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| <b>HOUSEHOLDER DUTY OF CARE FIXED PENALTY NOTICES</b>         |
| <b>COUNCILLOR IRENE WALSH, CABINET MEMBER FOR COMMUNITIES</b> |
| <b>March 2020</b>   |
| <i>Deadline Date: March 2020</i>                              |

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| Cabinet portfolio holder:<br>Responsible Director:                       | Councillor Irene Walsh, Cabinet Member for Communities<br>Wendi Ogle-Welbourn, Executive Director for People and Communities   |
| Is this a Key Decision?  | YES<br>If yes has it been included in the Forward Plan: YES<br>Unique Key Decision Reference from Forward Plan: KEY/11NOV19/01 |
| Is this decision eligible for call-in?                                   | YES  |
| Does this Public report have any annex that contains exempt information? | NO   |
| Is this a project and if so has it been registered on Verto?             | NO   |

## R E C O M M E N D A T I O N S

The Cabinet Member is recommended

1. To agree that the Council will use additional enforcement powers granted under the amended Environmental Protection Act 1990, to issue Fixed Penalty Notices to individuals where there is evidence that they have breached their duty of care for disposal of household waste.
2. To set the fine rate for the offence of £400.00 if paid within 28 days.

### 1. PURPOSE OF THIS REPORT

- 1.1 This report is for the Cabinet Member for Communities to consider exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (d).

### 2. TIMESCALES

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| Is this a Major Policy Item/Statutory Plan? | <b>NO</b> | If yes, date for Cabinet meeting | <b>N/A</b> |
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### 3. BACKGROUND AND KEY ISSUES

3.1 Fly-tipping significantly impacts on local communities, blighting our neighbourhoods and rural communities and places a significant financial burden upon the council (or the landowner where cabin is fly tipped on private land). In addition, the actions of unscrupulous waste operators undercut legitimate businesses which are operating within the law. Under Section 34 of the Environmental Protection Act 1990, all occupiers of domestic properties are required to take reasonable measures to ensure that waste produced on their property is only transferred to an authorised person for proper disposal.

Nationally, two thirds of fly-tipping incidents involve household waste often as a result of an individual breaching their duty of care to ensure their waste is taken away by an authorised carrier. The household waste duty of care Fixed Penalty Notice (FPN) is intended to reduce the flow of waste to those who would go on to dispose of illegally or fly tip it.

Examples of where the household waste duty of care has been breached includes (but not limited to)

- Where fly tipped waste can be traced back to an individual, who is found to have failed to take reasonable steps to ensure that they have transferred the waste to an authorised person.
- Where an unauthorised carrier is found to be carrying household waste that was directly transferred to them the occupier of a domestic property; or
- Where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption.

In all investigations of breaches of household waste duty of care, individuals will be given the opportunity to demonstrate they took reasonable steps to determine the person that took their waste was authorised to do so. If fly-tipped waste is traced to an individual, and they are unable to identify who took their waste, or the carrier that they are identify is unauthorised, then it is reasonable to believe they have not met their duty of care. In such circumstances, the council may consider enforcement action through FPNs under powers granted through the amended Environmental Protection Act 1990.

Examples of evidence which can be used to demonstrate an occupier of a domestic property meet their duty of care can include, but is not limited to:

- Details of business and of any vehicle used which can be linked to an authorised operator:
- A record of checks made, including operator's registration, permit or exemption number.
- A receipt for the transaction which includes the businesses details of a registered operator or
- A copy of the photograph of the carrier's waste license or site permit.

Prior to the introduction of the above regulations and subsequent FPN powers, the option for dealing with household waste duty of care was limited to prosecution, when other formal action is not possible or suitable.

The new 2018 Regulations amend section 34 of the Environmental Protection Act 1990 gives powers to local authorities to deal with household waste duty of care and specifically, the power to issue FPNs, instead of the current enforcement by prosecution.

The FPN powers relating to household waste duty of care allow the authority to set fine payment level between £150 and £400 with a minimum discounted penalty of £120. FPNs should not be given where prosecution through the courts is more appropriate, for example the deliberate transfer of waste to an unauthorised person in the knowledge that it would be fly-tipped, or when someone is a persistent offender with a record of not paying fixed penalties for environmental offences.

The council's new FPN powers for breaches of household waste duty of care would be used as part of the package of enforcement options available in accordance with the council's enforcement policy and is another tool to tackle and reduce the impact of fly tipping in Peterborough.

It is proposed that if approved and introduced the use of FPNs for breaches of this offence will be backed up with a communications campaign, commencing 1<sup>st</sup> April 2020, to ensure that the public are fully aware of these new obligations. It is proposed that the council brings these powers into effect from 1 April 2020 to allow time for systems and processes to be implemented.

#### **4. CONSULTATION**

- 4.1 Briefing documents supplied to Adults and Communities Scrutiny Committee 2<sup>nd</sup> January 2020.

A communications campaign will be launched during April 2020 to make residents aware of their duty and ways in which they can legally dispose of their household waste.

#### **5. ANTICIPATED OUTCOMES OR IMPACT**

- 5.1 Should the council adopt the enforcement powers to issue FPNs for duty of care it will allow officers the ability to more effectively take action against individuals who have not taken reasonable steps to legally dispose of their household waste. The use of FPNs is a quicker, cheaper and more effective tool for the council to take enforcement action, compared to prosecution through the courts.

As a result of adopting these powers, it is anticipated that the council can more easily take action against individuals or businesses which break the law. In turn, this should result in a reduction of fly tipping across Peterborough.

#### **6. REASON FOR THE RECOMMENDATION**

- 6.1 The issuing of FPNs will provide the council with further powers to reduce fly tipping and enforce the law through the implementation of the new 2018 Regulations, amended section 34 of the Environmental Protection Act 1990.

#### **7. ALTERNATIVE OPTIONS CONSIDERED**

- 7.1 Do not use the local authority powers to issue FPNs and continue to prosecute individuals through the court for not supplying waste details. This is a lengthy and costly process, with very few cases meeting the threshold for this action.

#### **8. IMPLICATIONS**

### **Financial Implications**

- 8.1 No financial implications. The investigation of fly tipping and issuing of FPNs will be undertaken within the existing Prevention and Enforcement Service. Any income generated through the payment of FPNs will be invested back into the service and offset against the council's operating costs.

### **Legal Implications**

- 8.2 Introduction of the issuing FPNs for Householder Duty of Care will be implemented in line with Legal Guidance and within the parameters of the legislation set out in this Report.

### **Equalities Implications**

- 8.3 There are no equalities implications arising from this recommendation.

### **Carbon Impact Assessment**

- 8.4 Potential positive impact - Introducing this power will hopefully reduce the amount of waste being fly tipped across the Peterborough area and as a result the number of trips required to collect and dispose of fly tipped waste

## **9. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED**

- 9.1 None.

## **10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

- 10.1 The 2018 Regulations amend section 34 of the Environmental Protection Act 1990

## **11. APPENDICES**

- 11.1 None.