

Item

INTRODUCTION OF FIXED PENALTY NOTICES FOR HOUSEHOLD WASTE DUTY OF CARE



To:

Councillor Katie Thornburrow, Executive Councillor for Streets and Open Spaces

Environment & Community Scrutiny Committee 21/03/2019

Report by:

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Wards affected:

All

Key Decision

1. Executive Summary

The purposes of this report are:

- a) To inform the Executive Councillor and Scrutiny 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.
- b) To authorise the council's Streets and Open Spaces 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.

- c) To seek authority to use the legal maximum FPN 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.

2. Recommendations

The Executive Councillor is recommended to:

- a) 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
- b) Delegate authority to the Head of Environmental Services to introduce the new fixed penalties for household waste duty of care offences
- c) Authorise council's Streets and Open Spaces enforcement officer's to issue these FPNs in accordance with section 34ZA of the Environmental Protection Act 1990.

3. Background

- 3.1. 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 Butt Lane). This reduces the risk of domestic waste ending up in the hands of those who would fly tip it.
- 3.2. Nationally two thirds of fly-tipping incidents involve household waste¹, 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,

¹ <https://www.gov.uk/government/consultations/reducing-crime-at-sites-handling-waste-and-introducing-fixed-penalties-for-waste-duty-of-care/outcome/government-response>

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.

- 3.3. 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.
- 3.4. 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.
- 3.5. 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.
- 3.6. 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.

- 3.7. 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.
- 3.8. 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
- 3.9. Within Cambridge there are a significant number of domestic waste cases investigated each year, and, of these, over 50% contain evidence, or are witnessed and linked to suspects. Over the last three years, the number of cases investigated is as follows:

Year	Number of household duty of care cases investigated	Number of household duty of care cases with evidence
2018/19 ²	312	177
2017/18	442	235
2016/17	468	194

- 3.10. FPN's are an effective and visible way of dealing with low level environmental crime and will be supported by the public, provided they are used sensibly, enforced fairly and are seen as a reasonable response to genuine problems.
- 3.11. The council has already approved the use of FPNs, as an alternative to prosecutions, when dealing with other environmental crimes including littering, dog fouling, small-scale fly tipping, illegal advertising and abandoned vehicles. These FPNs are issued by authorised officers

² Up to 17 January 2019 (not including ongoing cases)

within the Council's Streets and Open Spaces service. 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.

- 3.12. 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.
- 3.13. In determining the appropriate FPN levels for breaches of the household waste duty of care, the council will need to take into account the deterrent effect of different levels, peoples' readiness to pay and the levels of fines for breaches of household waste duty of care currently imposed in the magistrates' courts. 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.
- 3.14. In June 2016, 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 £240 for payment within ten days. In accordance with the City Council's June, 2016, decision to adopt the FPN upper limit level for small scale fly tipping and the July 2018 decision to adopt the FPN upper limit for littering, it is proposed that the City Council continues to adopt the upper limit charge level for all future environmental offences.
- 3.15. 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 Cambridge City Council.

- 3.16. 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.
- 3.17. 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.
- 3.18. 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.
- 3.19. 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.
- 3.20. 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 as a means of generating income for other uses.

4. Implications

(a) Financial Implications

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.

(b) Staffing Implications

The introduction and issuing of the new fixed penalties for household waste duty of care will be achieved within existing resources.

(c) Equality and Poverty Implications

An EQIA has been completed please see attached appendix A.

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.

(d) Environmental Implications

There are no adverse environmental implications. 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.

(e) Procurement Implications

No procurement is necessary for the introduction of FPNs for breaches of household waste duty of care. Any procurement involved in delivering the associated enforcement service will be undertaken in accordance with the procurement and financial regulations of the council.

(f) Community Safety Implications

There are no adverse community safety implications. Improvements to personal accessibility and the wider public realm are likely to have a positive effect upon access and public safety

(g) Consultation and communication considerations

FPNs are an accepted means of discharging liability to deal with small scale environmental crime and have been used by the council for more than ten years.

The extension of the scope of environmental crime for which FPNs can be issued, to include household waste duty of care, is now allowed through the 2018 Regulations. These Regulations have been set as a result of evidence obtained by Government, as set out in The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018, consultation documents.

In January, 2018, Defra and the Welsh Government jointly consulted on proposals to tackle crime and poor performance in the waste sector and introduce a new FPN for the householder waste duty of care. The joint consultation closed on 26 March and resulted in 275 responses being received. The summary of responses received and associated Government response is available at: <https://www.gov.uk/government/consultations/reducingcrime-at-sites-handling-waste-and-introducing-fixed-penalties-for-waste-duty-of-care>. Responses to the consultation were received from local authorities, businesses, private individuals, non-government organisations, trade associations, professional bodies, consultants and others. The majority of respondents also supportive of the introduction of an FPN and agreed that it would help to tackle fly tipping.

To communicate the introduction of the new FPN powers, promotional literature will be developed and provided to council staff and members, builders merchants, public outlets (including community centres/ council receptions and libraries), Cambridge BID (for dissemination to its members), and advertised to the wider city community through news releases, social and web media and inclusion in educational campaigns.

The departments and officers who will be responsible for the delivery of this enforcement procedure have been consulted.

6. Background papers

Background papers used in the preparation of this report:

- Council's Corporate Enforcement Policy - <https://www.cambridge.gov.uk/content/enforcement-policy>

- Council Constitution - <https://www.cambridge.gov.uk/constitution>
- The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 - <http://www.legislation.gov.uk/uksi/2018/1227/contents/made>
- The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 Explanatory Memorandum - http://www.legislation.gov.uk/uksi/2018/1227/pdfs/uksiem_20181227_en.pdf
- Guidance for local authorities on household waste duty of care fixed penalty notices - <https://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance/guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notices#>
- Waste Duty of Care Code of Practice 2018 - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759083/waste-code-practice-2018.pdf
- DEFRA and Welsh Government Consultation on the household waste duty of care: Summary of responses - November 2018 - <https://consult.defra.gov.uk/waste/consultation-household-waste-duty-of-care/results/householdwastedutyofcareconsultationsummaryofresponses.pdf>

7. Appendices

Appendix A: EqlA - Introduction of fixed penalty notices for household waste duty of care

8. Inspection of papers

To inspect the background papers or if you have a query on the report please contact Wendy Johnston, Community Engagement and Enforcement Manager, tel: 01223 - 458578, email: wendy.johnston@cambridge.gov.uk.