

Subject:	INTRODUCTION OF FIXED PENALTY NOTICES (FPNs) FOR FLY-TIPPING
Meeting and Date:	Cabinet – 7 November 2016
Report of:	David Randall, Director of Governance
Portfolio Holder:	Councillor Trevor Bartlett, Portfolio Holder for Property Management and Public Protection
Decision Type:	Executive Non-Key
Classification:	Unrestricted

Purpose of the report: To seek approval to the use of new powers introduced by central government to issue fixed penalty notices for fly-tipping offences.

- Recommendation:**
- (1) To authorise the issue of fixed penalty notices for small scale fly-tipping offences contrary to section 33(1)(a) of the Environmental Protection Act 1990.
 - (2) To set the level of the fixed penalty notices at a level of £400.
 - (3) To authorise the Head of Regulatory Services to authorise persons to act as “authorised officers” under section 33ZA (12) of the Environmental Protection Act 1990 for the purposes of issuing fixed penalty notices.

1. Summary

- 1.1 Fly-tipping is becoming more of an issue throughout the UK. To assist in tackling smaller scale fly-tipping, on 09th May 2016 local authorities in England and Wales were given the power to issue fixed penalty notices (‘FPN’s) of between £150 and £400 for such offences.

2. Introduction and Background

- 2.1 The estimated cost of clearing fly-tipped rubbish to local authorities in England in 2014/15 was nearly £50 million, an 11 per cent increase on 2013/14. There were 1358 incidents of fly-tipping reported in Dover in 2014/15. This ranges from single bags to large scale dumping of builder’s rubble.

- 2.2 As a result of public concerns and lobbying by local authorities central Government introduced the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016. The regulations add a section 33ZA to the Environmental Protection Act 1990 which provides for the issue of a FPN for contravention of section 33(1)(a) of that Act. The explanatory memorandum to the regulations explain that the purpose is to provide *‘local authorities with a more efficient and proportionate response to small-scale fly-tipping of waste.’*

FPN’s must be issued by an “authorised officer” within the meaning of section 33ZA (12) of the Environmental Protection Act 1990.

- 2.3 Under the regulations local authorities are empowered to set the level of FPN between £150 and £400.

- 2.4 The legislation also allows for an early payment discount if fines are paid within 10 days of the FPN issue. The minimum level for discounted fines is £120. However the current policy within DDC is not to allow a reduction for early payment of FPNs. To maintain consistency no early repayment option is considered in this report.
- 2.5 FPNs would only be used for small scale fly-tipping where prosecution is unlikely to be cost-effective. Prosecution will still be pursued in more serious cases, such as for high volume, commercial or organised tipping.

2.6 Identification of Options

- Option 1 The recommended option. The FPN is set at £400
- Option 2 The FPN is set at the default amount of £200.
- Option 3 The FPN is set at £150

3. Evaluation of Options

3.1 Option 1 – Set the FPN at £400.

Fly tipping is a serious offence which can result in 5 years imprisonment and/or an unlimited fine on conviction.

The FPN for failing to produce waste documentation is set at £300. Such FPNs can be issued where fly-tipping has occurred as a result of businesses passing their waste on to unscrupulous companies or individuals who then fly-tip it. This is seen as a lesser offence than fly tipping and is reflected in the maximum penalty of £5,000 upon conviction.

It is therefore felt the fly-tipping FPN should reflect that it is a more serious offence and be set at a higher level of £400.

Setting the level at the maximum recognises the seriousness of the offence and also differentiates between the lesser offence of littering where the FPN is set at £75.

3.2 Option 2 - The FPN is set at the default amount of £200.

This option would set the FPN for fly tipping at a lower level than the level for failing to produce waste documentation as described above. Fly-tipping is a more serious offence and as such the penalty should be higher.

3.3 Option 3 - The FPN is set at £150.

This option would set the FPN for fly tipping at a lower level than the level for failing to produce waste documentation as described above. Fly-tipping is a more serious offence and as such the penalty should be higher.

4. Resource Implications

- 4.1 The introduction of FPN's for fly tipping is not motivated by income generation and is predicted to only produce a minimal income for the Council. There are no additional costs envisaged.

5. Corporate Implications

- 5.1 Comment from the Section 151 Officer: 'Finance has been consulted and has nothing further to add (SB).
- 5.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comment to make.
- 5.3 Comment from the Equalities Officer 'The report does specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15> '
- 5.4 Other Officers (as appropriate):

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