



## Report of the Cabinet Member for Community (Services)

Cabinet – 19 January 2023

### Fixed Penalty Notices for Breach of Householder Duty of Care in relation to Fly Tipping

<b>Purpose:</b>	To seek approval to adopt and implement the Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 to issue fixed penalty notices (FPNs) as a more proportionate response to tackling small scale fly tipping where appropriate.
<b>Policy Framework:</b>	The Environmental Protection Act 1990 Section 34 as amended by The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 <a href="http://www.legislation.gov.uk/wsi/2019/331/introduction/made">http://www.legislation.gov.uk/wsi/2019/331/introduction/made</a>
<b>Consultation:</b>	Access to Services, Finance, Legal.
<b>Recommendation(s):</b>	It is recommended that Cabinet: <ol style="list-style-type: none"><li>1) Approves the issue of Fixed Penalty Notices in accordance with the legislation</li><li>2) Approves the fixed penalty fee be set at £300 to be paid within 14 working days in accordance with the legislation</li><li>3) Approves an early payment amount of £150 if paid within 10 working days.</li></ol>
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## **1. Introduction**

- 1.1 The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 is an amendment to Part II of the Environmental Protection Act 1990 (EPA 1990) section 34. It amends and improves previous legislation available to Local Authorities in Wales.
- 1.2 The Act amends legislation to provide an opportunity for householders to avoid court and a possible criminal record by way of a Fixed Penalty Notice (FPN). FPNs offer a more efficient and proportionate response to tackling Household Duty of Care (HDoC) in regard to fly tipped waste, 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.
- 2.2 Using FPNs is an optional course for councils to tackle 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. FPN's will not be used where prosecution through the court is more appropriate ie the deliberate transfer of waste knowing it will be fly tipped or for persistent offenders or where there is a history of not paying FPN's.

## **3. Level of Fixed Penalty**

- 3.1 Table A below outlines the offence, the fixed and the amount for early payment of the FPNs which can be applied.
- 3.2 The level of penalty is set out in the legislation: which is as follows:
  - a) Fixed Penalty - £300
  - b) Discounted Penalty for early payment (if offered) - £150
- 3.3 The recommendation is that a discounted penalty is offered for early payment which will be set at £150 if paid within 10 working days. The alternative would be to not agree an early payment option with all FPN's having to be paid at the rate of £300 within 14 days.

**Table A**

Sections & Legislations	Offence	Amount		Suggested Amount for Early Payment
The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019	Fixed Penalty notices for contravention of section 34(2)(a):Wales EPA 1990 34ZB	£300		£150 if paid within 10 working days

3.4 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.

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

#### **4. Integrated Assessment Implications**

4.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- Deliver better outcomes for those people who experience socio-economic disadvantage
- Consider opportunities for people to use the Welsh language
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

4.1.1 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in

accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

4.1.2 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

4.1.3 The outcome of the screening was that a full IIA was not required due to their being low impact on protected groups.

## **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, removal/disposal and enforcement action in respect of fly tipping

## **6. Legal Implications**

6.1 The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 prescribes the ranges that certain fixed penalties are required to fall within. The proposed amounts in the report are as specified in the Regulations.

6.2 Regard should be given to Welsh Government Guidance for Local Authorities on Household Waste Duty of Care – Fixed Penalty Notices in particular as to when FPN's should be issued.

**Background Papers:** None

**Appendices:**

Appendix A - IIA Screening