



## Report of the Cabinet Member for Environment & Infrastructure Management

Cabinet – 21 June 2018

### Fixed Penalty Notices for Fly-tipping

<b>Purpose:</b>	Fixed Penalty Notices (FPNs) 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.
<b>Policy Framework:</b>	The Environmental Protection Act 1990 Section 33 as amended by The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 <a href="http://www.legislation.gov.uk/wsi/2017/1024/regulation/2/made">http://www.legislation.gov.uk/wsi/2017/1024/regulation/2/made</a>
<b>Consultation:</b>	Access to Services, Finance, Legal.
<b>Recommendation(s):</b>	It is recommended that: -  1) The fixed penalty fee be set at £400 with an early payment amount of £250 if paid within 10 working days. 2) This will be reviewed in one year by the Cabinet Member / Lead Officer.
<b>Report Author:</b>	Chris Howell
<b>Finance Officer:</b>	Ben Smith
<b>Legal Officer:</b>	Tracey Meredith
<b>Access to Services Officer:</b>	Catherine Window

#### 1. Introduction

- 1.1 The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 is an amendment to Part II of the Environmental Protection Act 1990 (EPA 1990) section 33. It amends and improves previous legislation available to Local Authorities in Wales.

1.2 The Act amends legislation to provide an opportunity for first time non-habitual offenders to avoid court and a possible criminal record by way of (FPN). FPNs 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

## 2. Fixed Penalty Notice Procedures

2.1 The act increases the number of offences that can be dealt with by the issue of (FPNs). For some of these, the Council has direction to set its own level of fines within a prescribed range. Where no such decision is made the Government has set default levels. The remaining fixed penalty notices have been fixed at prescribed levels and no variation is allowed. In addition, with most FPNs, there is a power to set a lower level if it's paid early. The council has already adopted £75 penalties for littering with a £50 early payment level.

2.2 Using FPNs is an optional course for councils to punish those who admit the offence and free up court and council time. Failure to pay the penalty will result in prosecutions for the original offence.

2.3 Table A below outlines the offence, the fixed or default level of fine, the discretionary range and the minimum amount for early payment of those FPNs which can be applied.

**Table A**

Sections & Legislations	Offence	Amount	Discretionary Range	Suggested Amount for Early Payment
The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017	Fixed Penalty notices for contravention of section 33(1)(a):Wales EPA 1990 33ZB	£400	£120-£400	£250 within 10 working days

2.4 The Act also generally requires the use of fixed penalties to be used for specific purposes as the Council is able to retain the amounts paid to it. Those purposes are laid down specifically but, in the main, require reinvestment of the FPNs back into the service that generated the FPN.

2.5 Local Authorities (LA's) can set the amount of the fly-tipping FPN between £120-£400 with a default of £200 if no amount is specified. An option for early payment of an amount no less than £120 can be made available and Local Authorities can retain the receipts to help contribute to the costs of dealing with fly-tipping. The FPNs can be used on both publicly and privately owned land.

2.5 It must be emphasised that this is not an income generating exercise. These procedures give the Council further regulatory options to prosecution and it is expected that income from all FPNs will still remain relatively low.

**3. Levels of Fixed Penalty Notices**

3.1 There are a variety of options available in respect of the level of such penalties.

- a. Set the default level this means no discount for early payment and may lead to higher levels of non-payment.
- b. Set a low level of fee with no early discount; this prevents a lesser deterrent and could result in high levels of non-payment.
- c. Set high levels of fee with maximum discount; this maintains a high deterrent value with maximum incentive to pay early with less administrative work subsequently in prosecution for the offence on for non-payment.
- d. Set high levels of fee with medium discount; this maintains a good deterrent value with incentive to pay early with the same advantages as above.

**Recommendations**

3.2 It is **recommended** that option d is adopted as a principle and that this be reviewed after one year.

3.3 It is also **recommended** that the amounts of the Fixed Penalty Notices are as set out in Table B below.

**Table B**

Offence	Proposed Amount of fee	Recommended Amount for Early Payment (within 10 days)
The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 Fixed Penalty notices for contravention of section 33(1)(a):Wales EPA 1990 33ZB	£400 Fixed	£250

**4. Equality and Engagement Implications**

4.1 In order to comply with the relevant equality regulations, an EIA screening was carried out and it was noted that the opportunity to issue fixed penalty

notices (FPNs) was an amendment to current legislation in place and there are no equality implications.

4.2 An EIA Screening Form has been completed with the agreed outcome that a full EIA report was not required:

- Screening Form as a background paper.

## **5. Financial Implications**

5.1 The income generated will be additional to existing budgets and there will be no additional costs. However, that extra income is expected to be minimal. Any such income will be used solely and incidentally to offset the costs of other early intervention, awareness raising, advertising, and enforcement action in respect of fly tipping

## **6. Legal Implications**

6.1 The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008 prescribed the ranges that certain fixed penalties are required to fall. The proposed amounts in the report fall within the ranges specified in the Regulations.

**Background Papers:** EIA.

**Appendices:** None.