

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Streetscene & Engineering Cabinet Board

5th April 2019

Report of the Head of Streetcare

M. Roberts

Matter for Decision.

Wards Affected: ALL WARDS

New Fixed Penalty Notice in respect of Fly Tipping

1. Purpose of Report

- 1.1. To advise Members of the introduction of a new Fixed Penalty Notice under the “The Household Waste Duty of Care Regulations (Wales) 2019” and to seek agreement to delegate these powers to relevant officers.

2. Executive Summary

- 2.1. Regulation in respect of the Householders Duty of Care is specified under the Environmental Protection Act 1990 s34 (2A) as follows: *“It shall be the duty of the occupier of any domestic property in England or Wales to take all such measures available as are reasonable in the circumstances to secure that any transfer of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.*
- 2.2. Proceedings against an offender are currently taken through the courts under The Environmental Protection Act 1990 s34 (6). This states that *“any person who fails to comply with the above duty shall be liable on summary conviction to a fine not exceeding the statutory maximum.*
- 2.3. The new regulations insert a new section 34ZB into Part II (waste on land) of the Environmental Protection Act 1990 (c.43) (“the Act).
- 2.4. The new section 34ZB confers a discretionary power on Waste Collection Authorities in Wales to offer a Fixed Penalty Notice,

giving a person/householder the opportunity of discharging any liability to conviction for the offence of failing to comply with the duty imposed by section 34(2A). This report seeks to adopt the use of the new power in Neath Port Talbot.

3. Background

- 3.1. In 2005/6 a change in legislation allowed a Waste Collection Authority to take action against householders who failed to ensure that they passed their unwanted household waste to an authorised person or to a person for authorised transport purposes. Whilst some householders may be duped, it is apparent from cases where fly tipped waste is traced back to householders that on many occasions the householder has opted to pay a very low amount of money to remove their waste having no regard for where it is disposed of. The householders then either blame an “unknown/fictitious third party” or knowingly refuse to give the details of the person who removed the waste for them. If the illegal depositor cannot be identified the authority have historically prosecuted the householder for a “Duty of Care offence”, however this can be complex and time consuming process which requires significant input of staff resources. In addition, the fines imposed for successful prosecutions are paid to the court and not direct to the local authority. Furthermore the recovery of officers costs, if awarded, are often problematic.
- 3.2. The Household Waste Duty of Care Regulations (Wales) 2019 introduce a new power enabling an authorised officer of a Welsh Collection Authority to serve a Fixed Penalty Notice on a person found to have failed to comply with their “Householders Duty of Care” responsibilities. The explanatory note within the legislation explains that the Regulations provide local authorities with an option of a more efficient and proportionate response to the small scale fly tipping of waste as opposed to enforcement by prosecution. In addition it allows an individual to discharge their liability for conviction of the offence by payment of the Fixed Penalty Notice. Fixed Penalty Notices also provide an opportunity for first time “non-habitual” offender’s to avoid court and a possible criminal record. They also help ease the burden on Enforcement Officers, Legal Services and the court system.
- 3.3. Unlike the Fixed Penalty Notices for “Fly tipping” where Local Authorities have the discretion to set the level of fine within limits, on this occasion the level of fine is set out in the legislation at

£300 with a potential early payment incentive of £150 (if offered) for payment within 10 days following the date of the notice. Fixed Penalty Notices can be served in relation to waste illegally dumped on both public and privately owned land, and if a Fixed Penalty Notice is not paid then the council's recourse would be to prosecute via the normal court process.

- 3.4. Fixed Penalty Notices should not be issued to repeat offenders. Where an offender is taken to court, the fact that they have been issued with a previous Fixed Penalty Notice may influence the court's assessment of the offender's suitability for a particular sentence.
- 3.5. Fly-tipping blights our communities and it damages our environment. The Authority's waste enforcement team dealt with 1056 incidents during the financial year 2017/18 and spent £67,236 on clean-up costs to remove the waste. These new powers provide Local Authorities with an additional enforcement tool for small-scale fly-tipping offences where a prosecution is considered disproportionate. The ability to issue Fixed Penalty Notices to Householders will not eradicate the problem of fly tipping but it is a further positive step in tackling the issue.
- 3.6. Experience has shown that over the last two years fines issued by the courts for "Householders Duty of Care" offences for small scale tips are ranging between £150 and £250, together with a Victim Surcharge of perhaps £30. In addition to this, Officer investigatory costs and clean-up costs are applied for which are generally awarded in full.

4. Financial Impact

- 4.1. In order to issue a Fixed Penalty Notice for a "Householders Duty of Care" offence the investigatory process would be no different than if we were going down the prosecution route; the evidence must be conclusive. During the financial year 2017/18 the Waste Enforcement team dealt with 16 Householders Duty of Care cases that would have constituted a "small scale fly tip" and if the proposed Fixed Penalty Notice regime had been in force it may have generated an income of between £2,400 - £4,800 whilst at the same time reducing the burden on the Council's Legal Services etc. Any income gained as a result from Fixed Penalty Notices may be retained and used in exercising Council functions in relation to fly tipping.

5. Equality Impact Assessment

- 5.1. A Screening Assessment has been undertaken to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010. After completing the assessment it has been determined that this proposal does not require an Equalities Impact Assessment

6. Workforce Impact

- 6.1. There are no workforce impacts associated with this report

7. Legal Impact

- 7.1. There are no legal impacts associated with this report.

8. Risk Management

- 8.1. There are no risk management issues associated with this report.

9. Consultation

- 9.1. There is no requirement under the constitution for external consultation on this item.

10. Recommendations.

- 10.1. It is recommended that Members approve:
- Adoption of the use of Fixed Penalty Notices for Householders Duty of Care in accordance with the Environmental Protection Act 1990 Section 34ZB
 - Delegated authority to the Director of Environment and the Head of Streetcare to issue Fixed Penalty Notices under the new legislation, and to appoint named competent Waste Enforcement Officers to issue such Fixed Penalty Notices on their behalf.
 - That an early payment incentive of £150 (reduced from £300) be offered if payment is settled within ten days of the FPN being issued.

11. Reasons for Proposed Decision

- 11.1. The adoption of FPN's for "Householders Duty of Care" with respect to small scale fly tipping of household waste will improve

the authority's effectiveness in tackling fly tipping and allow officers to deal with small scale fly tipping more proportionately and efficiently. Any monies accrued as a result of issuing notices will help to offset the associated investigatory costs/removal costs of fly-tipped waste and reduce the amount of case files submitted to the Authority's Legal Section.

12. Implementation of Decision

- 12.1. The decision is proposed for implementation after the three day call in period.

13. Appendices

- 13.1. Equalities Impact Screening Assessment

14. List of Background Papers

- 14.1. Nil

15. Officer Contact

- 15.1. Mr Andrew Lewis, Waste and Neighbourhood Services Manager.
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