, accumulations and flytipping.
- 4.5.2 The legal implications of implementing the Fixed Penalty Notice are outlined in the main body of the report.
- 4.5.3 This decision constitutes a significant operational decision and as such is not eligible for call in.

4.6 Risk Management

- 4.6.1 Historically, the numbers of prosecutions for householders failing to meet their duty of care have been relatively low for the reasons outlined in section 2.4. The introduction of the opportunity for householders to discharge their liability for an

offence through payment of an FPN provides a more time efficient imposition of a sanction.

- 4.6.2 Those who choose not to pay the Fixed Penalty may result in more cases going through the courts than has been the case historically. There is however, a significant difference between the unlimited fine and prison sentence that can be imposed through the courts and the payment of £200 and it is anticipated that take up of the opportunity to pay the FPN will be high.

5 Conclusions

- 5.1 In introducing the option for authorised officers to issue Fixed Penalty Notices for householders who fail to meet their duty of care in relation to waste, an additional route is available as an alternative to prosecution. Publicising a householders responsibilities in relation to correctly disposing of unwanted items is also essential in helping to prevent flytipping in the city.

6 Recommendations

- 6.1 The Director of Communities and Environment is recommended to:
- 6.2 Approve the implementation of the Fixed Penalty Notice for householders who fail to meet their duty of care with regards to the passing of their waste to an authorised person.
- 6.3 That the Fixed Penalty Notice is set at £200, reduced to £150 if paid within 10 days.
- 6.4 That the introduction of the Fixed Penalty Notice is accompanied by a publicity campaign.

7 Background documents¹

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.