

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	ENVIRONMENT, HEALTH AND HOUSING COMMITTEE	3 SEPTEMBER 2019	5
THE INTRODUCTION OF FIXED PENALTY NOTICE FOR HOUSEHOLD WASTE DUTY OF CARE			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

To inform the Environment, Health and Housing Committee Members of the new fixed penalty notice (FPN) powers relating to the household waste duty of care that have come into force under The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 (the Regulations), which amend section 33 of the Environmental Protection Act 1990.

To authorise the council's enforcement officers to issue FPNs, under section 34ZA of the Environmental Protection Act 1990 (EPA), to persons whom the officer has reason to believe have committed a breach of household waste duty of care.

To seek authority to use the legal maximum FPN charge level of £400 for all breaches of household waste duty of care and to give a discount of £240 (i.e. discounted fine payment level of £160) for early payment provided payment is made within 10 days of the date the FPN was issued.

RECOMMENDATIONS

The Committee is recommended to:

1. Adopt the legal maximum FPN level of £400 for all of breaches of household waste duty of care offences and to give discount for early payment of £240 (i.e. discounted fine payment level of £160) provided payment is made within 10 days of the date the FPN was issued;
2. Delegate authority to the Head of Health and Environment to introduce the new fixed penalties for household waste duty of care offences; and
3. Authorise the Council's enforcement officers to issue these FPNs in accordance with section 34ZA of the Environmental Protection Act 1990.

SUMMARY OF PREVIOUS DECISIONS

There are no previous decisions under this subject matter

CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services (Value for Money)	✓
Delivering the services that customers expect of an excellent council (Clean and Green)	✓
Working with all partners (Vibrant Economy)	✓
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	✓
Promoting Fylde as a great destination to visit (A Great Place to Visit)	✓

REPORT

1. Under Section 34 of the Environmental Protection Act 1990, all occupiers of domestic properties are required to take reasonable measures to ensure that waste produced on their property is only transferred to an authorised person. An authorised person is defined in law and includes the council waste collection service (ie. bulky waste collection), a registered waste carrier (i.e. an authorised skip company) or an operator of a registered site (i.e. household waste recycling centre at Saltcotes Road). This reduces the risk of domestic waste ending up in the hands of those who would fly tip it.
2. Nationally two thirds of fly-tipping incidents involve household waste, often as a result of an individual breaching their duty of care to ensure their waste is taken away by an authorised carrier. The household waste duty of care FPN is intended to reduce the flow of waste to those, who would go on to dispose of it illegally or fly tip it. The FPN allows a more proportionate approach to enforcement, both for the council in costs of enforcement, and for householders in size of penalty and avoiding a criminal record.
3. Examples of where the household waste duty of care has been breached include (but is not limited to):
 - a. Where fly tipped waste can be traced back to an individual, who is found to have failed to take reasonable steps to ensure that they have transferred the waste to an authorised person;
 - b. Where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property; or
 - c. Where an individual is found to have transferred their household waste to an unauthorised person, at a site that does not have a permit or exemption.
4. In all investigations of breaches of household waste duty of care, individuals will be given the opportunity to demonstrate they took reasonable steps to determine the person that took their waste was authorised to do so. If fly-tipped waste is traced to an individual, and they are unable to identify who took their waste, or the carrier that they identify is unauthorised, then it is reasonable to believe they have not met their duty of care.
5. Examples of evidence which can be used to demonstrate an occupier of a domestic property meet their duty of care can include, but is not limited to:
 - a. Details of business and of any vehicle used which can be linked to an authorised operator ;
 - b. A record of checks made, including operators registration, permit or exemption number;
 - c. A receipt for the transaction which includes the businesses details of a registered operator; or
 - d. A copy of photograph of the carrier's waste license or site permit.
6. Fly tipping is a significant problem to local communities and a risk to the environment. It is a drain on council resources and undermines legitimate waste businesses, where unscrupulous operators undercut those that operate within the law. Prior to the introduction of the aforementioned Regulations and subsequent FPN powers, the option for dealing with household waste duty of care was limited to prosecution, when other formal action was not possible or suitable.
7. Of the 641 incidents of fly tipping in Fylde Borough during 2018/2019, 246 (54%) was found to be household waste. Whenever evidence was found within these incidents of household waste deposited illegally, the investigation found that there was a failing in the duty of care.
8. The costs to local authorities of investigating, bringing prosecutions, clearance and disposal of fly tipping are considerable. Where fines are issued, as a result of a successful prosecution, they are paid to the court, and prosecuting authorities must seek to recover their costs through a separate process, which often can result in an award levels significantly less than the actual costs incurred for the investigation and prosecution.
9. The new 2018 Regulations amend section 34 of the Environmental Protection Act 1990 to give new powers to local authorities to deal with household waste duty of care. The Regulations also provide local authorities with a more efficient and proportionate response to breach of duty of care, ie. the power to issue FPNs, instead of the current enforcement by prosecution
10. FPNs are an effective and visible way of dealing with low level environmental crime provided they are used sensibly, enforced fairly and are seen as a reasonable response to genuine problems.

11. The council has already approved the use of FPNs, as an alternative to prosecutions, when dealing with other environmental crimes including littering, dog fouling and small-scale fly tipping vehicles. These FPNs are issued by authorised officers within the Council's Environmental Health Team. The same authorised officers will be continue to be responsible for issuing FPNs for breaches of the already adopted FPNs and of the new household waste duty of care.
12. The FPN powers relating to household waste duty of care allow an enforcement authority set a fine payment level between £150 and £400, with a minimum early payment of £120. This ensures the combination of illegal disposal and penalty is higher than the cost off legitimate disposal. If a person pays the notice within 14 days of the date of the notice, they cannot be convicted for the offence.
13. Fixed penalties that are set too high for local conditions, or are likely to be higher than the Court imposed fine in the event of non-payment, will lead to substantial non-payment rates and so are counter-productive.
14. In March 2017, FPNs were introduced by the council, as an alternative to prosecution, for small scale fly tipping that came into force under The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016. In introducing FPNs for small scale fly tipping, the Council adopted the upper limit level of £400 and to give discount of £200 for payment within ten days. In accordance with the Borough Council's March 2017, decision to adopt the FPN upper limit level for small scale fly tipping, it is proposed that the Borough Council continues to adopt the upper limit charge level for all future environmental offences.
15. There is a set legal standard payment period of 14 days for the payment of fixed penalties. Once a FPN has been issued, an authority cannot prosecute for the alleged offence, if the FPN is paid within this 14 day period, and this must be stated on the notice itself. For this reason, the period, during which a discount for early payment is offered, must be less than 14 days; and, in line with the Regulations, cannot be more than 10 days. Again, this will be consistent with the standards set by other local authorities and the approach already in place for other environmental crime FPNs issued by Fylde Borough Council.
16. The council will continue not to accept payment by instalments or payment plans. Payment for fixed penalties can only be accepted by the council for the full amount. However, in cases of extreme financial difficulties, officers will continue to have discretion to be able to extend the lower threshold payment period (subject to legal restrictions), and will work together with those issued fixed penalties to avoid prosecution where possible.
17. Under the Regulations there is no right of appeal (which is the case for the other environmental FPNs issued by the council). However, with the household waste duty of care FPN, there is the right to challenge the appropriateness of the enforcement; or to dispute the alleged offence. An alleged offender, issued an FPN, would be entitled to make representations, which the council will be required to consider, in conjunction with the evidence of the case. Any such representations would be considered in line with the council's Corporate Enforcement Policy.
18. FPNs are not appropriate for repeat offenders, or those responsible for large-scale environmental offences, offences involving hazardous waste, those who are non-compliant with enforcement officers or those who do not wish to be issued a FPN. These types of offences will continue to be enforced by prosecution in line with the Corporate Enforcement Policy.
19. The council's new FPN powers, for breaches of household waste duty of care, will be used as part of the package of enforcement options available in accordance with the council's Corporate Enforcement Policy.
20. In accordance with the Environmental Protection Act 1990 and new Regulations, the income received by local authorities from FPN's has to be spent on functions relating to waste, enforcement and cleansing. It is not to be used a means of generating income for other uses.
21. The Council fees and charges will be updated to reflect the charge if approved
22. It is not possible to predict the likely income from the introduction of this charge at this stage. Any additional income will be reflected in future updates to the Financial Forecast.

IMPLICATIONS	
Finance	It is not possible to accurately assess the level of income that will be generated from the new charge but there is no direct cost in adopting the charge. Any additional income will be reflected in future updates to the Financial Forecast. The use of FPNs has the potential of yielding a modest income. In accordance with the Regulations, FPN receipts will be used for the purpose of exercising functions to improve street cleanliness and enforcement of offences; it is not being regarded as an 'income generator'. It is not envisaged that the revenue generated from the fines will be significant, but it will reduce the need to pursue costly prosecution in some cases and enable a more flexible approach in dealing with specific offences under the Environmental Protection Act 1990
Legal	The legal implications are set out in the body of the report
Community Safety	There are no direct community safety implications arising from the report
Human Rights and Equalities	There are no direct human rights and equalities implications arising from the report. The impact on businesses, charities or voluntary bodies is expected to be positive, as these proposals should act as a deterrent and encourage responsible waste disposal; and help level the playing field for legitimate waste businesses.
Sustainability and Environmental Impact	There are no direct sustainability and environmental impact implications arising from the report. The introduction of FPNs for household waste duty of care will deliver a net positive climate change impact, through the reduction in illegal waste disposal and fly tipping; and associated additional vehicle movements required to clear and dispose of it. A reduction in fly tipping will also deliver an increase in the quality of the local environment, a reduction in associated environmental pollution and contamination and associated improvements in public perception, health, civic pride and inward investment.
Health & Safety and Risk Management	There are no direct sustainability and environmental impact implications arising from the report

LEAD AUTHOR	CONTACT DETAILS	DATE
Philip Dent	Phil.dent@fylde.gov.uk ; Tel 01253 658620	July 2019

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
N/A	N/A	N/A