

BIRMINGHAM CITY COUNCIL

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

18 JANUARY 2017
ALL WARDS

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

1. Summary
 - 1.1 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force on the 9th May 2016.
 - 1.2 These Regulations introduced a new fixed penalty notice for small scale fly-tipping offences under Section 33 of the Environmental Protection Act 1990.
 - 1.3 This report seeks to inform and update the committee of the current process.
2. Recommendation
 - 2.1 That the report be noted.

Contact officer: Tony Quigley, Head of the Waste Enforcement Unit
Telephone: 0121 303 9158
Email: Tony_quigley@birmingham.gov.uk

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 controlled waste. On conviction the maximum penalty for this criminal offence 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 this offence.
- 3.2 The fixed penalty notice provisions are made under the Unauthorised Deposit of Waste (Fixed Penalties) Regulation 2016 and came 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 alternative to prosecution 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 on a case by case basis taking in to account all of the circumstances including the amount, type, and deposit of the controlled waste as well as any relevant information available at the time regarding the offender and the offending.
- 3.4 The Licensing and Public Protection Committee set the fixed penalty notice at its maximum allowable tariff of £400.

4. Environmental Protection Act 1990, Section 33 - Fixed Penalty Notices

- 4.1 The introduction of the new fixed penalty for “Flytipping” was as ‘an alternative to prosecution of offenders through the courts’ and was aimed at small scale dumping of controlled waste where the liability of the offending could be discharged through payment of the fixed penalty amount.
- 4.2 This means that these fixed penalties, however, can only be used if there is evidence that a named individual (a person) or legal business entity has committed a criminal offence of unauthorised deposit of controlled waste.
- 4.3 This means you cannot issue this type of fixed penalty or take action against “households”, “businesses” without means of identifying a person who is responsible for depositing the waste. Merely finding documents in waste is not sufficient evidence to identify who deposited the waste and would not meet the required standard of proof.
- 4.4 The Standard of Proof remains as ‘beyond a reasonable doubt’ and the burden of proof remains with the prosecutor, exactly the same as that which is required to secure a conviction at court.

- 4.5 This means that these fixed penalties can only be used if there is real evidence that a named individual (a person) has committed a criminal offence of depositing the un- authorised waste.
- 4.6 The fixed penalties are a way of reducing magistrates' court service workload reducing the need for prosecution for smaller scale offences, but they cannot be used if there is insufficient evidence. Without court proceedings local authorities have no ability to recover investigatory or legal costs and the regulator carries the full financial burden.
- 4.7 The same amount of investigative input is required whether a fixed penalty notice is being issued or a full prosecution is being pursued.
- 4.8 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.
- 4.9 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 enquiries with other enforcement agencies, such as the police.
- 4.10 It remains that offenders need to be caught in the act and eye witness account or admissions of guilt are essential. Suspicion or having only circumstantial evidence of an offence does not meet the required standard of proof for issuing fixed penalty notices or instituting criminal proceedings through the courts.
- 4.11 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.
- 4.12 It is often the absence of an eye witness or an eye witness not wishing to give a statement or attend court which prevents action being taken.
- 4.13 The unit has served 11 Section 33 Fixed Penalty Notices so far.

4.14 Some examples of flytipping that would not be deemed appropriate as small scale offending are below:



Examples where fixed penalty notices may be deemed appropriate (small scale)



Enforcement figures to April to November 2016:

Waste Investigation Outcomes:	
Investigations into commercial waste disposal suspected offences and offences	460
Section 34 Environmental Protection Act: demand notices issued (trade waste statutory information demands)	396
Section 34 Environmental Protection Act: Fixed Penalty Notices issued to businesses (£300)	131
Section 87 Environmental Protection Act: Fixed Penalty Notices issued for commercial and residential litter offences (£80)	69
Prosecutions:	
Number of prosecution files submitted to Legal Services (number produced quarterly)	28

7. Implications for Resources

- 7.1 Fixed penalty notices issued appropriately will not reduce implications for resources 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 The issuing of fixed penalty notices is another application Regulation and Enforcement officers, in particular, the Waste Enforcement Unit can utilise 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