

CABINET

Date of Meeting	Tuesday 17th March 2020
Report Subject	Fly Tipping and Household Duty of Care Enforcement
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 across the County every year.

In January 2019, Cabinet approved the use of Fixed Penalty Notices (FPNs) for fly tipping offences that were deemed to be small scale in nature, retaining the possibility of prosecution against persons responsible for larger or environmentally dangerous fly tips. Cabinet requested a review of the FPN process, following the first year of introducing the new arrangements and this report provides an update on the number of FPN's issued for this offence in the first year.

Of the fly tipping events that occur, approximately two thirds of the waste originates from domestic properties and from investigations undertaken, it has been identified that residents transfer their waste to unregistered traders which then gets fly tipped instead of correctly disposed. It is the householder's legal responsibility (Duty of Care) to transfer their waste to a registered waste carrier and ensure that the waste is disposed of at a legally permitted site.

This report proposes that a Countywide education campaign is undertaken to educate residents on their 'Duty of Care' responsibilities in relation to their domestic waste disposal and where it can be demonstrated that domestic waste is passed to an unregistered carrier and then that waste is then tipped illegally, that an FPN is issued to the resident for failure to meet their statutory obligation.

RECOMMENDATIONS

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| 1. | That Cabinet notes the progress on the issuing of Fixed Penalty Notices for small scale Fly tip events. |
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2.	That Cabinet approves the Countywide education campaign and subsequent enforcement of Householder Duty of Care arrangements through Fixed Penalty Notice.
3.	That Cabinet approves that the Fixed Penalty Notice charge for breach of Householder Duty of Care should be £300, with a reduction to £150 if the FPN is paid within 10 days.
4.	That Cabinet approves that the Fixed Penalty Notice charge for small scale Fly tipping offences should be raised to £300, with a reduction to £150 if the FPN is paid within 10 days.

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.</p> <p>Reported fly tips have increased slightly recently over the past 3 years as follows:</p> <p>2016/17 – 800 2017/18 – 763 2018/19 – 1034 2019/20 (YTD) - 814</p> <p>We provide monthly figures to Welsh Government in relation to Fly-tipping, and have also looked to recently improve customer contact when dealing with fly-tipping reports. The most recent figures since 2018 that we have submitted show an increase in those incidents reported through the FCC webpages following improvements to the webpage, and also those reported at the Flintshire Connects Centres directly, whilst telephone calls and Mobile App reports remain at a similar level, and e-mails have dropped. These improved reporting methods have led to an overall increase in reports received.</p> <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 allowed Local Authorities to deal with small scale fly tipping through FPN's, without the need for expensive prosecutions. This also provided 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>
1.02	<p>The Council's Cabinet approved the use of FPNs for small scale fly tipping in January 2019, retaining the possibility of prosecution against persons responsible for larger or environmentally dangerous fly tips, with the Council in-house enforcement team responsible for the investigation and progression of cases. To date the number of FPNs issued stands at 19.</p>

	<p>The FPNs were issued following full investigation and assessment of the scale of the fly tip, along with the severity, in accordance with the guidelines produced by the All Wales Fly Tipping Forum. Prior to the issue of an FPN all suspected offenders are invited to an interview to allow them to provide a mitigating reason as to why their waste has been fly tipped.</p> <p>During these interviews, enforcement officers are repeatedly being informed that a resident has passed their domestic waste to a 'man in a van' who has advertised or offered to take their waste for a small fee. It has been identified that residents are not ensuring their waste is passed to an authorised registered waste carrier or enquiring as to where their waste is being taken.</p>
1.03	<p>As an occupier of a domestic property, residents have a legal duty to make sure that their household waste, produced on their property, is passed to an authorised person for correct disposal. This is detailed in Section 34 of the Environmental Protection Act 1990.</p> <p>Legislation requires a resident to 1) Check with Natural Resources Wales that the person or company which they are using is a registered waste carrier 2) Ask where the waste is being taken to.</p> <p>In addition to the legislative requirements Fly Tipping Action Wales also recommend that the residents 1) Record details on the person / company taking their waste (name / registration number) 2) Keep a receipt detailing description of the waste and company used 3) Record details of the business or vehicle used to take the waste (registration number, make, model, colour).</p>
1.04	<p>Fly Tipping Action Wales commissioned a survey in which they asked people their understanding of 'Household Waste Duty of Care'. The results of the survey revealed that only 56% of people in Wales understood their legal Duty.</p> <p>Given this information, and the feedback from the enforcement officer's investigatory interviews, it is proposed that a Countywide education campaign is undertaken with Flintshire residents to improve our residents understanding of their legal Duty of Care for disposing of domestic waste from their properties to assist with the reduction of fly tipping events in our community.</p>
1.05	<p>Section 34ZB of the Environmental Protection Act 1990 allows for a Local Authority (Wales) to issue a Fixed Penalty Notice to any person who has failed to comply with their duty relating to the transfer of household waste.</p> <p>Following the period of education, and where it can be demonstrated that a resident has given their waste to an unregistered waste carrier with that waste then being fly tipped, it is proposed that the Council's enforcement team be given approval to issue a Fixed Penalty Notice to the resident for breach of 'Householder Duty of Care'</p>

1.06	<p>Legislation states that that charge for an FPN for breach of Duty of Care is set at £300, with a reduced cost to £150 if paid within 10 days.</p> <p>Local authorities can set the amount of the fly-tipping FPN at a level between £150 and £400. The current amount approved is £200 (reduced to £120 if paid within 10 days) but it is proposed that this is increased to £300 (£150) if the recommendation in this report are approved.</p>
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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	IMPACT ASSESSMENT AND RISK MANAGEMENT
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3.01	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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4.00	CONSULTATIONS REQUIRED / CARRIED OUT
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4.01	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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5.00	APPENDICES
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5.01	None
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6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
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6.01	None
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7.00	CONTACT OFFICER DETAILS
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7.01	<p>Contact Officer: Stephen O Jones</p> <p>Telephone: 01352 704700</p> <p>E-mail: stephen.o.jones@flintshire.gov.uk</p>
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8.00	GLOSSARY OF TERMS
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8.01	FPN - Fixed Penalty Notices
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