

FOR PUBLICATION

UNAUTHORISED DEPOSIT OF WASTE (FIXED PENALTIES) REGULATIONS 2016 (E000)

MEETING:	1. CABINET 2. CABINET MEMBER FOR HEALTH AND WELLBEING
DATE:	1. 17 MAY 2016 2. 25 APRIL 2016
REPORT BY:	SENIOR ENVIRONMENTAL HEALTH OFFICER – ESTHER THELWELL
WARD:	ALL
COMMUNITY ASSEMBLIES	ALL
KEY DECISION REFERENCE (IF APPLICABLE):	N/A

FOR PUBLICATION

1.0 PURPOSE OF REPORT

1.1 To inform and seek members approval on the enforcement of The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.

2.0 RECOMMENDATIONS

2.1 Members approve the proposals set out within the report to enable enforcement of the provisions of The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.

2.2 Members approve the necessary amendments to the Constitution to enable enforcement of the Regulations. Issuing of Fixed Penalty

Notices would be limited to officers within the Environmental Protection Team.

2.3 Members approve to set the Fixed Penalty Notice at £300.

3.0 BACKGROUND

3.1 Section 33 of the Environmental Protection Act 1990 looks at the '*prohibition of authorised or harmful deposit, treatment or disposal of waste*'. It is this section of the law that is used to understand what flytipping is. Waste in this context is described as "*controlled waste*". Household, commercial, industrial and clinical waste are all defined as controlled waste.

3.2 This should not be confused with littering which the law describes as "*throwing down, dropping or otherwise depositing litter in any place which is open to the air*". Therefore, flytipping is the illegal dumping of waste (such as lots of filled rubbish bags) in an unauthorised place (for example a playing field).

3.3 Rubbish in front and back gardens is not defined as flytipping. This is because the rubbish is dumped on private land. This means that different legislation can be used to deal with this type of waste.

3.4 Since 2012, Chesterfield Borough Council has received over 2000 complaints about flytipping incidents. Of these, 1158 was dumped on land owned by Chesterfield Borough Council; 238 on private owned land; 382 on land where ownership was unknown and 38 complaints were recorded as littering but were actually flytipped rubbish.

3.5 The Council has a number of existing enforcement options available for dealing with flytipping offences. Under the current Enforcement Policy these are

- Informal warning
- Formal warning
- Formal caution
- Prosecution

3.6 Under Section 33 of the Environmental Protection Act 1990, the Council may take someone who has flytipped on public land to Court. However, the Council must prove in court, beyond all reasonable doubt, that the accused flytipper has flytipped. This

therefore requires the Council to collect evidence such as interviews conducted under PACE (Police and Criminal Evidence Act 1984). If the evidence is accepted, the Court can fine the flytipper up to £50,000 and sentence them to 5 years in prison, or unlimited sentencing if the issue appears before Crown Court (i.e. on appeal).

3.7 Since 2012, Chesterfield Borough Council has issued 60 formal warnings, 13 formal cautions and has presented 6 court prosecutions for incidents of flytipping.

3.8 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 introduce another enforcement tool; i.e. the serving of a Fixed Penalty Notice which the legislation states can be issued "*when an authorised officer...has reason to believe that a person has committed a waste deposit offence in the area of the authority*".

3.9 By issuing a Fixed Penalty Notice, the legislation allows this to "*discharge any liability to conviction for the offence to which it relates by payment of a fixed penalty*".

3.10 Failure to pay the Fixed Penalty Notice will result in prosecution.

4.0 FINANCIAL IMPLICATIONS

4.1 The legislation states that the Fixed Penalty Notice can be fixed at a level between £150 and £400. If no amount is specified, the default amount is £200.

4.2 It is recommended to set the Fixed Penalty Notice at £300.

5.0 LEGAL IMPLICATIONS

5.1 The legal implications are referred to in this report.

5.2 The Council's Enforcement Policy may need updating.

6.0 RISK MANAGEMENT

6.1 It is necessary to proactively identify and manage significant risks which may prevent delivery of business objectives.

6.2 The following risks associated with this report have been identified:

Description of the Risk	Impact	Likelihood	Mitigating Action
Non-compliance with legislation	High	Low	Ensure compliance with legislation
Not having sufficient resources to issue the Fixed Penalty Notice	High	Low	Enforcement staff already issue Fixed Penalty Notices for other enviro-crimes.
Offenders not being able to afford payment of Fixed Penalty Notice	High	Low	Case would be presented as a prosecution.

7.0 EQUALITIES IMPACT ASSESSMENT

7.1 DEFRA and their Regulatory Policy Committee carried out an impact assessment with regard to the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 and determined that there would be no costs to businesses that carry out their waste activities legitimately.

7.2 Businesses that carry out waste activities illegally (fly tipping waste) will experience costs from either finding legitimate disposal routes or being issued a fixed penalty notice. Introducing the fixed penalty notice in an attempt to deter flytipping is reinforcing a level playing field for businesses that legitimately dispose of their waste.

7.3 Local authorities that choose to issue fixed penalty notices for flytipping may incur small set-up costs for staff training and developing a suitable enforcement notice form. However, since local authorities already have the ability to issue fixed penalty notices for a range of issues it is envisaged that implementing the new powers will be at a limited additional cost.

7.4 The DEFRA impact assessment states that the new powers will reduce enforcement costs for local authorities by allowing them to

recover some of the enforcement and clearance costs without having to take a case to court.

7.5 The DEFRA impact assessment states that any subsequent reduction in fly tipping incidents, resulting from the introduction of fixed penalty notices would increase the quality of the local environment and generate associated improvements in public perception, health and civil pride.

7.6 The government has impact assessed this change in legislation and no specific equality considerations were identified. This has also been considered from a local perspective, no negative impacts have been identified.

8.0 RECOMMENDATIONS

8.1 Members approve the proposals set out within the report to enable enforcement of the provisions of The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.

8.2 Members approve the necessary amendments to the Constitution to enable enforcement of the Regulations. Issuing of Fixed Penalty Notices would be limited to officers within the Environmental Protection Team.

8.3 Members approve to set the Fixed Penalty Notice at £300.

9.0 REASONS FOR RECOMMENDATIONS

9.1 Flytipping is the illegal deposit of waste on land contrary to Section 33(1)(a) of the Environmental Protection Act 1990. Types of flytipped waste range from 'black bag' waste to large deposits of materials such as industrial waste, tyres, construction material and liquid waste.

9.2 Flytipping is a significant blight on local environments; a source of pollution; a potential danger to public health and a hazard to wildlife. It also undermines legitimate waste businesses where unscrupulous operators undercut those operating within the law.

9.3 The Fixed Penalty Notice will provide an additional enforcement tool and is in addition to the existing options listed in paragraph 3.5.

Officer recommendation supported

Signed:  Cabinet Member

Date: 25 April, 2016

You can get more information about this report from Esther Thelwell,
Senior Environmental Health Officer, Tel: 01246 345767 or email:
esther.thelwell@chesterfield.gov.uk