

## RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

<b>*PART 1 – PUBLIC DOCUMENT</b>
----------------------------------

Any interest to declare/ or conflict and any dispensation granted <i>[if applicable]</i>	
------------------------------------------------------------------------------------------	--

**DIRECTORATE: LEGAL & COMMUNITY**

### **1. DECISION TAKEN**

To set the standard Fixed Penalty Notice (FPN) to £300 (reduced to £200 if paid within 10 days of issue) for household waste duty of care offences in line with the recommendations of the Hertfordshire Waste Partnership Fly Tipping Group.

### **2. DECISION TAKER**

Jeanette Thompson, Service Director – Legal & Community in consultation with Councillor Bernard Lovewell, Executive Member for Housing and Environmental Health whose responsibilities include enviro-crime.

### **3. DATE DECISION TAKEN:**

**27.3.19**

### **4. REASON FOR DECISION**

- 4.1. The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018, herein referred to as the Regulations, requires Authorities to set the level of fine between £150-£400.
- 4.2. This decision is to set the fixed penalty in accordance with national legislation and in agreement with the recommendations of the Hertfordshire Fly Tipping Group, a sub group of the Hertfordshire Waste Partnership.

### **5. ALTERNATIVE OPTIONS CONSIDERED**

- 5.1. The Council could set their own local level of fines within the parameters specified in the Regulations, however this would be against the uniform approach adopted across Hertfordshire by the other district and borough local authorities and would be contrary to the recommendations made by the Hertfordshire Fly Tipping Group.

### **6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)**

- 6.1. Consultation has taken place with both the Executive Member for Housing and Environmental Health whose responsibilities include enviro-crime and also the Executive Member for Community Engagement and Rural Affairs as their responsibilities include community safety matters.
- 6.2. The Hertfordshire Fly Tipping Group have discussed the introduction of FPN's for household waste duty of care offences and the Group have broadly agreed that a common approach to the level of fine would ensure consistency across the county. The Group includes representatives from:
  - All ten district/borough Councils
  - Hertfordshire County Council
  - Office of the Police and Crime Commissioner
  - Hertfordshire Constabulary
  - Hertfordshire Fire and Rescue Service

- The Environment Agency
- National Farmers Union

6.3. Internal discussions as regard to the usefulness of introducing FPN's as an appropriate sanction have also been undertaken between the Community Safety team and Legal Services.

## 7. RELEVANT CONSIDERATIONS

7.1. 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.

7.2. The Regulations came into force on 7<sup>th</sup> January 2019 and introduced a new Section 34ZA to the Environmental Protection Act 1990 ('the Act'); permitting statutory authorities to issue a FPN for household waste duty of care offences under section 34 of the Act where the statutory authority believes a FPN is the most appropriate sanction. 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, and their introduction equalised the measures currently available to the authority for a section 33 fly-tipping offence.

7.3. The Government has made it quite clear under what circumstances a FPN can be issued:

- 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.

7.4. The Regulations allow for a fixed penalty of £150 to £400 with a default level of £200 (if no amount is specified by the Authority) and minimum reduced rate of £120 if paid within 10 days.

7.5. The Hertfordshire Fly-tipping Group recommendations are for local authorities to set the level of penalty for household duty of care FPNs at £300, reduced to £200 if paid within 10 days of issue. In coming to this conclusion the Group had regard to the levels set for other environmental offences (such as the FPN for £300 for the illegal deposit of waste (fly tipping) offence). The Group also considered that this level of penalty reflects the seriousness of the duty of care offence, but is set at a level that makes the option to pay the penalty preferable to going to Court.

7.6. In June 2018 the Council introduced FPNs for fly-tipping offences. The Council set the FPN level £300 (reduced to £200 if paid within 10 days of issue) for first time offender and small scale fly tipping offences in line with the recommendations of the

Hertfordshire Waste Partnership Fly Tipping Group. Since then the Council has issued five FPNs for this offence and all have been paid, thus the Council avoiding prosecution through the Courts saving Council cost and resource for taking enforcement action against these lower level offences.

- 7.7. Existing FPN penalty payments for environmental crime offences are set out in Appendix A. These were originally included as part of the Housing and Public Protection Fees and Charges for 2018/19 agreed as a delegated decision in March 2018.

## **8. LEGAL IMPLICATIONS**

- 8.1. The Council's Constitution delegates the Chief Executive, the Deputy Chief Executive and the Service Directors the responsibility to set fees and charges for their respective service areas, in accordance with the Council's Financial Regulations and relevant policies, in consultation with the Executive Member (14.6.4 (a) (viii), p.128). This would be a potential fee as a penalty that may be set by the authority and as the s34ZA provision emanates from post Local Government Act 2000 legislation this is an Executive function. The Service Director: Legal and Community has service responsibilities for Community Safety and its enforcement as per 14.6.9(v) and (vi), which includes fly-tipping and FPNs.
- 8.2. The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018 which came into force on 7 January 2019, introduced a new Section 34ZA to the Act and permits Local Authorities to issue FPNs for breach of householder duty of care and may set a FPN penalty payment in relation of fly tipping at a range between £150 and £400 (as per s34ZA of the Act).

## **9. FINANCIAL IMPLICATIONS**

- 9.1. Any additional revenue expenditure incurred relating to the implementation of FPNs is expected to be minimal and will be managed within current expenditure budgets. It is anticipated that any additional pressure on support services, such as corporate income recovery, can also be managed within existing budget provision.
- 9.2. Any income from fines will be monitored and reported as part of the Services' budget monitoring process.

## **10. RISK IMPLICATIONS**

- 10.1. There are no risks associated with the setting of charges for FPN's. However, there could be a corporate reputational risk to the Council and criticism levied if the penalty fines are not set in accordance with the levels agreed by the Hertfordshire Fly Tipping Group.

## **11. EQUALITIES IMPLICATIONS**

- 11.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 11.2. There are no equalities implications arising from this decision.

## **12. SOCIAL VALUE IMPLICATIONS**

- 12.1. The Social Value Act and "go local" policy do not apply to this decision.

## **13. HUMAN RESOURCE IMPLICATIONS**

13.1. There are no additional resourcing implications arising from this decision.

**14. BACKGROUND PAPERS**

14.1. The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018  
<http://www.legislation.gov.uk/ukxi/2018/1227/contents/made>

14.2 Guidance for local authorities on household waste duty of care fixed penalty notices. Policy Paper from Department for Environment, Food & Rural Affairs (11 December 2018)  
<https://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance/guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notice>

14.3 Fixed penalty notices: issuing and enforcement by councils. Guidance from Department for Environment, Food & Rural Affairs (May 2016)  
<https://www.gov.uk/guidance/issued-penalty-notice-issuing-and-enforcement-by-councils>

14.4 Corporate Statement of Enforcement Policy (December 2018)  
<https://democracy.north-herts.gov.uk/documents/s3899/Appendix%20A%20-%20Corporate%20Statement%20of%20Enforcement%20Policy.pdf>

14.5 Housing and Public Protection Service Schedule of Fees and Charges 2018/19  
<https://www.north-herts.gov.uk/home/environmental-health/housing-and-public-protection-service-fees-and-charges>

14.6 Fly-tipping – Fixed Penalty Notice: 23 May 2018 Delegated Executive Decision  
<https://www.north-herts.gov.uk/sites/northherts-cms/files/Fly%20Tipping%20-%20Fixed%20Penalty%20Notice.pdf>

14.7 Hertfordshire Fly Tipping Group Terms of Reference 2016 (electronic copy available on request)

**15 APPENDICES**

15.1 Appendix A – Existing Environmental Crime fees and charges.

**16 NOTIFICATION DATE**

29.3.19

Signature of Executive Member Consulted ..... 

Date 29th March 2019 .....

Signature of Decision Taker

  
.....

**Please Note:** that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.

## Appendix A – Existing Environmental Crime fees and charges

Legislation	Offence	Standard Penalty (14 days)	Reduced Penalty (if paid within 10 days)	Non-payment will result in prosecution and a criminal record (maximum fines do not include any associated court costs claimed back by the Council)
S6(1) Clean Neighbourhoods and Environment Act 2005	Nuisance Parking (repairs/exposing for sale)	£100	£60	Maximum level 4 fine (currently £2,500)
S2A(1) Refuse Disposal (Amenity) Act 1978	Abandoned Vehicle <sup>1</sup>	£200 (plus removal, storage and disposal costs) <sup>2</sup>	£120 (plus removal, storage and disposal costs) <sup>2</sup>	£2,500 or imprisonment up to 3 months or both
S88(1) Environmental Protection Act 1990	Littering	£75 <sup>3</sup>	£50	Maximum level 4 fine (currently £2,500)
Schedule 3A, para 7(2) Environmental Protection Act 1990	Unauthorised distribution of literature on designated land	£75 <sup>3</sup>	£50	Maximum level 4 fine (currently £2,500)
The Dogs (Fouling of Land) Act 1996	Dog Fouling (where Dog Control Order does not exist)	£50	£50	£1,000
S33 Environmental Protection Act 1990	Fly-Tipping	£300	£200	On summary conviction (i.e. tried in the Magistrates' Court): unlimited fine or 12 months custody or both Conviction on indictment (i.e. tried at the Crown Court before a jury): unlimited fine, or 5 years or both
S34 Environmental Protection Act 1990	Breach of Household waste: duty of care	£300 <sup>4</sup>	£200 <sup>4</sup>	On summary conviction: maximum level 5 fine (unlimited) Conviction on indictment: unlimited

<sup>1</sup> Owners Request = Request to remove vehicle for scrap. For further information please contact 01462 474000

<sup>2</sup> Additional contractor's fees apply for the removal, storage and disposal of each vehicle

<sup>3</sup> Denotes government recommended fixed penalty Notice default rate

<sup>4</sup> New charge based on this decision notice