

	<p style="text-align: center;">REPORT TO CABINET TO BE HELD ON 18 JUNE 2019</p>
	<p>Key Decision YES</p> <p>Forward Plan Ref No 8</p>
<p>Corporate Priority Place</p>	<p>Cabinet Portfolio Holder Cllr J Jefferson</p>

REPORT OF: DIRECTOR (NE) – 19/090

WARDS AFFECTED: ALL

**SUBJECT: HOUSEHOLD DUTY OF CARE ENFORCEMENT
 POWERS**

RECOMMENDATION (S):

Recommend that Council:

- a) Approve the use of fixed-penalty notices for duty of care offences committed by householders under s34 Environmental Protection Act 1990.
- b) Approve that the penalty for the offence be £200
- c) Delegate authority to the Directors:
 - (i) to issue fixed penalty notices for householder duty of care offences;
 - (ii) to authorise in writing any Officer of the Council to issue fixed penalty notices for householder duty of care offences

REASON FOR RECOMMENDATION (S):

To ensure the Council can use available legislative tools to tackle to the problem of the illegal fly-tipping of waste.

1. INTRODUCTION

- 1.1 The Department for Environment Food and Rural Affairs published guidance in December 2018 regarding the introduction of a new fixed penalty notice for a breach of the household duty of care requirements under the 1990 Environmental Protection Act.
- 1.2 Introducing this penalty will allow cases to be dealt with without going to Court, saving the time of the Court and the Council. It will also bring the offence in line with others the Council currently enforces, including fly-tipping and littering.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

- 2.1 The Plan supports the Corporate Aim of Place - to protect and improve our environment, now and for the future.

3. BACKGROUND AND ISSUES

- 3.1 Nationally two-thirds of fly-tipping incidents involve household waste which is often fly-tipped by a person the householder has allowed and/or arranged to take it away. There is a legal responsibility on the householder to check that said person is authorised to dispose of this waste.
- 3.2 Individuals who use an unauthorised person to dispose of their household waste and make no checks on that person commit an offence. They have failed to fulfil the requirements of their duty of care to their waste. Currently enforcement action can only be taken through the Courts, however, these prosecutions are costly for the Council and for the Court, and can also result in householders being left with a criminal record. The introduction of a fixed penalty notice provides a quicker sanction which is more efficient and proportionate. Use of a fixed penalty notice can avoid unnecessary criminal prosecutions, reduce costs, and be more effective at changing behaviour.
- 3.3 It is accepted that some householders may not be aware of this legal requirement, however, it is relatively easy for a householder to check whether a person is authorised to clear away waste. Checks could include asking the person to prove they are appropriately authorised; check if they are on the Environment Agency (EA) Waste Carriers database which is available online at <https://environment.data.gov.uk/public-register/view/search-waste-carriers-brokers> or by calling the EA on 03708 506 506 Monday to Friday 8am-6pm.
- 3.4 Common scenarios the Council encounters are households who engage the services of someone over a social network to clear waste which is then illegally fly-tipped rather than being disposed of correctly. Officers would always seek to investigate the fly-tipper but would also look into what steps the householder took to ensure the person was properly authorised.

4. CONSULTATION

- 4.1 Government consulted widely before the introduction of this power and it is not considered necessary for the Council to consult further on this. The Council will, however, actively publicise this new approach in line with the communications proposals set out later in this report.

5. ASSESSMENT

- 5.1 Householders are encouraged to think carefully about whom they give their waste to and not simply choose the cheapest option. The Council will take action against any householder who has not taken reasonable measures to ensure their waste is passed on to an authorised person.
- 5.2 The Council will routinely ascertain if a householder has complied with their obligation through an interview under caution; any enforcement action will then be measured against the public interest.
- 5.3 Investigating officers will always try to identify the person/s who actually illegally dumped the waste. If sufficient evidence against an offender is secured then a fly tipping offence may be prosecuted. The Council may also take action against the householder if reasonable checks were not made as to who the waste was passed on to. The new power simply introduces a fixed penalty that can be issued to a householder rather than restricting our sanction to prosecution only.
- 5.4 The current enforcement process is to consider taking the householder to court for formal prosecution, however there are occasions when this does not seem proportionate, for example if the individual has co-operated and shows remorse. Formal prosecution through the Courts significantly increases costs for the Council, the Courts and ultimately the householder upon prosecution. Use of the new fixed penalty will allow the householder to discharge their liability and have the matter dealt with quicker and with reduced workload for all. Notwithstanding this, the implementation of the Fixed Penalty Notice will not restrict the Council in taking formal action should the scale of the offence warrant it.
- 5.5 The fixed penalty amount can be set locally between £150 and £400 and it is recommended that a level to be set at £200. This compares to £80 for depositing litter and £400 for the offence of fly-tipping. It is felt that this amount reflects the seriousness of the offence.
- 5.6 It is recognised that the Council will need to raise awareness of this offence and officers propose to invest in an educational and awareness campaign to achieve this aim. This would encompass social media adverts, radio adverts, posters and business cards and a comprehensive website information section.

- 5.7 As awareness is raised of household's responsibilities the likelihood of an offence taking place may be reduced and make it more difficult for unscrupulous individuals to operate, further protecting the local environment from illegal fly-tipping.

6. IMPLICATIONS

6.1 Policy Summary

The provisions in this report support the Corporate aim - **Place** - to protect and improve our environment, now and for the future.

6.2 Legal

All enforcement action is considered on a case by case basis and any formal proceedings are authorised by a Director upon reviewing the evidence in consultation with the public interest.

6.3 Financial

There are limited financial implications arising from this report. Financial targets for the number of fixed penalty notices issued are not set and monies derived from payment of these notices are invested in educational campaigns to prevent offences occurring.

6.4 Equalities and Diversity

No identified implications

6.5 Staffing Implications

None

6.6 Planning Implications

There are no planning implications arising from this report.

6.7 Crime and Disorder Implications

The provisions within this report will provide an additional tool through which anti-social behaviour within the Borough can be tackled.

6.8 Health and Safety Implications

No identified implication.

6.9 Environmental Implications

The provisions in this report will improve the local environment through more effectively controlling behaviour which is unsightly and impacts negatively on the physical appearance of the area.

6.10 Communications

A comprehensive communications campaign will be activated to inform householders of their responsibilities under this legislation. It is also important to inform the public how the Council strives to tackle crimes such as fly-tipping and regular updates on successful prosecutions will continue to be provided through social media and on the Council's website. The Council will also continue to work closely with local Community Groups to try and tackle fly-

tipping hot spot areas, providing support both through prosecution and clean-up.

7. ACTION PLAN

- 7.1 Subject to the approval of this report, Officers will commence a campaign to raise awareness of this issue.

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Director

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Background Papers:
None

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT THE AUTHOR.

Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/Responsible Officer
1		Enforcement powers are limited and open to challenge.	Increased workload, reducing ability to tackle offences. Cases being challenged in Court.	Agreement of the new powers	C3	A1	OTCM
2		The Council fails to tackle fly-tipping	Direct impact on the local environment. Direct impact on one the Council's key aims. Reputational damage to the Council	Agreement to the recommendations contained within the report	C3	A3	OTCM
3		The Council fails to publicise the use of these new powers	Potential for reputational harm. Failure to change householder behaviour	Adoption of the communication plan supported by a budget supported by FPN receipts	C3	B2	OTCM