

CABINET

Agenda Item: 11

Ward: All

Portfolio: Services

Report Author(s): Cllr Nigel Taylor, Portfolio Holder for Neighbourhood and Community Health Services
Meeting Date: 11 July 2016

SUBJECT: Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016

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Report Sign off	Seen by:	Name	Date
	Legal	Lesley Dolan	17/06/16
	Finance	Duncan Moss	15/06/16
	Procurement	N/A	
	Corporate Manager	Stuart Cave	14/06/16
	Portfolio Holder	Nigel Taylor	15/06/16
	Ward Member(s)		
Summary:	<p>The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 (the Regulations) came into force in May 2016. The new regulations introduce the ability to issue an FPN to persons believed to have committed an offence of fly-tipping. The FPNs offer a person the opportunity to discharge their liability to conviction for the offence by the payment of a fixed penalty. The legislation allows the FPNs to be used for offences under Section 33 of the Environmental Protection Act 1990.</p> <p>The new provisions provide for a fine of not less than £150 and not more than £400 as specified by the waste collection authority, and £200 if no amount is specified by the authority.</p>		
Recommendation:	<p>Cabinet is recommended to:</p> <ul style="list-style-type: none">a) Set the Penalty Charge for Unauthorised Deposit of Waste (Fixed Penalty Notices) at £400 (four hundred pounds) and offer a discount to £250 if paid within 10 days.b) Authorise the Corporate Manager – Regulatory Services in consultation with the Portfolio Holder to amend the Environmental Protection Fixed Penalty Notice Enforcement Policy, (Environmental Offences) as necessary, to reflect the introduction of Penalty Charge for Unauthorised Deposit of Waste.		

Direct and/or indirect impact on service delivery to our customers and communities:	<p>Investigations into fly-tipping are resource intensive and can be lengthy and complex, requiring Enforcement Officers and the council's contractors to analyse tipped waste material in order to identify potential offenders.</p> <p>Fly-tips can vary hugely in their scale, impact on the environment and cost of clearing. It is useful to have a range of sanctions available which can be implemented in proportion to the severity of the offence. It gives the option to issue a penalty without the time needed to go prepare prosecution papers and attend at court, where this is more</p>
Legal Implications:	<p>None identified</p>
Financial Implications:	<p>Receipts from FPNs are retained by the authority to which they are paid</p>
Value for Money:	<p>Any FPNs paid will therefore go a small way to help offset the costs to the Council of enforcing and clearing fly-tips.</p>
Equalities Implications:	<p>None identified</p>
Risk Assessment and Adverse Impact on Corporate Actions:	<p>The issue of FPNs is a judgement call by the relevant Enforcement Officer. There have been no known adverse impacts over the last 3 years and the risk is regarded as Low.</p>
Scrutiny Recommendation (if any)	

INTRODUCTION

1. The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force in May 2016. The new regulations introduce the ability to issue an FPN to persons believed to have committed an offence of fly-tipping. The FPNs offer a person the opportunity to discharge their liability to conviction for the offence by the payment of a fixed penalty. The legislation allows the FPNs to be used for offences under Section 33 of the Environmental Protection Act 1990.
2. The new provisions provide for a fine of not less than £150 and not more than £400 as specified by the waste collection authority, and £200 if no amount is specified by the authority.

BACKGROUND

1. Fly-tipping is an offence under section 33(1) of the Environmental Protection Act 1990 (as amended), which provides that it is an offence to deposit controlled or extractive waste in or on any land without a permit, or in breach of a permit.
2. Mendip district like other authorities suffers from flytipping incidents across the whole area. To date the Council has had two options when enforcing against flytipping offenders. These have been to take formal court proceedings or to issue a FPN (a type of civil sanction) for depositing litter, which amounts to a £80 penalty. Both options require the perpetrator to be identified.
3. The council has served a dozen FPNs for Litter (the only option prior to the new legislation) and with the introduction of additional FPNs for fly-tipping with enhanced fines bridges the gap between the extremes of the offence. FPNs do not replace the prosecution option for serious offences; In these instances, where a perpetrator can be identified and there is available sufficient direct evidence, a prosecution is instigated in more serious cases, such as for high volume, commercial or organised tipping. The Council has had one successful court prosecution.
4. An FPN offers the opportunity to discharge any liability to conviction for the offence to which it relates by payment of a fixed penalty and is applied in cases where prosecution is unlikely to be cost-effective.
5. Despite the best efforts of Council staff, its contractors and the public the perpetrators of the majority of fly-tips cannot be identified. Where they are identified it is appropriate that they receive a sanction that properly reflects the damage to the environment and local community and the cost to the local authority in clearing the waste material and detecting the offence. It should also act as a deterrent against future offending, both for the identified offender and, if suitably publicised, for others who may be minded to fly-tip. An £80 penalty falls short on all counts.
6. In recognition of the Government has introduced the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 which amend Part II of the Environmental Protection Act 1990 (EPA) which relates to waste on land. The Regulations provide for a fine of not less than £150 and not more than £400 as specified by the waste collection authority and a default value of £200 if no

amount is specified by the authority. Under the EPA a waste collection agency is defined as “for any district in England ... not within Greater London, the council of the District”.

7. The Regulations which came into force in May 2016 are intended to provide local authorities with a more appropriate tool to tackle small-scale fly-tipping.
8. It is recommended therefore that the Council sets the penalty charge for Unauthorised Deposit of Waste (Fixed Penalty Notices) at £400 (four hundred pounds) and offer a discount to £250 if paid within 10 days.
9. In setting the charge the Council’s Environmental Protection Fixed Penalty Notice Enforcement Policy (Environmental Offences) will need to be amended to reflect the introduction of a penalty charge (FPN) for Unauthorised Deposit of Waste.

OPTIONS CONSIDERED

1. The legislation allows the fine for a FPN to be set between £150 and £400. Taking into account the cost of clearing up small fly tips, enforcement, investigatory time setting the level at the maximum £400, discounted to £250 if paid within 10 days would seem appropriate.
2. This level of fine would properly reflect the damage to the environment and local community and the cost to the local authority in clearing the waste material and detecting the offence. It should also act as a deterrent against future offending.

RECOMMENDATIONS

Cabinet is recommended to:

- c) Set the Penalty Charge for Unauthorised Deposit of Waste (Fixed Penalty Notices) at £400 (four hundred pounds) and offer a discount to £250 if paid within 10 days.
- d) Authorises the Corporate Manager – Regulatory Services in consultation with the Portfolio Holder to amend the Environmental Protection Fixed Penalty Notice Enforcement Policy, (Environmental Offences) as necessary, to reflect the introduction of Penalty Charge for Unauthorised Deposit of Waste.

REASONS FOR RECOMMENDATIONS

The implementation of a Penalty Charge for Unauthorised Deposit of Waste will contribute to the Council’s commitment to a stronger approach to Enforcement.

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List of background Papers: