

**Report to:** Cabinet  
**Date of meeting:** 4th December 2017  
**Report of:** Senior Environmental Crime Officer  
**Title:** The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016

## 1.0 Summary

- 1.1 On the 9th May 2016 the Government introduced the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016. This legislation allows local authorities the opportunity to issue a “Fixed Penalty Notice” (FPN) for small scale fly tipping offences as an alternative to taking offenders to Court.
- 1.2 The Regulations set a default penalty of £200 reduced to an amount not lower than £120 if paid within 10 days. The Regulations also allow for Councils to vary the penalty amount and to set it between £150 and £400.
- 1.3 Currently Officers are using FPN’s at the default level of £200 reduced to £120 if paid within 10 days. This report is to amend the penalty charges to a level agreed by Cabinet and Officers are recommending £300 penalty fee reduced to £150 for early payment.

## 2.0 Risks

2.1	Nature of Risk	Consequence	Suggested Control Measures	Response (Treat, tolerate, terminate, transfer)	Risk Rating (the combination of severity and likelihood)
	Public perception that FPN’s would be a money making opportunity for	Negative perception for council	Positive press release	Tolerate	4

WBC				
Herts Waste Partnership negative perceptions of adopting different charge levels to those recommended.	Lack of County cooperation	Explanation of reasoning from portfolio holder	Tolerate	2

### 3.0 **Recommendations**

- 3.1 That the penalty charge for a fixed penalty notice issued for fly tipping under the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 be set at £300, and be reduced to £150 if paid within 10 days.

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Report approved by: Alan Gough Head of Community & Environmental Services

### 4.0 **Detailed proposal**

- 4.1 Fly tipping can cause serious pollution of the environment, be a risk to human health, harm wildlife and leave councils and land owners with significant clearance costs. The Department for Environment Food and Rural Affairs (Defra) estimate the cost of clearance for fly-tipping to local authorities in England in 2015/16 was £49.8 million.
- 4.2 As a local authority we are empowered to investigate and prosecute criminal offences of fly tipping. Section 33 of the Environmental Protection Act 1990 defines fly tipping as the 'illegal deposit of waste onto land that does not have a licence to accept it'. Anything illegally dumped that is larger than a single black bag of waste is considered to be a fly tip.
- 4.3 For residents this means that apart from domestic waste which is collected by the council, they must ensure that they dispose of all other waste lawfully. They can either take it themselves to a household waste recycling centre, or they can arrange for it to be collected by a waste carrier licensed by the Environment Agency who then disposes of the waste legally. Residents can check how to dispose of their waste legally, and if a

business is registered, on our website and via this link to the Environment Agency's website <https://environment.data.gov.uk/public-register/view/search-waste-carriers-brokers>. The Council regularly undertakes promotion of legal waste management.

- 4.4 For business waste there are stricter controls in place and businesses must have a contract in place with a registered waste collector. Officers regularly carry out proactive checks with businesses to ensure they are legally disposing of their waste.
- 4.5 The factors that influence the decision of an individual to fly tip waste are usually associated with ignorance of the law or misunderstanding of the requirements, irresponsibility and convenience, or in a small proportion of cases an intent to carry out a criminal act - generally for financial gain. When officers investigate cases they have to assess each one individually. They consider the evidence they have to verify who is responsible as well as the factors that led to the offence. They then decide the best course of action to deal with the matter and the outcomes can range from education and information, to enforcement, which can be a formal caution, a fixed penalty notice or a prosecution. Officers refer to the Compliance Policy adopted by the Licensing Committee to guide this decision  
[https://www.watford.gov.uk/info/20011/business\\_and\\_licensing/423/environmental\\_services\\_enforcement\\_policy](https://www.watford.gov.uk/info/20011/business_and_licensing/423/environmental_services_enforcement_policy).
- 4.6 Prior to May 2016 enforcement options were limited to either prosecution at magistrates court with a maximum sentence of 12 months imprisonment and/or a fine of £50,000, or the issue of fixed penalty notice for littering which could be applied for a small fly tip of a single black bag or less. The penalty for the Fixed Penalty Notice was £75. Whilst FPNs could be used for various waste offences, including businesses without legal waste collection arrangements in place, they could not be issued for fly tips over one black bag.
- 4.7 This left councils with limited formal options. Prosecution results in a criminal record if convicted and we understand that the majority of fly tips are not as a result of intended criminal behaviour by residents. The criminal nature of the offence also means significant resource can be needed to prove a case as it needs to be "beyond all reasonable doubt". Once a decision to prosecute is taken, the reality was often that for small scale fly tipping cases they often result in low fines and costs being awarded that do not cover officer time and legal fees. Cases locally often result in a fine of ~£350 for a guilty plea and costs of around £800. For a simple case officer costs can often be in excess of £1,000. DEFRA estimates that Local authorities carried out 494,000 enforcement actions in 2015/16 at an estimated cost of £16.9 million.
- 4.8 In May 2016 the government introduced 'The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016' to address small scale fly tips. The small scale deposits are mostly from householders and make up the bulk of the incidents reported to local authorities in England and Wales. The Regulations amend Section 33 of the Environmental Protection Act 1990 permitting Waste Collection Authorities to issue a "Fixed Penalty Notice" (FPN) for fly tipping offences where the authority believes an FPN

is the most appropriate course of action rather than a prosecution. Using this option when appropriate is more proportionate for the majority of offences, and a more effective use of officer resources allowing focus on the repeat and serious offences as well as wider environmental improvements.

- 4.9 The Regulations permit the Waste Collection Authority to set the level of fixed penalty no less than £150 and no more than £400 payable within 14 days. A discount payment of no less than £120 is allowed if paid within 10 days. Until the level is agreed by Council the default payment applies, this is £200 with a discounted payment of £120. Currently the default level of fines is being used in Watford and this report seeks to vary this to reflect discussions across the County and to offer an effective yet proportionate deterrent.
- 4.10 Watford Borough Council is a member of the Hertfordshire Waste Partnership who Chair the Hertfordshire Flytipping Group. Both groups agree that a uniform approach to fly tipping throughout the county will help reduce incidents of fly tipping through the exchange of intelligence and good practice, but also increased consistency. The group has an action plan that is working to deliver this. There is also however some recognition that the problems faced in one district/borough are not necessarily the same as those in others and so tailoring approaches is understood. As an example, Watford rarely experiences the large scale fly tips seen in rural areas.
- 4.11 Hertfordshire Waste Partnership recommend an FPN fine of £300 discounted to £100, and local authorities have adopted fines as set out below –

Local Authority	FPN	Discounted FPN
Broxbourne	£300	£100
Dacorum	£300	£100
East Herts	£300	£100
Hertsmere	£300	£100
North Herts	ONLY PROSECUTE	ONLY PROSECUTE
St Albans (using default fines)	£200	£120
Stevenage	£300	£100
Three Rivers	£300	£100
Watford	£200	£120
Welwyn Hatfield	£300	£120

NB: It is Watford Borough Council's opinion that legally the reduced payment option must be a minimum of £120 according to the regulations.

- 4.12 The number of FPNs for fly tipping per authority as of September 2017 throughout the county is as follows –

<b>Authority</b>	<b>No.</b>
Broxbourne	6
Dacorum	4
East Herts	1
Hertsmere	14
North Herts	0
St Albans	4
Stevenage	1
Three Rivers	2
Watford	18
Welwyn Hatfield	13
<b>Sub total</b>	<b>63</b>

- 4.13 Officers recommend fines are set at £300 with a reduced fee of £150 if paid within 10 days. In addition to the reduced fee officers will agree payment options with customers where appropriate – this process is already in place for littering FPNs. Experience has shown that the vast majority of people pay within 10 days at the reduced rate and that people are very unlikely to reoffend once issued with a FPN. Setting the amount for the FPN needs to be significant enough to be a deterrent to prevent small scale fly tipping but also an attractive alternative to attending court and risking a criminal conviction.
- 4.14 Members should note that before an FPN is issued evidence still has to meet the same standard in criminal law to prove the offence ‘beyond reasonable doubt’. This is the same standard as if the case was being prosecuted and issuing FPNs can in no way be used to generate income or take cases where limited or insufficient evidence exists. The issue of an FPN allows the person to discharge his liability for the crime when payment is received. To ensure FPNs remain effective as a deterrent, and as is the case with littering FPN’s, if payment is not received the offender will be prosecuted unless further evidence comes to light that mean it is not appropriate. This commitment is important to retain the effectiveness of the approach.

## 5.0 **Implications**

### 5.1 **Financial**

- 5.1.1 The Head of Finance comments that as the use of Fixed Penalty Notices is designed to be a deterrent rather than an income generator it would not be prudent to set specific budget targets for fly-tipping FPN income budgets.

### 5.2 **Legal Issues** (Monitoring Officer)

- 5.2.1 The Head of Democracy and Governance comments that the legal implications are

contained within the body of the report.

### **5.3 Equalities/Human Rights**

- 5.3.1 Having had regard to the council's Equalities Impact Analysis obligations under s149, it is considered that there are no Equalities/Human Rights issues.

### **5.4 Staffing**

- 5.4.1 Not applicable.

### **5.5 Accommodation**

- 5.5.1 Not applicable

### **5.6 Community Safety/Crime and Disorder**

- 5.6.1 Authorised officers already issue FPN's in relation to other offences

### **5.7 Sustainability**

- 5.7.1 Authorised officers already issue FPN's in relation to other offences

### **Appendices**

None

### **Background Papers**

No papers were used in the preparation of this report.

### **File Reference**

None.