



CABINET – 28TH FEBRUARY 2018

SUBJECT: FIXED PENALTY NOTICES FOR THE UNAUTHORISED DEPOSIT OF WASTE

REPORT BY: INTERIM CORPORATE DIRECTOR, COMMUNITIES

1. PURPOSE OF REPORT

- 1.1 To advise Cabinet of the introduction of new fixed penalty notices to deal with fly tipping under the Unauthorised Deposit of Waste (Fixed Penalty) (Wales) Regulations 2017 (referred to in the report as the Regulations).
- 1.2 To seek a Cabinet decision to set the level of the fixed penalty to the maximum of £400 with no discount for early payment.

2. SUMMARY

- 2.1 Fly tipping is an offence under Section 33(1) of the Environmental Protection Act 1990. The Act prohibits, subject to certain exemptions the deposit of controlled waste or extractive waste in or on any land other than in accordance with an environmental permit. A person who commits an offence under section 33(1) is liable on conviction:
 - In Magistrates court to imprisonment for 12 months and a fine to maximum of £50,000 or both.
 - In Crown court to imprisonment for 5 years and an unlimited fine or both.
- 2.2 The Regulations amend the Environmental Protection Act 1990 to insert a new section 33ZB. This enables Welsh waste collection authorities to issue a fixed penalty notice for small-scale fly tipping offences. Such fixed penalties may not be less than £150 and not more than £400. If no amount is specified the penalty will be £200. A discount may be applied for early payment.

3. LINKS TO STRATEGY

- 3.1 The prevention of fly tipping contributes to the Healthier and Greener themes of the single integrated plan, Caerphilly Delivers.
- 3.2 The prevention of fly tipping and can contribute to the following well-being goals within the Well-being of Future Generations Act (Wales) 2015:
 - A sustainable Wales
 - A prosperous Wales
 - A more equal Wales
 - A Wales of more cohesive communities
 - A globally responsible Wales.

4. THE REPORT

- 4.1 In 2016/17 local authorities in Wales received 38,614 reports of fly tipping, costing the Welsh Tax payer over £2.18 million to clear. Caerphilly received 1992 reports of fly tipping, a reduction of 15% on the previous year's 2359, costing in excess of £150,000 to clear
- 4.2 Enforcement action continues to be taken to deal with perpetrators of fly tipping; however this is a complex and time consuming process which requires significant input of staff resources and cannot be guaranteed to be successful. The fines from any successful prosecutions are paid to the court and not to the local authority. In response to public concerns about fly tipping and appropriateness of sanctions available the Welsh Government brought forward the Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 which came into force on the 25th October 2017.
- 4.3 These Regulations introduce a new power enabling an authorised officer of a Welsh collection authority to serve a fixed penalty notice on a person found to be responsible for fly tipping offences. The explanatory note to the legislation explains that the Regulations provide local authorities with a more efficient and proportionate response to small scale fly tipping of waste instead of enforcement by prosecution. In addition it allows an individual to discharge their liability for conviction of the offence by payment of the fixed penalty. Fixed penalty notices provide an opportunity for first time non-habitual offenders to avoid court and a possible criminal record. They offer a more efficient and proportionate response to tackling small-scale fly-tipping incidents which will also help ease the burden on the court system.
- 4.4 The Regulations give local authorities the power to set the level of the fixed penalty within the range of £150 to £400 with the default being £200 if no other amount is specified. Local Authorities can choose to make arrangements to accept a reduced amount for early payment of no less than £120 if paid within 10 days following the date of the notice. Fixed penalty receipts can be retained by the council and used in exercising its functions in relation to fly tipping. Fixed penalty notices can be used on both publicly and privately owned land. If the fixed penalty notice is not paid then the council's recourse will be prosecution via the normal court process.
- 4.5 Fixed penalty notices should not be issued to repeat offenders. Where an offender is taken to court, the fact they have been issued with a previous fixed penalty notice may influence the court's assessment of the offender's suitability for a particular sentence. In Wales a Flytipping Enforcement Working Group has produced guidance on what constitutes small scale fly tipping. There will be individual circumstances that will need to be considered on occasion, but the guidance will assist in a consistent approach to issuing fly tipping fixed penalty notices in Wales and indicates that the following criteria should apply:
- First time non-habitual offenders only
 - Non-hazardous waste only
 - Up to a car boot load
 - Up to 8 black bags
 - One or two bulky items (e.g. furniture, white goods).
- 4.6 Fly tipping blights our communities and it damages our environment. These powers will provide Local Authorities with an additional enforcement tool for small-scale fly tipping offences where a prosecution is considered disproportionate. The ability to issue fixed penalty notices will not solve the problem of fly tipping but it is a positive step in tackling an issue that has an impact across the County Borough.
- 4.7 Experience has shown over the last two years that fines issued by the courts for small scale tips are in the range between £120 and £250, together with a Victim Surcharge of perhaps £30. In addition the costs involved in investigating the incident and cleanup cost are applied for and are generally awarded in full; typically this would be approximately £250. In the last

six months the authority has prosecuted six individuals for fly tipping related offences with fines and cost totalling £3988 and issued 2 simple cautions recovering £411 in costs. However, it is estimated that only 2 of these offences would have been suitable for discharge by way of a fixed penalty notice.

4.8 In determining the level of the fixed penalty fine it is clearly important that it acts as a deterrent. It is also important that it is not set at a level which incentivises the offender to take the option of a court hearing and therefore encouraging non-payment. Of course the outcome of legal proceedings cannot be pre-determined, but an analysis of financial penalties imposed for relevant offences in recent years indicates that typically it would cost an offender less to pay the fixed penalty fine at the maximum of £400 than being found guilty in court. It also allows the individual to avoid any need for the costs of legal representation.

4.9 As stated above Local Authorities can choose to make arrangements to accept a reduced amount for early payment of no less than £120 if paid within 10 days following the date of the notice. Whilst a discount can encourage early payment, but as it also has the effect of reducing the financial penalty it would impact upon the deterrent effect of the fixed penalty fine. It is therefore proposed that the fixed penalty fine is set at the maximum level of £400 with no discount for early payment.

5. WELL-BEING OF FUTURE GENERATIONS

5.1 The Well-being of Future Generations (Wales) Act commenced in April 2016. The Act is about improving the social, economic, environmental and cultural well-being of Wales. It aims to make public bodies listed in the Act think more about the long term; work better with people and communities and each other; look to prevent problems and; take a more joined-up approach.

5.2 The proposals in this report contribute to the Well-being Goals as set out in Links to Strategy above, as follows:

- Resilient. The proposals will contribute to a cleaner, safer environment by removing the likelihood of fly tipping and associated environmental issues
- Healthier. The proposals are intended to minimise the public exposure to risk that illicit tips can pose.
- More equal. Will allow all the public to get involved in assisting the council in dealing with the problem.
- Cohesive communities – The subsequent publicity and education process will allow all residents to be involved and will allow communities to be involved in making the proposals sustainable
- Vibrant culture and thriving Welsh language – The underlying objective is to enable people to enjoy the area they live in and not be despoiled by fly tipping. It also tries to ensure that tourism is not affected by the visual effects of fly tipping in our rural landscape.
- Globally responsible –The proposals are intended to improve the environment in all areas within the county Borough

5.3 The proposals are consistent with the five ways of working as defined within the sustainable development principle:

- Involvement - The proposals have been generated as a result of a review by the Welsh Government. The proposals are intended to improve the area and make it safer for individuals to go about their daily routines without added risk. The involvement of the public as a whole from the outset will create ownership and participation to allow the orders to have a meaningful outcome. This would include actively encouraging individuals to report issues and incidents.

- Collaboration - Outside stakeholders including Natural Resources Wales, Fly Tipping Action Wales and local stakeholders have been involved and their views have been included in the considerations.
- Long Term - The proposals look to reduce both short term and long term risks to the public from fly tipping and will seek to improve the living environment.
- Integration. The proposals contribute to health objectives through minimising the exposure to fly tipping. They also contribute to resilient objectives by promoting and ensure a clean safe environment.
- Prevention - The proposals are intended to minimise the public to the exposure to risk that illegally deposited materials can generate.

6. EQUALITIES IMPLICATIONS

- 6.1 An equalities impact assessment has been undertaken which indicates that the fixed penalty provisions will apply equally across Caerphilly CBC. The sanction can only be used where there is evidence available of the person responsible for the fly tipping. This has the effect of shifting the cost burden onto the persons responsible rather than it being borne by the Council Tax payers as a whole and is more equitable.

7. FINANCIAL IMPLICATIONS

- 7.1 In order to serve a fixed penalty notice for fly tipping it will still be necessary to determine the identity of the person or persons responsible for the fly tipping and therefore all cases of fly tipping reported to the council will continue to be investigated. Work will continue to encourage communities to report and share information about those known to be fly tipping. This activity will continue to be undertaken within the current resources of the Enforcement Team in Environmental Health. Having regard to the number of appropriate offences it is anticipated that the amount of fixed penalty income may be around £1000 per year. Any income received will be used to support the Enforcement Team to investigate and pursue fly tipping incidents.

8. PERSONNEL IMPLICATIONS

- 8.1 No additional personnel issues have been identified.

9. CONSULTATIONS

- 9.1 This report has been sent to the consultees listed below and all comments received are reflected in this report.

10. RECOMMENDATIONS

- 10.1 It is recommended that Cabinet agree:-
- (i) A flytipping fixed penalty at the maximum level of £400 with no discount for early payment.

11. REASONS FOR THE RECOMMENDATIONS

- 11.1 This would act as a deterrent and ensure that the receipts from fixed penalty notices are in proportion to the actual cost of dealing with fly tipping in Caerphilly.

12. STATUTORY POWER

12.1 The Unauthorised Deposit of Waste (fixed Penalties) (Wales) Regulations 2017.

Environmental Protection Act 1990 Section 33ZB.

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