

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

20 APRIL 2016
ALL WARDS

**SETTING THE FIXED PENALTY NOTICE AMOUNT FOR THE UNAUTHORISED
DEPOSIT OF WASTE (FIXED PENALTIES) REGULATIONS 2016**

1. Summary

- 1.1 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 will come into force on the 9th May 2016.
- 1.2 These Regulations introduce a new fixed penalty notice for fly-tipping offences under Section 33 of the Environmental Protection Act 1990 and this report requests Committee to set alternative fixed penalty amount to the default tariffs set within the regulations.

2. Recommendations

- 2.1 That Committee determines a fixed penalty amount between £150 and £400 for Section 33(1)(a) Environmental Protection Act 1990 offences. The maximum fine of £400 is recommended, to go some way to covering the costs of the investigation.
- 2.2 That Committee determines if it wishes to set a reduced fixed penalty amount for payment of the fixed penalty notice within 10 days of its issue. It is recommended that Committee do not set any reduced fixed penalty amount and if the case progresses to Court the Council will seek to recover full costs for what are not trivial offences.
- 2.3 If Committee determines at 2.2 to allow a reduced fixed penalty amount then it should be set between £120 and the maximum level set at 2.1 above. If Committee do determine to set a reduced fixed penalty amount then it is recommended this be set at £300 for the reasons specified in 2.1.

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3. Background

- 3.1 Section 33 of the Environmental Protection Act 1990 [the Act] deals with the offence of fly-tipping which is the illegal deposit of waste. On conviction the maximum penalty for fly-tipping is unlimited fines and/or five years imprisonment. Government has extended the non-court sanctions available to local authorities through the introduction of fixed penalty notices for fly-tipping.
- 3.2 The fixed penalty notice provisions are made under the Unauthorised Deposit of Waste (Fixed Penalties) Regulation 2016 and come into force on the 9th May 2016. The new Regulations mirror similar provisions available to Scottish local authorities since 2004. As with Scotland, the provisions are intended to be considered as a potential options in cases involving small scale fly-tipping.
- 3.3 For individual fly-tipping offences the duty to consider whether issuing a fixed penalty notice or another disposal option is the most appropriate course of action will continue to be determined under the Enforcement Policy. The Enforcement Policy is published and reviewed annually through your Committee. Any determinations regarding legal proceedings in connection with any individual fixed penalty notice offence will continue to be made against the City Council's legal duties under the Crown Prosecution Services' Regulators Code.

4. The New Fixed Penalty Notice

- 4.1 Local authorities can set the level of the fixed penalty amount locally and where this is done the level must be set between £150 and £400. Where no local level is set the Regulations require the default level to be £200.
- 4.2 Fixed penalties are payable within 14 days of issuing. Local authorities can set locally a reduced fixed penalty amount for early payment [made within 10 days of issuing]. Where this is done the level must be between £120 and £399.
- 4.3 As with other types of fixed penalty notices related to the Act, failure to pay the fixed penalty amount renders a person liable to prosecution for the original offence for which the fixed penalty notice was issued.

5. Matters for Consideration

5.1 In determination of any fixed penalty amount, Officers would ask Committee to consider the following matters:

a) Existing fixed penalty amounts	Currently, all of fixed penalty notices for which local levels can be applied by your Committee have been set at the maximum tariff amount. (The primary reason for this is that although fixed penalties initially enable court proceedings to be avoided, Officers are still required to gather evidence and investigate offences to the full criminal burden of proof which is resource intensive).
b) Existing early payment reductions	Currently, no 'early payment' reduction is applied to any fixed penalty for which your Committee can offer a reduction. (This is primarily because analysis of the initial early payment reductions for littering offences showed no significant increase in payment rates or allied reduction in administrative or court related processing costs).
c) Investigation and regulatory cost	<p>The fixed penalty notice regime is intended to reduce burdens relating to the court process. Without court proceedings local authorities have no ability to recover investigatory or legal costs and the regulator carries the full financial burden.</p> <p>Fixed penalties are not intended as a cost recovery tool; however the investigation of small scale fly-tipping requires full evidence to be gathered to enable potential court proceedings to be mounted in the event that a fixed penalty was not paid.</p> <p>Fly-tipping investigations, irrespective of size, invariably require Officers to conduct interviews under caution with suspects and may require witness statements to be gathered or police support to facilitate enquiries. The fixed penalty amount must take account of the investigatory and regulatory input required for this type of offence.</p>
d) Fixed penalty levels and payment rates – Allied offences	<p>Under the Act the offence of failing to provide written Duty of Care details for commercial waste disposal carries a £300 fixed penalty level. (In the opinion of the Officers this type of offence, unlike fly-tipping, carries no direct or immediate environmental impact).</p> <p>Around a third of Duty of Care fixed penalty notices issued are paid, which requires the remainder to be considered for court proceedings. A high fixed penalty amount may dissuade payments by offenders who hope for a lesser amount at a court trial.</p>

e) Impact on the Environment	No-one fly-tips or abandons their waste by accident. The fixed penalties are aimed at a 'deliberate act' which continues to be a national problem. The City has arrangements in place for collection of waste through both free and chargeable services.
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6. Consultation

- 6.1 The draft Regulations have been through consultation, however, the setting of local fixed penalty tariffs is a matter for individual local authorities and their respective democratic processes. Your Committee reviews fixed penalty notice amounts annually.

7. Implications for Resources

- 7.1 Currently this is not expected to create significant savings due to the level of investigation required prior to service of any potential fixed penalty notice, however, it may reduce time in court or the necessity of court proceedings.

8. Implications for Policy Priorities

- 8.1 These new Regulations assist in tackling waste offences and improving the cleanliness of the city.

9. Public Sector Equality Duty

- 9.1 There are no specific implications identified.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Birmingham City Council – Corporate Charging Policy