

DECISION ITEM



REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	ENVIRONMENT, HEALTH AND HOUSING COMMITTEE	21 FEBRUARY 2017	6
THE INTRODUCTION OF FIXED PENALTY FOR FLY TIPPING			

PUBLIC ITEM

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

SUMMARY

Regulations have recently been introduced which grant new powers to local authorities to issue fixed penalty notices (FPN) for small scale fly tipping. Previous powers have required local authorities to enforce both small and large scale fly tipping through prosecutions. This report details the recent changes to the regulations and proposes the adoption and level of charge for the new FPN.

RECOMMENDATIONS

1. To adopt the national FPN for small scale fly tipping in accordance with the Unauthorised Deposit of Waste (fixed penalties) Regulations 2016.
2. To set the level of a FPN charge for small scale fly tipping as £400 which will be reduced to £200 if paid within 14 days of issue. This is in line with the majority of Lancashire Authorities.

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. There are significant environmental, social and financial implications associated with fly tipping and illegal dumping of waste. The Government has stated that fly tipping is a significant blight on local environments; a source of pollution; a potential danger to public health and hazard to wildlife. It also undermines legitimate waste businesses where unscrupulous operators undercut those operators within the law.
2. A government consultation on proposals to enhance measures to tackle waste crime took place in early 2015. The consultation sought views on enhancing enforcement powers and other measures to tackle waste crime and called for evidence on adopting FPNs for small scale fly tipping.
3. Consequently a report by the Communities and Local Government Select Committee recommended that the government introduce a national FPN for small amounts of fly tipping. The report states: Fly tipping is a serious problem for local authorities and private land owners, and it is increasing.
4. There is therefore a need for local councils to increase their efforts both to deter fly tipping and to penalise those who engage in it. We accept that prosecution is often difficult and costly and as a result the number of convictions for fly tipping is low. The government should introduce a national fixed penalty notice for small amounts of fly tipping.
5. Fly tipping is the illegal disposal of household, industrial, commercial or other controlled waste without a waste management licence. The waste can be liquid or solid or controlled waste including garden refuse and large domestic items such as fridges and mattresses.
6. Controlled waste is waste that is subject to legislative control in either its handling or its disposal. As a legal term, controlled waste applies exclusively to the UK but the concept is enshrined in laws of many other countries. The types of waste covered includes domestic, commercial and industrial waste.
7. Roles and responsibilities for clearing up fly tipped waste vary depending on circumstances. Local authorities such as Fylde are responsible for investigating and clearing small scale fly tipping on public land (including public roads and highway within their responsibility).
8. The Environment Agency investigates larger scale fly tipping, hazardous waste and fly tipping by organised gangs.
9. Private land owners are responsible for the clearance of fly tipped waste on private land.
10. Fly tipping is a criminal offence pursuant to section 33 of the Environmental Protection Act 1990. An offence is punishable by fine of up to £50,000 or 12 months imprisonment if convicted in a Magistrates court. The offence can attract an unlimited fine and up to 5 years imprisonment if convicted in Crown Court.
11. Until recently the powers available to local authorities have been reliant of pursuing prosecutions to enforce fly tipping. This can be costly and in some cases cumbersome when enforcing small scale fly tips. Small scale fly tips can be defined as above one bag of waste up to a quantity equivalent to a small vehicle load.
12. Recently introduced regulations have granted local authorities powers to issue FPNs for contraventions of section 33 (1) (a) of the Environmental Protection Act 1990 (EPA) for small scale fly tipping. The introduction of a national FPN allows local authorities in England to issue a FPN in-between £150 to £400 for small scale fly tipping pursuant to the Unauthorised Deposit of Waste (fixed penalties) Regulations 2016.
13. The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force on 9 May 2016. These regulations amend section 33 of the Environmental Protection Act 1990 by

inserting a new section 33ZA into the EPA 1990. The regulations introduce new powers for local authorities to issue FPNs for such offences, including small scale fly tipping, providing Councils with an alternative and generally more suitable option to prosecutions.

14. The charge rate for the new FPN can be set in-between £150 to £400 for small scale fly tipping offences at the discretion of a local authority. It is important to give a strong message to potential offenders that fly tipping will not be tolerated in Fylde. It is therefore proposed that the highest rate is set at £400 but this is reduced to £200 if paid within 14 days of issue. This potentially may result in good payment rates and avoid the need to enter into costly prosecution proceedings should an offender not pay the FPN.
15. It is proposed that the Council adopts the new national FPN and introduces a FPN charge of £400 reducing to £200 if payment is made within 14 days of issue.

IMPLICATIONS	
Finance	It is not possible to accurately assess the level of income that will be generated from the introduction of a fixed penalty notice for small scale fly-tipping if such a charge is introduced. Any additional income that does result from the new charge will be reflected in future updates to the financial forecast. There is no direct cost implication in the adoption of the new charge.
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
Sustainability and Environmental Impact	There are no direct sustainability and environmental impact implications arising from the report
Health & Safety and Risk Management	There are no direct health and safety and risk management implications arising from the report

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LIST OF BACKGROUND PAPERS
None