

15th June 2016

Environment and Housing Management Committee

**Unauthorised Deposit of Waste
(Fixed Penalties) Regulations 2016**

Report of: *David Carter, Environmental Health Manager*

Wards Affected: *All*

This report is: *Public*

1. Executive Summary

- 1.1 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force on 9th May 2016.
- 1.2 These Regulations introduce a new fixed penalty notice for fly tipping of waste offences under section 33 of the Environmental Protection Act 1990.
- 1.3 The default fixed penalty amount set in the regulations is £200, however it is open to councils to set alternative rates up to a maximum of £400.

2. Recommendation(s)

- 2.1 **Members agree to set a fixed penalty amount of £400 to provide a greater deterrent to fly tipping and help towards the recovery of costs to the Council of this activity.**
- 2.2 **That Members do not set a reduced amount for the early payment of this fixed penalty due to the significant harm caused by fly tipping.**
- 2.3 **Members delegate to the Environmental Health Manager authority to implement a scheme for the issuing of fixed penalties for the unauthorised deposition of waste.**

3. Introduction and Background

- 3.1 Section 33 of the Environmental Protection Act 1990 (the Act) deals with fly tipping, which is defined as the unauthorised depositing of waste on land. The Act provides a maximum penalty on conviction for fly tipping of an unlimited fine and/or five years imprisonment. The Government have introduced fixed penalties for fly tipping to provide additional means for local authorities to deal with these offences whilst avoiding court cases.

- 3.2 The new fixed penalties are introduced by the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 and came into force on 9th May 2016. These fixed penalties are intended to be considered as an option for dealing with smaller scale fly tipping incidents.
- 3.3 For individual fly tipping offences the decision to issue a fixed penalty notice or take an alternative form of action will continue to be determined with reference to the Council's Enforcement Policy. Decisions on legal proceedings resulting from fly tipping offences will continue to be determined by relevant managers and approved by the Head of Legal Services.

4. Issue, Options and Analysis of Options

- 4.1 Local authorities can set the level of the fixed penalty locally and when an authority does so the level must be between £150 and £400. Where this option is not taken by a local authority the level remains at the default level of £200.
- 4.2 Fixed penalties have to be paid within 14 days of being issued. Councils can agree reduced penalties locally for prompt payment (within 10 days of the notice being issued). Where Councils exercise this option the reduced penalty must be between £120 and £399.
- 4.3 Failure to pay the fixed penalty renders the offender liable for prosecution for the original fly tipping offence.

5. Reasons for Recommendation

- 5.1 Fly tipping is a serious problem in Brentwood and gives rise to a drain on the resources of the authority when tips have to be cleared from public land. It is also burdensome for private land owners who are unfortunate enough to have their land targeted by tippers.
- 5.2 The imposition of a £400 fixed penalty for fly tipping would allow officers investigating these offences, where sufficient evidence was available, to deal with smaller scale fly tips by way of fixed penalty notice where appropriate, and in some cases avoid the need for lengthy and expensive court proceedings that could be reserved for the larger scale offences which occur.
- 5.3 A fixed penalty notice of £400 would deter many would be household fly tippers and leave more resources remaining for the investigation of the offences committed by a hard core of professional offenders.

6. Consultation

- 6.1 A Government consultation on proposals to enhance measures to tackle waste crime was undertaken between 26th February and 6th May 2015; the responses indicated support for the use of fixed penalty notices for small scale fly-tipping with prosecutions for more serious cases.

7. References to Corporate Plan

7.1 *Environment and Housing Management*

Encourage more people to become involved in the environmental aspects of their community

Encourage residents to work with us to take responsibility for the environment, and improve the cleanliness of our streets

Enable communities to take a more active role in delivering a cleaner and safer environment

7.2 *Community and Health*

Provide advice, support, guidance and enforcement

Work with partners to reduce anti-social behaviour and ensure that Brentwood is a safe place to live

7.3 *Transformation*

Look to reduce costs by streamlining services and processes

Develop new ways of working for the Council, improving service delivery and reducing costs and unnecessary bureaucracy

8. Implications

Financial Implications

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- 8.1 All costs will be met from existing budgets.

Legal Implications

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- 8.2 The relevant legislation and legal implications are set out in the body of this report.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 8.3 None identified.

9. Background Papers (include their location and identify whether any are exempt or protected by copyright)

9.1 Brentwood Borough Council Regulatory Services Enforcement Policy 2015.

10. Appendices to this report

10.1 None.

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