

NORTH LINCOLNSHIRE COUNCIL

**GOVERNANCE & TRANSFORMATION
CABINET MEMBER**

**THE UNAUTHORISED DEPOSIT OF WASTE
(FIXED PENALTIES) REGULATIONS 2016**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To bring to the attention of the Cabinet Member a change in legislation regarding enforcement options available to the council in relation to the unlawful depositing of waste - fly-tipping.
- 1.2 To seek approval for the Fixed Penalty Notice (FPN) amount payable for the offence of fly-tipping.

2. BACKGROUND INFORMATION

- 2.1 The duty of care requirements regarding the storage and disposal of waste applies to households, industrial and commercial premises alike. Producers of waste have a legal responsibility to store their waste in an appropriate manner. They must also take all reasonable steps to ensure that when they transfer their waste to another waste holder that the waste is managed correctly throughout its complete journey to disposal or recovery.
- 2.2 This report covers the following offences:
 - Section 33 of the Environmental Protection Act 1990 (EPA) relating to the unauthorised deposit of waste on land not licensed to receive it.
 - Section 34 of the EPA regarding the illegal transfer of waste.

The new arrangements do not extend to excess or side waste associated with poor waste management arrangements on or outside premises.

- 2.3 Fly-tipping is the illegal disposal of household, industrial, commercial or other waste on land without a waste management licence. The waste can be liquid or solid and waste includes garden refuse and larger domestic items such as fridges and mattresses. The Department for Environment, Food and Rural Affairs (Defra) stresses the range of impacts of fly-tipping:

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

- 2.4 In its report ‘Litter & Fly-Tipping in England’ the Communities and Local Government Select Committee recommended that the Government introduce a national fixed penalty notice for small amounts of fly-tipping. In so doing, they stated that:

“Fly-tipping is a serious problem for local authorities and private land owners, and it is increasing. There is therefore a need for local councils to increase their efforts both to deter fly-tipping and to penalise those who engage in it. We accept that prosecution is often difficult and costly and as a result the number of convictions for fly-tipping is low.”

- 2.5 Under section 33 of the EPA it is a criminal offence to fly-tip punishable by a fine of up to £50,000 or 12 months imprisonment if convicted in a Magistrates' Court. However, the offence can attract an unlimited fine and up to 5 years imprisonment if convicted in a Crown Court.
- 2.6 The act of fly-tipping is to deposit, or knowingly cause or permit to be deposited, waste on land unless in accordance with the terms of a waste management license. The most common form of fly-tipping in North Lincolnshire involves the dumping of domestic waste (not excess or side waste) in the public domain or private land without the council or land owners knowledge or consent. The following table shows the recent levels of fly-tipping in North Lincolnshire:

RECENT FLY TIP INCIDENTS			
	July 15 - Sep 15	Oct 15 - Dec 15	Jan 16 - March 16
Single item (excluding single black bag)	19	49	66
Car boot	14	110	46
Small van load	127	300	274
Transit van load	129	121	150
Tipper lorry load	2	12	22
Total incidents	291	592	558

- 2.7 The average cost of removing an incident of fly-tipped waste in North Lincolnshire is £150 including labour and disposal costs. Investigation costs vary but are generally no less than £25.
- 2.8 The following enforcement actions have been taken for fly-tipping over the past 3 years in North Lincolnshire:

Year	Level of Fine	Level of costs / compensation	Location
2013/14	Conditional Discharge + £200	£215	Single offender - Black Bank, Messingham
	100 hours Community Service	£0 as unemployed.	Single offender - Lakeside Retail Park
2014/15	£650	£380	Single offender – North Moor Lane, Messingham
2015/16	£1,349	£1,349	Single offender, two offences –

			Carr lane Worlaby and Carr Lane, Broughton
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NOTE: there is currently a commercial fly-tip prosecution file with Legal Services and summonses have been served.

- 2.9 FPNs are a useful tool for dealing with low-level enviro-crime and once served and paid in full discharge the offender of any liability to conviction for the offence. Section 88 of the EPA enables local authorities to issue FPNs for littering. The council has adopted a littering FPN of £80 with an early payment discount reduced to £50
- 2.10 From 9 May 2016 The Unauthorised Deposit of Waste (Fixed Penalty) Regulations 2016 allow local authorities to issue FPNs for 'minor' offences of fly-tipping e.g. greater than a single black bag of waste (not side or excess waste). The level of FPN may be set between £150 and £400. The FPNs are designed to reduce the burden of taking smaller scale fly-tips to court.
- 2.11 It is envisaged that fly-tipping FPNs will be issued for small scale fly-tips where the nature of the fly-tip is low risk and there is no significant financial gain by the offender(s), such as bed base in a rear access road / tenfoot, fridge in a field gateway etc.

3. **OPTIONS FOR CONSIDERATION**

- 3.1 **Option 1** - To continue prosecuting offenders regardless of the size or nature of the fly-tip and not to adopt FPNs for small scale low risk fly-tipping.
- 3.2 **Option 2** - To adopt the use of FPNs for small scale fly-tips where the nature of the fly-tip is low risk, there is no significant financial gain by the offender and to continue prosecuting offenders where the fly-tip is large scale, hazardous and for significant financial gain.
- 3.3 If **option 2** is adopted the council can set the level of the FPN between £150 and £400. The FPN must be paid in full within 14 days of issue. A discount for early payment of the FPN may reduce the amount payable to not less than £120 if paid within 10 days of issue. If no amount is set by the council the FPN defaults to £200 with no discount for early payment.

4. **ANALYSIS OF OPTIONS**

- 4.1 **Option 1** - This is unsustainable as investigating fly-tipping is time intensive, often complex and also involves investigating the duty of care placed upon the waste producer (section 34 of the EPA) as well as the offence of depositing the waste (section 33 of the EPA). To investigate all fly-tips with a view to prosecuting offenders regardless of the size or nature of the fly-tip when there is an early admission of guilt would be disproportionate for small, low-risk fly-tips where there is no significant financial gain. FPNs are designed to reduce the burden of taking small scale low risk fly-tips to court and not to criminalise individuals to who admit the offence.
- 4.2 **Option 2** - An early admission of guilt for small scale fly-tips where the nature of the fly-tip is low risk, there is no significant financial gain by the offender(s) and the FPN amount covers all, or the majority, of the public cost of investigating and removing the deposited waste is sustainable, reduces the burden of taking smaller scale fly-tips to court and does not criminalise individuals. Failure to pay an FPN in full and in a timely manner reverts back

to the original offence of fly-tipping and is a relatively straight forward prosecution as the offender has already admitted the offence.

- 4.3 The average cost of investigating and removing a small scale incident of fly-tipped waste in North Lincolnshire is approximately £150. Setting the level of FPN at £150 with a discounted rate to £120 for early payment in full reduces the burden of taking small scale fly-tips to court and does not criminalise individuals.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 The payment of FPNs for small scale fly-tips where the nature of the fly-tip is low risk will assist in offsetting the council's costs in relation to the removal of fly-tipped waste in the public domain.

- 5.2 Fly-tips containing evidence of source will continue to be investigated by the existing resource base. The appropriate use of FPNs for small scale fly-tips where the nature of the fly-tip is low risk, there is no significant financial gain by the offender and there is an early admission of guilt will bring a swift resolution to investigations thereby freeing resource to investigate more serious and complex offences.

- 5.3 Environmental Health Officers, Technical Officers and Dog / Street Wardens enforce the requirements of the EPA and FPNs may be served as an alternative to prosecution via the existing employee resource. Other Officers, such as Waste Management staff and Community Wardens may also be authorised.

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

- 6.1 The appropriate use of FPNs can have a positive impact on the environment by acting as a deterrent to those considering disposing of small amounts of waste unlawfully.

- 6.2 The appropriate use of FPNs is a useful tool for dealing with those considering disposing of small amounts of waste unlawfully and once served and paid in full discharges the offender of any liability to conviction for the offence. As a result 'one off' offenders who acted 'out of character' will not be criminalised.

- 6.3 The council's reputation as a regulator and custodian of the public domain may be put at risk if it fails to respond effectively and appropriately to incidents of fly-tipping.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

- 7.1 Consultation with Highways and Neighbourhoods, Waste Management, Safer Neighbourhoods and Legal Services has informed the content of this report and revealed no known conflicts of interest.

8. RECOMMENDATIONS

- 8.1 That the Cabinet Member approves the adoption and implementation of Fixed Penalty Notices (FPNs) for small scale fly-tips as per option 2.

- 8.2 That the council publicise the adoption of FPNs for fly-tipping and includes the FPN in relevant signs at fly-tip 'hot spots.'

- 8.3 That the Cabinet Member approves the amount payable for FPNs issued under section 33ZA of the Environmental Protection Act 1990 for small scale fly-tips be set at £150 with a discount to £120 for early payment (within 10 days of issue).

DIRECTOR OF PLACES

Civic Centre
Ashby Road
SCUNTHORPE
North Lincolnshire
DN16 1AB

Author: S A Coulman
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Background Papers used in the preparation of this report:

- The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.