

CABINET

Date of Meeting	Tuesday, 22 nd January 2019
Report Subject	Fixed Penalty Notices for Fly Tipping Events
Cabinet Member	Cabinet Member for Streetscene and Countryside
Report Author	Chief Officer (Streetscene & Transportation)
Type of Report	Operational

EXECUTIVE SUMMARY

The Council receives and investigates around 1,000 fly tipping reports every year. New legislation, by way of an amendment to the Environmental Protection Act, now gives all local authorities the power to deal with these incidents using a Fixed Penalty Notice (FPN). A FPN is a way of discharging liability for the offence however, the evidence required to issue a FPN remains at the same level as would be required to prove the offence through prosecution.

Where it is in the public interest to do so, the authority may give offenders an opportunity to avoid prosecution and subsequent court appearance by the payment of a FPN.

This report contains a recommendation for the introduction of FPN's for fly tipping offences in the event of low level fly tipping events and seeks approval for the level of charge for the FPN.

RECOMMENDATIONS

1.	That Cabinet approves the use of the new legislation to issue Fixed Penalty Notices for low level fly tipping offences.
2.	That Cabinet approves the level of an FPN at £200, with a discount of £80 for early payment.
3.	That Cabinet requests a review of the level of FPN charge after one year and grants delegated authority to the Chief Officer after consultation with the Cabinet Member and Portfolio holder, to vary the level of the charge, if necessary.

REPORT DETAILS

1.00	BACKGROUND TO THE REPORT
1.01	<p>The Council receives around 1,000 reports of fly tipping in the County every year. A small number of these are significant in size but the vast majority are small scale events such as black bags and bulky household items. Historically the powers available to the Council were limited to progressing the cases through the courts for prosecution, regardless of their scale. Gathering of evidence and preparing court papers is time consuming and costly with the number of successful prosecutions being low in number. This is a consistent theme across England and Wales.</p>
1.02	<p>In November 2017, the Environmental Protection Act was amended to give local authorities the powers to issue FPN's for fly tipped waste under 'The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017'. This change now allows local authorities to deal with small scale fly tipping through FPN's, without the need for expensive prosecutions. This also provides an opportunity for first time non-habitual offenders to avoid court and a possible criminal record. The FPNs can be used on both publicly and privately owned land.</p>
1.03	<p>It is not appropriate to issue FPN's in every case of fly tipping and in the event of more significant fly tipping events, prosecution should and will remain the most effective way of dealing with the situation. Appendix 2 shows the guidelines, produced by the All Wales Fly Tipping Forum for circumstances when FPN may be considered as the appropriate approach, rather than prosecution.</p>
1.04	<p>Local authorities can set the amount of the fly-tipping FPN at a level between £150 and £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.</p>
1.05	<p>Feedback from an All Wales Fly Tipping Forum of local authorities indicates that the majority have set, or are intending to set their FPN's at the higher end of the scale £400. (A list of the FPN levels at some Welsh authorities shown on Appendix 1). This is mainly to act as a deterrent to would be offenders, but also assists in the costs of dealing with the fly tipping clearance across the County. Given that the charge is intended as a deterrent and for first time offenders only, many of whom will be without the resources to pay such a high figure, it is suggested that the level of FPN is initially set at £200 and monitored over the first year of introduction.</p>
1.06	<p>The recognised standard period of 14 days for payment will apply and it is proposed that a reduced charge of £120 will be offered, if the Fixed Penalty Notice is paid within 10 days. Should the offender fail to make payment within the prescribed period, court proceedings will be issued.</p>

1.07	Enforcement action will take place in accordance with recognized guidelines including the Codes of Practice made under the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigations Act 1996. Suspected offenders where implicating evidence is found will be requested to attend a formal interview. The interviews will be carried out in accordance with the Police and Criminal Evidence Act 1984 (PACE) Codes of Practice. Only trained and accredited Officers will undertake these interviews.
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2.00	RESOURCE IMPLICATIONS
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2.01	There are no negative financial issues relating to this proposal. FPN's will be issued by the Enforcement Officers currently employed by the Council.
2.02	The issuing of FPN's is not intended to be an income generation exercise, the recovery of payments of FPN's levied is required by law to remain within the service area and for the benefit of the services provided.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
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3.01	No equality implications have been identified resulting from this proposal as there are no exceptions made within legislation concerning the enforcement of environmental crime.
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4.00	RISK MANAGEMENT
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4.01	A project team will be put in place to monitor and oversee the introduction of the new arrangements, if approval is given.
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5.00	APPENDICES
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5.01	Appendix 1 – FPN level comparator Appendix 2 – Guidelines for FPN/Prosecution
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6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
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6.01	Contact Officer: Stephen O Jones Telephone: 01352 704700 E-mail: stephen.o.jones@flintshire.gov.uk
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7.00	GLOSSARY OF TERMS
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7.01	FPN - Fixed Penalty Notices.
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