

## Bath & North East Somerset Council

MEETING/ DECISION MAKER:	<b>Cllr Martin Veal, Cabinet Member for Community Services</b>	
MEETING/ DECISION DATE:	<b>On or after 28<sup>th</sup> January 2017</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		<b>E2938</b>
TITLE:	<b>Unauthorised Deposit of Waste (Fixed penalties) Regulations 2016 – Approval to set fine at £400</b>	
WARD:	All	
<i>Attached:</i>		

### 1 THE ISSUE

- 1.1 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016, came into force on 9 May 2016. The Regulations amend the Environmental Protection Act 1990 to introduce a power for Waste Collection Authorities to issue a fixed penalty notice (FPN) to persons believed to have committed an offence of fly-tipping. The FPNs offer a person the opportunity to discharge their liability to conviction for the offence by the payment of a fixed penalty.
- 1.2 The amendment provides for the amount of fixed penalty to be not less than £150 and not more than £400 with £200 being the default amount if no amount is specified.
- 1.3 This report seeks approval to set this Council's fixed penalty notice at the maximum £400.

### 2 RECOMMENDATION

The Cabinet Member is asked to;

- 2.1 Set the Penalty Charge for Unauthorised Deposit of Waste (Fixed Penalty Notices) at £400 (four hundred pounds) with no discount for early payment, to reflect the seriousness with which the Council views this offence and the costs incurred in issuing the FPN and clearing the fly-tip.

### 3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The authority already has resources allocated to clear and investigate incidents of fly tipping; this will not require additional resource.
- 3.2 Receipts from FPN's are retained by the authority to which they are paid
- 3.3 Any receipts from FPN's paid will contribute towards the costs to the Council of enforcing and clearing fly-tips.

## **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

- 4.1 The Environmental Protection Act 1990 is amended to allow for FPNs to be issued for fly tip offences under section 33 of the Environmental Protection Act.
- 4.2 If the FPN is not paid, then the person it was issued to will be liable to conviction through the magistrate's court for the original offence.
- 4.3 Section 33(1) of the Environmental protection Act 1990 states that it is an offence to deposit controlled or extractive waste in or on any land without a permit, or in breach of a permit.
- 4.4 The issues of leaving litter and use of receptacles for household waste are dealt with elsewhere in the Environmental Protection Act 1990 and lower penalties are in place for these types of offences.
- 4.5 Section 88 (1) of the Environmental Protection Act 1990 allows for FPNs to be issued for littering offences. The current fixed penalty for this offence is £75.
- 4.6 Section 47ZA of the Environmental Protection Act 1990 allows for FPNs to be issued for domestic waste receptacle offences. The current amount of the fixed penalty for this offence is £60.

## **5 THE REPORT**

- 5.1 The government introduced the Unauthorised Deposit of Waste (Fixed Penalty Notices) Regulations 2016 which inserted section 33ZA into the Environmental Protection Act 1990. Section 33ZA empowers waste collection authorities to issue FPNs to fly-tippers and provides for an amount of fixed penalty to be not less than £150 and not more than £400. If there is no amount specified in the FPN there is a default value of £200.
- 5.2 The amendment is intended to provide local authorities with a more appropriate tool to tackle small-scale fly tipping and the amendment came into force on 9 May 2016.
- 5.3 Bath and North East Somerset Council suffers from fly tipping incidents across the whole area. Prior to the amendment the Council had two options when dealing with fly tipping offences. These were to issue criminal proceedings or issue a FPN for the depositing of litter offence.
- 5.4 FPNs offer the opportunity for an individual to discharge any liability to conviction for the offence to which it relates, by payment of a fixed penalty. FPNs will be used to deal with low level fly tipping incidences, first time offenders and incidences where prosecution may not be the most cost-effective method of dealing with an incident.
- 5.5 FPN's will not replace the prosecution option but rather prosecution will be reserved for serious offences including high volumes of waste, repeat offences and or commercial/organised tipping.
- 5.6 When perpetrators of fly tipping are identified, it is appropriate that they receive a penalty reflecting the damage to the environment, local community and cost to the Local Authority for clearing the waste and investigating the offence. The penalty should also act as a deterrent against future offending. It is recommended therefore that the fixed penalty for the unauthorised deposit of waste FPN should be set at £400 reflecting the seriousness of the offence and the clear up costs involved. No discount will be offered for early payment.

5.7 In line with existing arrangements, the decision on whether to issue an FPN or to pursue a prosecution will be made by the investigating officer in consultation with their line manager and where appropriate Legal Services.

## 6 RATIONALE

6.1 The implementation of a fixed penalty for unauthorised deposit of waste will contribute towards the Council's commitment to take enforcement action when fly tipping incidents have occurred.

## 7 OTHER OPTIONS CONSIDERED

7.1 The legislation provides for the amount of fixed penalty to be between £150 and £400. Taking into account the cost of clearing up incidents of fly tipping, the time involved investigating and enforcing against them it is considered that the level of fixed penalty should be set at the maximum of £400, with no discount for early payment.

## 8 CONSULTATION

8.1 The Council's Monitoring Officer, Section 151 Officer and Strategic Director for Place have had the opportunity to input to this report.

## 9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

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<b>Background papers</b>	
<b>Please contact the report author if you need to access this report in an alternative format</b>	