

For publication

Changes to the waste legislation – specifically Sections 34 and 342A of the Environmental Protection Act 1990 (introduction of a fixed penalty notice for ‘householders duty of care’).

Meeting: Cabinet

Date: 19th March 2019

Cabinet portfolio: Cllr Chris Ludlow

Report by: Senior Environmental Health Officer

1.0 Purpose of report

- 1.1 To inform Members of the changes to the Environmental Protection Act 1990 (sections 34 and 342A) in relation to updated guidance on waste (known as ‘householder duty of care’) and new guidance for local authorities on issuing proposed fixed penalty notices.
- 1.2 To seek approval from Members to introduce a fixed penalty notice for the amount of £250.

2.0 Recommendations

- 2.1 Members approve the proposals set out within the report to enable enforcement of the provisions of sections 34 and 342A of the Environmental Protection Act 1990.
- 2.2 Members adopt the fixed penalty level of £250.

2.3 Members approve the necessary amendments to the constitution to delegate authority to the Assistant Director for Health & Wellbeing to introduce and carry out the new powers and to authorise the appropriate officers to issue fixed penalty notices under the Environmental Protection Act 1990.

3.0 **Background**

3.1 Nationally there has been a year on year increase in fly tipping offences. Over a third of the waste involved in illegal fly-tipping is from households, resulting in waste crime costing the UK economy around £600 million every year, according to the Environment Agency.

3.2 The householders duty of care, section 34(2A) of the Environmental Protection Act 1990 requires occupiers of a domestic property to take all reasonable measures available to them to ensure that they only transfer household waste to an authorised person. These duties includes:

- Details of the business and of any vehicle used which can be linked to an authorised operator;
- A record of the operators registration or permit;
- A receipt for the transaction which includes the business details of a registered operator; or
- A copy of the carrier's waste licence or site permit.

3.3 If waste is fly tipped and can be directly linked back to the householder, the householder has committed an offence under the householder duty of care if the householder cannot demonstrate that they took the above mentioned reasonable measures.

3.4 For the purposes of applying the householder duty of care requirements, household waste is generally considered to be any waste produced within a domestic property.

3.5 If a tradesperson carries out work on a domestic property, generally they are responsible for the waste they produce and must comply with their own waste duty of care obligations in relation to that waste.

4.0 Background – legal framework

4.1 Householders are required, by law, to dispose of their waste in an appropriate manner. This means that waste should be either disposed of

- in the appropriate wheelie bin,
- at the waste collection site (e.g. Sheffield Road),
- by using the Council's 'bulky collection service', or
- by employing a registered waste collector (i.e. with a licence to carry and dispose of waste).

4.2 At the start of 2018 the Department for the Environment, Food and Rural Affairs (DEFRA) published a consultation document on proposals to tackle crime and poor performance in the waste sector and introduced a fixed penalty notice for the 'householder duty of care'.

4.3 In July 2018, the Environmental Protection Act 1990 was amended to include the option for local authorities to issue a fixed penalty notice to householders for failure to dispose of their waste in the correct manner.

4.4 Changes in the law mean that householders are being held more accountable for their household waste and where it ends up. If householders are found to have disposed of waste with someone who then illegally disposes of that waste, they

can be prosecuted or now be offered with a fixed penalty notice.

4.5 Prior to 2019 the only options available to the Council were to prosecute or offer formal cautions for householder duty of care offences. Since 2016 we have issued 20 formal warnings and 6 cautions to householders for failure to meet their duty of care requirements. Two householders have been involved with prosecution cases for incidents of flytipping.

4.6 However, prosecutions are costly for the Council and for the Courts, and also result in householders being left with a criminal record. Having the option of a fixed penalty notice can avoid unnecessary criminal prosecutions, reduce costs and be more effective at changing behaviour. It is hoped that these changes will encourage householders to think about who is collecting their waste and where it will end up.

4.7 Flytipping investigations of household waste have identified an increasing trend amongst unlicensed waste operators who are now advertising via social media. They tempt householders with cheap prices for the removal of large items of waste, including furniture, building waste and white goods which will inevitably end up dumped in laybys, on the highways or on streets.

5.0 Financial Implications – setting the FPN

5.1 The legislation makes provision for the maximum fixed penalty level to be set at a minimum of £150 to a maximum of £400 (default is set at £200).

5.2 Guidance from the government recommends that local authorities take into consideration factors affecting the local population when setting fixed penalty levels, including consideration of the local economy and affordability when setting fixed penalty levels – if the level is too high, the

payment may not be made resulting in more cases for prosecution (i.e. for non-payment of the fixed penalty notice).

5.3 It is recommended that the level of fixed penalty notice is set at £250.

5.4 Guidance for local authorities for issuing fixed penalty notices is available here

<https://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance/guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notices>

5.5 Discussions with neighbouring local authorities in Derbyshire have confirmed that as yet none have set an amount for the fixed penalty notice.

5.6 Discussions have extended to local authorities in the Yorkshire and Humberside regions and they have collectively agreed to set the amount for the fixed penalty notice at £250.

6.0 Legal implications

6.1 The legal implications are referred to in this report.

6.2 The Council's Corporate Enforcement Policy and Fixed Penalty Notice Policy will need updating.

7.0 Enforcement

7.1 Enforcement is carried out primarily by the officers within the Environmental Protection Team.

7.2 The fixed penalty notice can be used when a householder appears to have failed to comply with their duty of care and relates to the point where the transfer of waste took place, not the final disposal point of the waste. Reciprocal arrangements

will need to be put in place with neighbouring local authorities for investigation of cross-boundary cases of fly-tipped waste and failure to meet duty of care obligations.

- 7.3 This intervention would need to be supported with an educational campaign including updates via social media, news articles in publications and magazines as well as circulation of printed information to residents.

8.0 Equalities Impact Assessment (EIA)

- 8.1 DEFRA and their Regulatory Policy Committee carried out an impact assessment and determined that there would be no costs to businesses that carry out their waste activities legitimately or householders that dispose of their waste in the correct manner.
- 8.2 Introducing the fixed penalty notice in an attempt to deter the illegal disposal of waste is reinforcing a level playing field for all residents who dispose of their waste legitimately as well as registered waste carriers.
- 8.3 Local authorities that choose to issue fixed penalty notices for 'householder duty of care' 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.
- 8.4 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.
- 8.5 The DEFRA impact assessment states that any subsequent reduction in illegal deposits of waste as well as reduction in

illegal waste businesses, 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.

- 8.6 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.

9.0 Risk Management

- 9.1 Details of the risks associated with the legislation

Table 1 – risks for the implementation of this amendment

Risk	Likelihood	Impact	Mitigation Action	Revised Likelihood	Residual Impact
Non-compliance with the legislation	High	Low	Support from PR team and regulatory law team.	Low	Low
Not having sufficient resources to issue the FPNs	High	High	Enforcement staff already issue FPNs. Seek support from other teams.	Medium	Low
Offenders contest the fixed penalty notice	Medium	High	Support required from regulatory law team and lead enforcement officer	Medium	Medium

10.0 Recommendations

- 10.1 Members approve the proposals set out within the report to enable enforcement of the provisions of sections 34 and 342A of the Environmental Protection Act 1990.

- 10.2 Members adopt the fixed penalty level of £250.
- 10.3 Members approve the necessary amendments to the constitution to delegate authority to the Assistant Director for Health & Wellbeing to introduce and carry out the new powers and to authorise the appropriate officers to issue fixed penalty notices under the Environmental Protection Act 1990.
- 11.0 **Reasons for recommendations**
- 11.1 Illegally disposed waste is a significant blight on local environments; a source of pollution, a potential danger to public health and a hazard to wildlife.
- 11.2 Illegally disposed of waste has wider links with criminal activities, imposes avoidable costs on the public purse and draws money away from other priorities.
- 11.3 The intention is that the level £250 of the new fixed penalty will act as a deterrent to residents using unauthorised/unregulated waste carriers.

Decision information

Key decision number	678
Wards affected	All wards
Links to Council Plan priorities	To provide value for money services.

Document information

Report author	Contact number/email
Esther Thelwell, Senior Environmental Health Officer	01246 345767 esther.thelwell@chesterfield.gov.uk
Background documents	

These are unpublished works which have been relied on to a material extent when the report was prepared.

This must be made available to the public for up to 4 years.