

<b>Decision of:</b>	Deputy Leader of the Council (Tourism, Economic Growth and Jobs)
<b>Decision Number:</b>	PH24/2017
<b>Relevant Officer:</b>	John Blackledge, Director of Community and Environmental Services
<b>Relevant Cabinet Member :</b>	Councillor Gillian Campbell, Deputy Leader of the Council (Tourism, Economic Growth and Jobs)
<b>Date of Decision:</b>	15 March 2017

## UNAUTHORISED DEPOSIT OF WASTE (FIXED PENALTIES) REGULATIONS 2016

### 1.0 Purpose of the report:

- 1.1 From 9 May 2016, a waste collection authority in England has been allowed to issue a fixed penalty notice (FPN) for fly-tipping, a contravention of the Environmental Protection Act 1990 (EPA 1990). This provides local authorities with a more efficient and proportionate response to small-scale fly-tipping of waste.

The new provisions provide for a fine of not less than £150 and not more than £400 as specified by the waste collection authority, and £200 if no amount is specified by the authority.

### 2.0 Recommendation(s):

- 2.1 To note the Unauthorised Deposit of Waste (FPN's) Regulations 2016, which came into force on 9 May 2016.
- 2.2 To agree that the penalty charge for Unauthorised Deposit of Waste (Fixed Penalty Notices) now be set at £400 reduced to £250 if paid within 10 days.
- 2.3 That delegated authority be granted to the Director of Community and Environmental Services under the Environmental Protection Act 1990 (as amended), to make appropriate arrangements for the issuing of fixed penalty notices for the unauthorised deposit of waste.

### **3.0 Reasons for recommendation(s):**

3.1 Fly-tipping is an offence under section 33(1) of the Environmental Protection Act 1990 (as amended), which provides that it is an offence to deposit controlled waste in or on any land without a permit, or in breach of a permit.

Setting the fee at the proposed level will provide another option for use by Enforcement officers where considered appropriate.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

None.

### **4.0 Council Priority:**

4.1 The relevant Council Priority is:

“Communities: Creating stronger communities and increasing resilience”.

### **5.0 Background Information**

5.1 The number of fly-tipping incidents in the Blackpool over recent years has increased particularly from back street fly-tipping of domestic waste from resident householders.

5.2 To date the Council has had two options when enforcing against fly-tipping offenders. These have been to take formal court proceedings or to issue a fixed penalty notice (a type of civil sanction) for depositing litter, which amounts to a £80 penalty. Both options require the perpetrator to be identified.

5.3 A fixed penalty notice offers the opportunity to discharge any liability to conviction for the offence to which it relates by payment of a fixed penalty, and is applied in cases where prosecution is unlikely to be cost-effective.

- 5.4 Prosecution would continue to be instigated in more serious cases, such as for high volume, commercial or organised tipping.
- 5.5 Despite the best efforts of the Enforcement Teams the perpetrator(s) of the majority of fly-tips cannot be identified. It is important therefore that those that are identified receive a sanction that properly reflects the damage to the environment and local community, the cost to the local authority in clearing the waste material and detecting the offence. It would also act as a deterrent against future offending, both for the identified offender and if suitably publicised, for others who may be minded to fly-tip. The current fixed penalty notice charge of £80 as a penalty falls short on all counts.
- 5.6 Government has recognised these issues and introduced the Unauthorised Deposit of Waste (FPN's) Regulations 2016, which provide for a fine of not less than £150 and not more than £400 as specified by the waste collection authority and a default value of £200 if no amount is specified by the authority. The Regulations are intended to provide local authorities with a more appropriate tool to tackle small-scale fly-tipping and came into force on 9 May 2016.
- 5.7 Investigations into fly-tipping tend to be resource intensive and can be lengthy and complex, requiring Enforcement Officers to establish a 'chain' to trace the material back to source in order to identify potential offenders. It is recommended therefore that the Council sets the penalty charge for Unauthorised Deposit of Waste (FPN's) at £400 and offer a discount to £250 if paid within 10 days.
- 5.8 The new higher threshold of fixed penalty notices will provide a more proportionate and expeditious approach for the Council to deal with small-scale fly-tipping of waste offences and act as a deterrent for would be offenders. The scale of penalty helps to differentiate the offence from that of casual street littering. The Council will continue to prosecute serious cases and repeat offenders through the court, together with those who fail to pay the fixed penalty notice.
- 5.9 Does the information submitted include any exempt information? No
- 5.10 **List of Appendices:**
- None.
- 6.0 Legal considerations:**
- 6.1 Section 33 of the Environmental Protection Act 1990 (as amended) with immediate effect once approved. It is likely the new powers may reduce legal administration through the issuance of fixed penalty notices rather than prosecution.

**7.0 Human Resources considerations:**

7.1 No additional resources required the powers to be authorised to officers who currently have delegated powers under the Environmental Protection Act 1990.

**8.0 Equalities considerations:**

8.1 None.

**9.0 Financial considerations:**

9.1 The use of the new addition to the Environmental Protection Act 1990 will help to contribute to the cost of fly-tipping.

**10.0 Risk management considerations:**

10.1 None.

**11.0 Ethical considerations:**

11.1 None.

**12.0 Internal/ External Consultation undertaken:**

12.1 None.

**13.0 Background papers:**

13.1 <http://www.legislation.gov.uk/uksi/2016/334/made>

**14.0 Key decision information:**

14.1 Is this a key decision? No

14.2 If so, Forward Plan reference number:

14.3 If a key decision, is the decision required in less than five days? No

14.4 If **yes**, please describe the reason for urgency:

**15.0 Call-in information:**

- 15.1 Are there any grounds for urgency, which would cause this decision to be exempt from the call-in process? No

**TO BE COMPLETED BY THE HEAD OF DEMOCRATIC GOVERNANCE**

**16.0 Scrutiny Committee Chairman (where appropriate):**

Date informed:

Date approved:

**17.0 Declarations of interest (if applicable):**

- 17.1 None

**18.0 Executive decision:**

- 18.1 The Deputy Leader of the Council agreed the recommendations as outlined above namely:

1. To note the Unauthorised Deposit of Waste (FPN's) Regulations 2016, which came into force on 9 May 2016.
2. To agree that the penalty charge for Unauthorised Deposit of Waste (Fixed Penalty Notices) now be set at £400 reduced to £250 if paid within 10 days.
3. That delegated authority be granted to the Director of Community and Environmental Services under the Environmental Protection Act 1990 (as amended), to make appropriate arrangements for the issuing of fixed penalty notices for the unauthorised deposit of waste.

**18.2 Date of Decision:**

15 March 2017

**19.0 Reason(s) for decision:**

Fly-tipping is an offence under section 33(1) of the Environmental Protection Act 1990 (as amended), which provides that it is an offence to deposit controlled waste in or on any land without a permit, or in breach of a permit.

Setting the fee at the proposed level will provide another option for use by Enforcement officers where considered appropriate.

**19.1 Date Decision published:**

15 March 2017

**20.0 Executive Members in attendance:**

20.1

**21.0 Call-in:**

21.1

**22.0 Notes:**

22.1