

POLICY AND RESOURCES COMMITTEE - 22 JANUARY 2019

PART I – NOT DELEGATED

6. FIXED PENALTY NOTICES; OFFENCES UNDER SECTION 34(6) RELATING TO SECTION 34(2A) ENVIRONMENTAL PROTECTION ACT 1990 WHICH DEAL WITH THE UNAUTHORISED DISPOSAL OF HOUSEHOLD WASTE BY OCCUPIERS OF DOMESTIC PROPERTY (DCES)

1 Summary

- 1.1 The purpose of this report is to seek the introduction of FPNs for offences under section 34 (6) relating to section 34 (2A) Environmental Protection Act 1990.
- 1.2 The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 provided that waste enforcement authorities were empowered to issue an FPN for Duty of Care offences and build on the FPNs relating to fly tipping.
- 1.3 The Fixed Penalty Notice (FPN) provides an alternative to prosecution. It allows an individual to discharge liability for a duty of care offence by payment of a financial penalty, ending up with no criminal record and avoiding court proceedings which can be costing for local authorities.

2 Details

- 2.1 In 2016 an FPN for section 33 offences (fly tipping) was introduced. Three Rivers set the FPN level at £300 (reduced to £200 for payment within 10 days), as did the vast majority of other authorities in Hertfordshire. At this time a common definition of fly tipping was also agreed by the Hertfordshire Fly Tipping Group (FTG), of which Three Rivers is a member along with all other Hertfordshire districts and County Council. The FTG also includes Hertfordshire Constabulary, the Office of the Police and Crime Commissioner, the Hertfordshire Fire and Rescue Service, the Environment Agency and the Nationals Farmers Union. A common approach across the County is seen as key in combatting fly tipping, whilst also enabling comparisons between partner authorities.
- 2.2 On 7 January 2019 the regulations allowing FPNs for offences under section 34 (6) relating to section 34 (2A) England came into force. The FPN for breaches of the household waste duty of care provides an alternative to prosecution. It allows an individual to discharge liability for the duty of care offence by payment of a financial penalty. There is no obligation for the Council to offer an alleged offender the option to discharge liability through an FPN. However, it can be more proportionate than prosecution through the courts.
- 2.3 The duty of care regime requires occupiers of domestic property to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly tip it. The recent campaign (more detail in para 2.8) helps to educate residents in this regard.
- 2.4 When an FPN can be issued;

When an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990 in England. For example:

- 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 transferred the waste to an authorised person.
- where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property.
- 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.

An authorised person may still fly tip waste so tracing fly tipped waste to a household does not necessarily demonstrate a breach of the duty of care. An individual should be given an opportunity to demonstrate that 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 they identify is unauthorised, then it is reasonable to believe their duty of care was not met.

2.5 When you should not or cannot issue FPNs;

Enforcement should focus on those who, as a result of not meeting their duty of care, enable their waste to be fly tipped or otherwise inappropriately disposed of. Individuals should not be penalised for minor breaches which do not lead to waste being inappropriately disposed of. This includes where an individual uses an authorised carrier that disposes of their waste appropriately but doesn't check that they are authorised.

There are a number of instances when government guidelines show that an FPN should not be considered;

- Where the use is not proportionate – i.e. against vulnerable individuals or where the waste was given to a relative or family friend who took it to a recycling centre.
- Where the waste put out is intended for local authority waste collections.
- Where a tradesperson is working on a property and they are responsible for the waste they produce.
- Where a landlord arranges for the clearance of waste at the end of a tenancy.
- Where enforcement against an individual would hinder the investigation into the actual fly tipper.
- Where the local authority is opting for prosecution because the transfer was in the knowledge that the waste would be fly tipped or the person is a repeat offender.

The Enforcement Team will follow detailed procedures in these cases.

2.6 Officers recommend that the level of FPN is set at £300, reduced to £200 for early resolution (paid within 10 days). At the time of writing (January 2019) all ten local authorities in Hertfordshire are proposing the same FPN level, although the final outcome is clearly down to each authority to decide. It would be ideal if the level set is as consistent as possible, which is why officers are recommending setting the FPN level as such.

2.7 If this FPN is introduced the Environmental Enforcement Policy and the FPN pads will be updated accordingly.

- 2.8 Educational work to remind residents about the correct disposal of waste will continue. Three Rivers is an active member of the Hertfordshire Waste Partnership's WasteAware and Fly Tipping Groups, both of which have strong public facing campaigns in regards fly tipping and more general recycling and waste messages. The #SCRAPflytipping campaign (www.hertfordshire.gov.uk/flytipping) launched across Hertfordshire in March 2018 and has subsequently been launched in Kent, Corby, Lancaster and Buckinghamshire with Norfolk and Barrow in the process of customising the campaign and interest from Cambridgeshire, Cumbria and numerous other individual authorities and waste partnerships. The campaign is designed to ensure residents are aware of what fly tipping is, the penalties and where to go for more information to ensure proper disposal of waste. New material is being added to the campaign to help promote duty of care in more detail.

3 Options and Reasons for Recommendations

- 3.1 Now there is an option to issue an FPN officers feel that by doing so this will act as a further deterrent against committing these offences. It is a logical extension to the FPN regime and one the Hertfordshire FTG has previously lobbied for.

4 Policy/Budget Reference and Implications

- 4.1 The recommendations in this report are within the Council's agreed policy and budgets. The relevant policy is entitled the Strategic Plan 2018-21 and was agreed on 20 February 2018.

- 4.2 The recommendations in this report relate to the achievement of the following performance indicators.

CP01 – satisfaction with keeping public land clear of litter and refuse
CP47 – perception of ASB as a problem in the local area
CP05 – satisfaction with Three Rivers District Council
CP17 –reduce fly tipping across the district.

- 4.3 The impact of the recommendations on this/these performance indicator(s) is:

To increase satisfaction and to reduce fly tipping and the perception of ASB.

5 Financial Implications

- 5.1 None specific.
- 5.2 A waste collection authority may use amounts received by it under section 34 (its "fixed penalty receipts") only for the purposes of its waste functions under part II Environmental Protection Act 1990 (including functions relating to the enforcement of offences)
- 5.3 Any income from fines will be monitored and reported as part of budget monitoring.

6 Legal Implications

- 6.1 At the current time the only options available to the Enforcement and Legal teams are to prosecute, issue a Simple Caution or take no action. The introduction of this FPN will allow officers to deal effectively with low level breaches and send out a stronger message than the current system allows.

- 6.2 The regulations provide that where an FPN is issued, the waste collection authority must give a copy of the Notice to the Environment Agency and, where the failure took place in the area of a different waste collection authority, that authority must be given a copy of the Notice. No-one can receive a second FPN for this offence whichever authority issued the first FPN. Due regard must be given to adopting procedures to ensure that these regulations are followed.
- 6.3 The enforcement authority may authorise in writing a person (authorised officer) to issue FPNs. That officer may also require an occupier of domestic property to give the occupier's name and address if the officer proposes to give the occupier an FPN (regulation 13 of the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018.) It is an offence to fail to comply.
- 6.4 It is recommended that officers are authorised to request this information and issue FPNs.

7 Equal Opportunities Implications

7.1 Relevance Test

Has a relevance test been completed for Equality Impact?	Yes
Did the relevance test conclude a full impact assessment was required? No – the enforcement policy addresses the different approaches required to manage enforcement with disabled people, children and young people and older people.	No

8 Staffing Implications / Public Health Implications / Customer Service Centre Implications

8.1 None specific.

9 Environmental Implications / Community Safety Implications

9.1 By introducing this FPN we are sending out a clear message that fly tipping and allowing fly tipping to occur is not tolerated in Three Rivers.

10 Communications and Website Implications

10.1 Minor adjustments required, which will be made within existing resources.

11 Risk Management and Health & Safety Implications

11.1 There are no risks to the Council in agreeing the recommendations.

12 Recommendation

12.1 That Policy and Resources Committee recommend to Full Council the amendment to the Council's Constitution – Scheme of Delegation (para 11.18.4) to include authorisation for all Environmental Enforcement Officers both to require an occupier of domestic property to give the occupier's name and address if the officer proposes

to give the occupier an FPN and to issue Fixed Penalty Notices for offences under section 34 (6) relating to section 34 (2A) Environmental Protection Act 1990.

12.2 The Policy and Resources Committee recommend to Full Council that the level of FPN is set at £300 (reduced to £200 if paid within 10 days).

12.3 That the Policy and Resources Committee recommend to Full Council to delegate to the Chief Executive the ability to amend the scheme of delegation to authorise other relevant officers both to require an occupier of domestic property to give the occupier's name and address if the officer proposes to give the occupier an FPN and to issue Fixed Penalty Notices for offences under section 34 (6) relating to section 34 (2A) Environmental Protection Act 1990.

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1	Poor	
2	Sufficient	X
3	High	