

## Report of the Strategic Director Environment & Sport to the meeting of Executive to be held on 19<sup>th</sup> July 2016.

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**Subject:** The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.

**Summary statement:** Executive is asked to agree to the use of Fixed Penalty Notices for fly-tipping offences as provided for in the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 .

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**Portfolio:**

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**Overview & Scrutiny Area:**

**Environment & Waste Management**



## 1. SUMMARY

Executive is asked to agree to the use of Fixed Penalty Notices for fly-tipping offences as provided for in the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.

## 2. BACKGROUND

- 2.1 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 (the "Regulations") came into force on 9 May 2016. The Regulations give local authorities greater powers to tackle fly-tipping by allowing authorised officers of the authority to issue fixed penalty notices of between £150 and £400, where they have reason to believe a person has committed a "waste deposit offence" in the authority's area. Introducing fixed penalty notices for fly-tipping is the latest move in a government crackdown on waste crime, which costs the economy millions of pounds a year in clean-up costs, undermines legitimate business, and poses serious risks to our environment.
- 2.2 Currently the only sanctions the Council can take are to either prosecute or offer cautions to offenders for fly-tipping. Fly-tipping is a criminal offence and the maximum penalty for most fly-tipping offences is a fine of up to £50,000 or 12 months imprisonment or both (in the Magistrates Court) or a unlimited fine or 5 years imprisonment or both (in the Crown Court).
- 2.3 Prosecutions can be extremely time consuming, costly and can take many months to get to court. It is recommended that Fixed Penalty Notices (FPNs) are used for small scale fly-tipping such as dumping more than a single item of non commercial waste e.g 2 black bin bags of rubbish up to a car boot load. Anything more than a car boot load or any commercial waste is considered to be serious fly-tipping and prosecution would be considered in such incidents. Historically the fly-tipping of a single item of waste e.g. a single black bag or equivalent has been dealt with as a littering offence and a littering fixed penalty notice was issued to the offender. This will continue to be the case. The ability to issue a fixed penalty notice for small scale fly-tipping will enable the Council to deal with such offences in a more efficient and proportionate manner other than to prosecute or offer a caution. The fixed penalty notice offers the offender an opportunity to discharge their liability for the offence by payment of a fine. However, if the fine is not paid within a specified time scale namely 14 days following the date of the notice the Council will then prosecute the offender for the fly-tipping offence.

For more serious fly-tipping offences the Council will still look to prosecute offenders.

- 2.4 While acting as a deterrent, issuing fixed penalty notices for small scale fly-tipping will also save the Council officer time and money in prosecuting offenders as they will provide a quicker alternative to the prosecution of fly-tippers through the courts.

### **3. OTHER CONSIDERATIONS**

- 3.1 The Regulations provide for a fixed penalty of not less than £150 and not more than £400 for fly-tipping. If no amount for the fixed penalty is specified by the waste collection authority the default amount is £200. The Regulations allow a waste collection authority to offer a reduction for early payment if the penalty is paid before the end of the period of 10 days following the date of the notice.
- 3.2 Officers from Yorkshire Councils have been discussing the implementation and use of Fixed Penalty Notices for fly tipping to ensure a co-ordinated and consistent approach across the county.
- 3.3 Nearly all Councils in the Yorkshire and Humber region are setting the fixed penalty at £400. Most councils are looking to use the option of a discount for early payment, typically about a £100 reduction.

### **4. OPTIONS**

#### **Option One**

Executive agree to the use of Fixed Penalty Notices for small scale fly-tipping and agree that the penalty in the Bradford District be fixed at £400 .

That Executive also agree that the penalty be reduced to £300 if the penalty is paid in full before the end of the period of 10 days following the date of the notice.

#### **Option Two**

Executive do not agree to the use of Fixed Penalty Notices for small scale fly-tipping.

#### **Option Three**

Executive agree to the use of Fixed Penalty Notices for small scale fly-tipping but decide that a different amount for the fine and/or the early payment discount, within the limits prescribed by the Regulations , should be imposed .

### **5. FINANCIAL & RESOURCE APPRAISAL**

There are no direct financial implications with this report. The new fixed penalty powers will increase the potential to take alternative action against people committing lower level fly-tipping offences by issuing Fixed Penalty Notices as opposed to preparing lengthy, time consuming prosecutions.

### **6. RISK MANAGEMENT AND GOVERNANCE ISSUES**

There are no risk management and governance issues apparent within the context of this report.

## **7. LEGAL APPRAISAL**

- 7.1 Pursuant to section 33 (1) of the Environmental Protection Act 1990 it is an offence to deposit controlled or extractive waste in or on any land without a permit or in breach of a permit.
- 7.2 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 introduce a new section to the Environmental Protection Act 1990 to allow waste collection authorities in England to issue Fixed Penalty Notices for fly-tipping waste offences in breach of s33(1) EPA 1990.

## **8. OTHER IMPLICATIONS**

### **8.1 EQUALITY & DIVERSITY**

There are no equality and diversity implications apparent within the context of the report.

### **8.2 SUSTAINABILITY IMPLICATIONS**

Preventing fly- tipping contributes positively towards the sustainable agenda.

### **8.3 GREENHOUSE GAS EMISSIONS IMPACTS**

The content of the report does not have a negative climate change impact. Should the incidence of fly- tipping be reduced there will be a carbon saving from less vehicle and miles needed to remove fly- tipped waste.

### **8.4 COMMUNITY SAFETY IMPLICATIONS**

There are no community safety implications.

### **8.5 HUMAN RIGHTS ACT**

There are no known Human Rights Act implications.

### **8.6 TRADE UNION**

There are no staffing implications arising from this report.

### **8.7 WARD IMPLICATIONS**

Enforcement action would take place across the district and all Wards would be covered under the new legislation, which will hopefully help to reduce the amount of fly-tipping across the district, when applied as part of a wider Environmental Enforcement strategy.

## **9. NOT FOR PUBLICATION DOCUMENTS**

None

## **10. RECOMMENDATIONS**

- 10.1 That the Strategic Director Environment and Sport be given delegated authority in consultation with the Portfolio Holder to implement the provisions within the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.
- 10.2 That the Strategic Director Environment and Sport authorise in writing designated Council officers to issue Fixed Penalty Notices for fly- tipping and such officers will receive appropriate training.
- 10.3 That the fixed penalty be set at £400 which will be reduced to £300 if the penalty is paid in full before the end of the period of 10 days following the date of the notice.

## **11. APPENDICES**

None

## **12. BACKGROUND DOCUMENTS**

None