

Report of the Strategic Director of Place to the meeting of The Executive Committee to be held on 2nd April 2019.

Subject:

BG

**Introduction of Fixed Penalty Notices for Householder's Duty of Care
Offences**

Summary statement:

The Executive is asked to approve new enforcement powers in relation to S34 (2A) of the Environmental Protection Act 1990, known as the Householder's Duty of Care.

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Portfolio:

Healthy People & Places

Overview & Scrutiny Area:

Regeneration & Environment

1. SUMMARY

The Executive is asked to approve the introduction of a new Fixed Penalty Notice (FPN) for offences committed under section 34 (2A) of the Environmental Protection Act 1990, known as the Householder's Duty of Care

2. BACKGROUND

2.1 Nationally there has been a year on year increase in fly tipping offences. Over a third of the waste involved in illegal fly-tipping is from households, resulting in waste crime costing the UK economy around £600 million every year, according to The Environment Agency.

2.2 The Householder's Duty of Care under section 34 (2A) of the Environmental Protection Act 1990 requires occupiers of a domestic property to take all reasonable measures available to them to ensure that they only transfer household waste to an authorised person. This includes:

- Details of the business and of any vehicle used which can be linked to an authorised operator;
- A record of the operator's registration or permit;
- A receipt for the transaction which includes the business details of a registered operator;
- A copy of the carrier's waste licence or site's permit.

2.3 If an unauthorised waste carrier is found to be carrying waste and/or the waste is subsequently fly tipped and can be directly linked back to the householder, the householder has committed an offence under the Householder Duty of Care (if the householder cannot demonstrate that they took the above-mentioned reasonable measures).

Changes in the law mean that householders are being held more accountable for their household waste and where it ends up. If householders are found to have disposed of waste with someone who is going to illegally dispose of it, they can be prosecuted or now be offered a Fixed Penalty Notice (FPN).

2.4 Prior to 2019 the only options open to the Council were to prosecute or offer formal cautions for householder duty of care offences. Between 2017 and 2018 there were 2 prosecutions brought by the Council and 8 formal cautions issued.

However, prosecutions are costly for the Council and for the Courts, and also result in householders being left with a criminal record. Having the option of a FPN can avoid unnecessary criminal prosecutions, reduce costs, and be more effective at changing behaviour. It is hoped that these changes will encourage householders to think about who is collecting their waste and where it will end up.

2.5 Fly tipping investigations of household waste have identified an increasing trend amongst unlicensed waste operators who are now targeting householders via social media, local advertising and door-to-door sales pitches. They tempt people with cheap prices for the removal of large items of waste, including furniture, building waste and white goods, which inevitably end up dumped on highways or land.

It is often the householder that unwittingly finds themselves the victim of unscrupulous waste carriers who have charged householders for taking waste away only to dump it in a lay-by. These traders rely on householders not asking questions as to whether or not they are registered to carry and dispose of waste.

3. OTHER CONSIDERATIONS

- 3.1 On 7th January 2019 the Environmental Protection (Misc Amendments) (E&W) Regs 2018 came into effect allowing for a FPN to be issued for Householder Duty of Care Offences as an alternative to prosecution.
- 3.2 The level of the fine should be set within the limits set out in legislation, ranging from £150 to £400. If the Council can't determine a level the default level is £200. Councils can offer an early payment discount and the minimum discounted penalty is £120.
- 3.3 Consultations with other regional Local Authorities have determined the following levels set by each Council:

Local Authority	FPN – level of fine
Doncaster	£250 fixed – no discount for early payment
Sheffield	£250 fixed – no discount for early payment
Kirklees	£250 reduced to £200 for early payment
East Riding	£250 fixed – no discount for early payment
Craven	£250 reduced to £150 for early payment
York	£250 reduced to £150 for early payment
Leeds	£250 reduced to £200 for early payment

- 3.4 In Bradford it is proposed that the Council set the householders duty of care fixed penalty at £250 reduced to £200 for early payment.
- 3.5 The rationale for this proposed level is that on average it costs the Council's Cleansing Service approximately £200 for removing waste arising from householder duty of care offences.
- 3.6 The FPN will allow householders to discharge their liability for the offence by payment of the FPN, however the Council will prosecute where payments are not made.
- 3.7 As an alternative to issuing a FPN the Council will reserve the right to prosecute offenders or issue formal cautions as appropriate.
- 3.8 Before the introduction of the FPN, it is proposed that an extensive media campaign will be held to raise awareness of the new FPN. This will involve liaising with the Councils Marketing & Communications team to use the existing allocated budget to develop material designed to increase awareness around responsible disposal of household waste and reducing fly tipping. In addition existing social media such as

the Councils Facebook page and Bradford Council website will be used to promote these messages.

- 3.9 The Council are members of the Keep Britain Tidy (KBT) group and as such will have access to KBT posters and campaign material at discounted cost.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 It is hoped that through targeted educational advertising and marketing campaigns the Council can raise public awareness of the issues, effects, pitfalls and possible criminal outcomes of unknowingly providing an unlicensed waste carrier with their household waste that later becomes fly-tipped across the Bradford District.
- 4.2 Issuing a FPN as an alternative to prosecution or formal cautions will save considerable Officer time. Income received from payments will be retained by the Council and will offset the costs of removing the waste as well as increasing awareness. The FPN will allow householders to discharge their liability for the offence by payment of the FPN, however the Council will prosecute where payments are not made.
- 4.3 The introduction of the FPN as an option to deal with Householder Duty of Care offences will not have an impact on existing resources within the Environmental Enforcement Team.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

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

6. LEGAL APPRAISAL

The Council has a responsibility to investigate, clean up and take appropriate enforcement action in relation to fly tips on public land including public roads and highways. The Council will also investigate fly-tips on private land and take appropriate enforcement action where evidence is found.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

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

7.2 SUSTAINABILITY IMPLICATIONS

Preventing fly tipping contributes positively towards the sustainable agenda.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

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

7.4 COMMUNITY SAFETY IMPLICATIONS

There are no community safety implications.

7.5 HUMAN RIGHTS ACT

There are no known Human Rights Act implications.

7.6 TRADE UNION

There are no staffing implications arising from this report.

7.7 WARD IMPLICATIONS

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

7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS

None

7.9 Implications for Corporate Parenting

None

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

None as data will be processed on the basis of legal obligations

8. NOT FOR PUBLICATION DOCUMENTS

None

9. OPTIONS

Option 1

The Executive may determine to adopt the new powers, enabling Fixed Penalty Notices to be issued for Householder Duty of Care offences as appropriate.

Should The Executive determine to adopt the legislation, it will need to provide

guidance on the level for the preferred fixed penalty and any concession for early payment, in accordance with the information contained in paragraph 3.2.

Option 2

The Executive may determine not to seek the adoption of the new powers that allow Fixed Penalty Notices to be issued for Householder Duty of Care offences.

10. RECOMMENDATIONS

That the new powers to issue Fixed Penalty Notices for Householder Duty of care offences under S34 (2A) of the Environmental Protection Act 1990 be adopted and that the level of fine is set at the maximum of £250, reduced to £200 for early payment.

11. APPENDICES

None

12. BACKGROUND DOCUMENTS

None