

## MUNICIPAL YEAR 2018/2019 REPORT NO.

### ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

### PORTFOLIO DECISION OF:

Cabinet Member for  
Licensing and Regulatory  
Services

### REPORT OF:

Director – Environment  
and Operational Services

Agenda – Part: 1

KD Num: 4872

**Subject: Setting of the level of fixed penalties under Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018/1227**

**Wards: All**

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## 1. EXECUTIVE SUMMARY

- 1.1 On 7 January 2019, the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018/1227 (The Regulations) came into force. The Regulations make an amendment to the Environmental Protection Act 1990 (the Act).
- 1.2 The Regulations allow a local authority to issue a fixed penalty notice (FPN) to an occupier of any domestic property in England who has failed to take all such measures available to them as are reasonable in the circumstances to secure that any transfer by them of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.
- 1.3 The Regulations enable the Council to determine the penalty level, which cannot be less than £150 and not more than £400. If no level is set, then the default FPN level is £200. A reduced amount can be considered if the penalty is paid within 10 days (and must not be less than £120). The Council is not required to set a reduced FPN level for 'early payment'. We have not set a reduced amount for 'early payment' for other FPNs levels previously.

## 2. RECOMMENDATIONS

**That the Cabinet Member for Licensing and Regulatory Services:**

- 2.1 Agrees the penalty level be set at £400.
- 2.2 Agrees not to apply an early payment option.

### **3. BACKGROUND**

- 3.1 Section 34(2A) Environmental Protection Act 1990 (the Act) places a duty on the occupier of any domestic property in England or Wales with regards to waste produced on the property. The duty is to take all reasonable measures to secure that any transfer of that waste is only to an authorised person or to a person for authorised transport purposes. It is a criminal offence to fail to meet this duty.
- 3.2 On 7 January 2019, the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018/1227 (The Regulations) came into force. The Regulations make an amendment to the Act.
- 3.3 The Regulations insert section 34ZA into the Act after section 34. This enables an enforcement authority in England, either the Environment Agency or a local authority, to give a person who has failed to comply with their waste duty of care under section 34(2A) a FPN. The FPN offers the person the opportunity to discharge their criminal liability upon paying the fixed penalty. There is no obligation to offer an alleged offender the option to discharge liability through an FPN. However, in some cases it can be more proportionate than prosecution through the courts.

#### **3.2 Setting the FPN level**

- 3.2.1 The Regulations enable the Council to determine the penalty level, which cannot be less than £150 and not more than £400. If no level is set, then the default level is £200. A reduced amount can be considered if the penalty is paid within 10 days (and must not be less than £120). The Council is not required to set a reduced FPN level for 'early payment'. We have not set a reduced amount for 'early payment' for other FPNs levels previously. Setting the FPN level at the maximum of £400 ensures that there is sufficient sanction for the offence and we anticipate will also have a deterrent factor. In many cases it will have been cheaper to have disposed of the waste properly, rather than illegally and incurred a £400 FPN.
- 3.2.2 The Regulations do not specify what must be considered when setting the level of a fixed penalty notice; only setting the maximum and minimum levels of £400 and £150 respectively. Therefore, in determining the level, it is not unreasonable to consider the following:
  - (a) Any justifiable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of the legislation, and as a minimum cover officer time and costs, preparation and service of a FPN

- (b) Cost or expected cost, of enforcing the provisions of the legislation, including the recovery of the cost of the removal of the unauthorised waste deposit

3.2.3 This new FPN mechanism is like that which applies to the offence of illegal waste deposit (fly tipping) with the same FPN levels set by Regulations. The FPN levels for fly tipping were set at £400 to mirror that of other London boroughs in consultation with London Councils' Transport & Environment Committee. To set this duty of care FPN level at the same level as fly tipping will provide a consistent approach in dealing with illegal waste practices

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

4.1 There is an option of not setting a FPN level, in which case the level would default to £200 but this would not be consistent with current practice adopted by other London Councils tackling illegal waste practices

4.2 There is also the option of not issuing FPNs for duty of care offences and only prosecute. However, two thirds of fly-tipping incidents involve household waste, often because of an individual breaching their duty of care to ensure their waste is taken away by an authorised carrier. The FPN is intended to reduce the flow of waste to those who would go on to dispose of it illegally. The FPN allows a more proportionate approach to enforcement both for local authorities in costs of enforcement, and for householders in size of penalty and avoiding a criminal record.

4.3 There is also an option to adopt a reduced penalty level for early payment. By not offering an early payment option, it will send out a strong message that failing in one's duty of care with respect to waste transfer is unacceptable behaviour that the Council takes seriously. This is also consistent with Enfield Council's approach with other FPNs.

#### **5. REASONS FOR RECOMMENDATIONS**

5.1 The borough is adversely impacted by a significant number of daily fly tipping incidences. Many of these incidences are in relation to household waste dumped within the street scene.

5.2 The Waste Enforcement Unit look to implement strong penalties against those people responsible for fly tipping and those failing in their duty of care to manage the transfer of their waste. Implementing the maximum FPN level, would be a greater deterrent to illegal waste disposal practices and allow for matters to be resolved in a swifter and more efficient manner rather than automatically proceeding through the courts.

- 5.3 The process for issuing a FPN for a duty of care offence is the same as for other FPN offences for which the Council currently issues such notices.
- 5.4 The recommended level for the FPN is considered justifiable, proportionate and consistent with penalties for other waste offences. The FPN allows for the responsible parties to discharge any liability to conviction swiftly but still at a rate that demonstrates the seriousness of the offence which is intended to deter repeat offending.
- 5.5 The FPN level would also be in line with surrounding London boroughs tackling illegal waste practices and failure to adopt the recommended level could see the borough become a target for fly tippers, knowing they face a lesser punishment, if they were caught in Enfield.

## **6. COMMENTS FROM OTHER DEPARTMENTS**

### **6.1 Financial Implications**

This report seeks to agree that the penalty level be set at £400.

The Regulations enable the Council to determine the penalty level, which cannot be less than £150 and not more than £400. If no level is set, then the default level is £200. A reduced amount can be considered if the penalty is paid within 10 days (and must not be less than £120). The Council is not required to set a reduced FPN level for 'early payment'. We have not set a reduced amount for 'early payment' for other FPNs levels previously.

The costs of administering these new FPNs are met from within existing resources and the receipts will be used to support ongoing enforcement action.

### **6.2 Legal Implications**

6.2.1 On 7 January 2019, the Regulations came into force. The Regulations make an amendment to the Act enabling local authorities (a waste collection authority) to issue FPNs for contravention of section 34 (2A) of the Act – failing to comply with the duty relating to the transfer of household waste.

6.2.2 The Regulations insert section 34ZA into the Act after section 34 and sets out the processes to be followed when issuing an FPN.

6.2.3 If no FPN level is set then the default level is £200.

### **6.3 Property Implications**

None.

## **7. KEY RISKS**

- 7.1 Unlike other FPN regimes for waste offences a person issued a notice must be informed that they may make representations to the Council about the allegations contained in it. This may lead to an increase in officer time in evaluating such representations and the level of the penalty may be a driver for such representations. This risk can be mitigated by ensuring that full particulars of the circumstances alleged to constitute the offence are detailed in the notice.

## **8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION**

Public Realm (waste collection and street scene service) are supportive of this approach.

## **9. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD**

### **9.1 Good homes in well-connected neighbourhoods**

Adopting a balanced and proportionate approach in tackling waste crime gives environmental benefits. The option of issuing FPNs to tackle waste crime adds to the range of enforcement options available to the Council thereby improving the quality of the public realm by helping to reduce and prevent the environment being defaced by unlawful deposits of waste thereby supporting this Council priority.

### **9.2 Sustain strong and healthy communities**

The enhanced provision of environmental enforcement options contributes positively towards creating a cleaner, greener environment and improving quality of life and community safety.

### **9.3 Build our local economy to create a thriving place**

The enhanced provision of environmental enforcement options contributes positively towards creating an environment to those who wish to invest in the economy of the borough by creating an attractive place to live and work.

## **10. EQUALITIES IMPACT IMPLICATIONS**

- 10.1 The provision of general enforcement services has already been considered as part of the Regulatory Service's retrospective Equalities Impact Assessment.
- 10.2 The Council's approach to enforcement is detailed in its Enforcement Policy adopted by Cabinet.

10.3 For the introduction of the fixed penalty notice and its level, there is no, or no significant, impact on business, charities, voluntary bodies or the public sector.

**11. PERFORMANCE AND DATA IMPLICATIONS**

The use of FPNs for the Duty of Care will be monitored and measured alongside other enforcement actions used in the waste enforcement team.

**12. HEALTH AND SAFETY IMPLICATIONS**

None.

**13. HR IMPLICATIONS**

None.

**14. PUBLIC HEALTH IMPLICATIONS**

There are no negative impacts associated with the adoption of this report's recommendations.

The proposed FPN levels will have a positive impact upon the health and well-being of the public in Enfield by reducing the environmental impacts upon the streets which is detrimental to health and the environment.

**Background Papers**

None.