

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

Report for Public Protection and Licensing Committee – 4 July 2023

HEADING **Proposed Changes to Fixed Penalty Notices (FPNs) for Section 34(2A) Environmental Protection Act 1990 and Proposed Introduction of Powers under Section 46A Environmental Protection Act 1990.**

Submitted by: **Michelle Hopper - Mobile Multi-Functional Manager**

Portfolio: **Sustainable Environment and Operations**

Ward(s) affected: **All**

Purpose of the Report

To inform members of the proposals of the review of the penalty for Section 34(2A) of the Environmental Protection Act 1990 (EPA 1990) and Section 33 of the EPA 1990 and to seek approval for the proposals.

To inform members of the proposals to implement the use of Section 46A of the Environmental Protection Act 1990 and to seek approval for this implementation.

Recommendations

That members approve in principle the review of the FPN's and support the implementation of Section 46A EPA 1990.

Reasons

The Council wishes to review the current FPN's for Section 34(2A) and Section 33 of the EPA 1990 to ensure that failure to comply with these is a deterrent to those who do not comply with the law. The Council wishes to implement the use of Section 46A to deal with a long standing issue of household refuse and recycling bins being left on streets. The Council will create a policy to deal with abandoned and nuisance bins which will incorporate the use of the Section 46A.

1. Background

1.1. The Council has long been utilising powers under Section 34(2A) of the EPA 1990 to ensure that people understand the importance of their 'Duty of Care' obligations when it comes to disposing of their waste. Section 34 (2A) requires all occupiers of a domestic property to take all reasonable measures to ensure that waste produced on their property is only transferred to an authorised person. An authorised person includes:

- The local authority that provides your normal waste collection service.
- Someone who has a valid registration as a carrier, broker or dealer of waste
- An operator of a waste site with an appropriate environmental permit or registration exemption.

Reasonable measures are:

- Ask if the person or company taking the waste away is a registered carrier
- Ask to see a copy of their registration certificate
- Make a note of the registration number or take a copy of photography of it

- Take a note of the name of the collector and details of the vehicle used
- Ask for a receipt which should have all business details on.
- Check their details with the Environment Agency.

The current FPN for Section 34 (2A) of the EPA 1990 is set in the Scale of Fees and Charges 2023/2024. This is split as follows:

Household waste duty of care fixed penalty notices. Environmental Protection Act 1990 Section 34 (2A) (paid within 10 days) = £120.

Household waste duty of care fixed penalty notices. Environmental Protection Act 1990 Section 34 (2A) (paid within 14 days) = £200

A scoping exercise has been completed with a number of local authorities to understand how FPN's are used and to streamline the Council's FPNs in line with others. FPNs for Section 34 (2A) ranged in authorities from £400 to a minimum of £120 in accordance with the legislation. The recommend penalty is £200 with a reduction to £120 which is where the Council's penalty is currently set. Due to the increase in problems in Stoke-on-Trent the City Council adopted the upper end of this penalty. The Council is therefore proposing a review on the current FPN limits and proposing this to be increased to £400 with a reduction to £350 if paid within 10 days, to align with Stoke-on-Trent City Council.

1.2 Fly-tipping is defined as the 'illegal deposit of any waste onto land that does not have a licence to accept it'. Uncontrolled illegal waste disposal can be hazardous to the public, especially if it contains toxic material or asbestos. There could be a risk of damage to watercourses and soil quality from the dumped waste. The legislation that refers to this is Section 33ZA of the EPA 1990.

In 2016/17 more than one million incidences of fly-tipping were dealt with by councils in England. The estimated cost of clearing up this waste was over £58 million.

In 2019 the Government introduced new penalties for fly-tipping which could result in a penalty of up to £400. The FPN for Section 33ZA as set in the Scale of Fees and Charges for 2023/2024 is £400 if paid within 14 days reduced to £350 if paid within 10 days.

In January 2023, the government published new proposals on the Anti-social Behaviour Action Plan. In this document it highlights the proposal to raise the limits for on the spot fines in regards to fly tipping to £1,000 and increase the FPN for littering and graffiti to £500. It has also been encouraged that an invoice should be issued for the removal of the waste (where evidence is present) on top of the FPN. Further information is awaited from government in regards to the timescales to be expected for these changes to be implemented.

Fly tipping continues to be on the increase with 740 incidents reported in 2021/2022 and 775 in 2022/2023 throughout the Borough.

The Council intends to update the policy for fly-tipping with the suggestion of issuing an invoice for the removal of fly-tipping to perpetrators. The Council will also update the penalty for fly-tipping in accordance with government guidance.

1.3 Section 46A of the EPA 1990 relates to residents who fail to comply with the wheeled bin and recycling scheme. The notice has instructions on how to store, dispose and present waste for collect.

Failure to comply with a notice may result in a Fixed Penalty notice of £60.

Stoke-on-Trent City Council and Cheshire East Council currently have policies in place to assist with tackling matters in relation to poor domestic waste management. The Council intends to replicate this response to in order to address problems in hotspot locations throughout the Borough. The enforcement process proposed would require officers to notify residents that a problem has been identified and provide opportunities for residents to explain the circumstances and ask for support. The Council would only issue fixed penalties for persistent cases where a resident refuses to manage their waste properly. By adopting this method, it is intended to tackle problems that have been persistent in some locations for a long period of time.

2. The Evidence base for these proposals

- 2.1. Fly tipping is continuing to increase on an annual basis. Government is currently reviewing the penalty limits for such offences which greater reflects the environmental impact that fly tipping has on our communities. An increase in FPN would be a greater deterrent for fly tippers and proactively encourage individuals to dispose of their waste responsibly and in accordance with the law. There were 740 reports logged in 2021/2022 and 775 in 2022/2023 across the Borough.
- 2.2. Issues in relation waste are continuing to make the headlines with some neighbouring authorities now adopting the powers conferred under Section 46 of the EPA 1990. There will be a period of monitoring to be completed alongside the introduction of this method to ensure that it is being used correctly. A policy will be put in place to ensure that there is a clear process in regards to advising residents of what is required of them before any enforcement action is taken. Officers will work closely with members to ensure that this message is pushed out to our residents and ensure a clear communication package accompanies this.
- 2.3. Duty of Care – the Council intends to mirror the penalty that has been adopted by Stoke-on-Trent City Council in relation to approaches to dealing with Duty of Care offences. Due to the close proximity between the two authorities and the successful implementation work that the City have had with dealing with fly tipping, Duty of Care and Section 46 the Council intends to mirror this approach to ensure that the Borough does not see an increase in problems as a result of the work that is being done in the City.

Finance & Resources

- 2.4. The use of this legislation predominantly sits within the Mobile Multi Functional team – a newly designed team, created to address Neighbourhood issues from anti-social behaviour to environmental enforcement. The team is currently in its infancy and work is in progress to ensure that Officers have the powers and tools needed to address matters that have been longstanding issues in our community.
- 2.5. The Council will continue to utilise and develop the skills of the team and will monitor any changes in legislation that enable them to take swift and proactive action for our communities.

Residents' Expectations & Authority's Priorities

- 2.6. It may be necessary to manage residents expectations in relation to the use of Section 46 as this will be a new tool used by the authority that will prompt an increase in demand. This will continue to be monitored and residents will be referred to the Council's

website in the first instance which will guide them through the process of what the Council will and will not do.

- 2.7. Key corporate priorities are currently:
Priority 1: One Council delivering for local people
Priority 3: Healthy, Active and Safe Communities

3. Proposal and Reasons for Preferred Solution

3.1 That members approve in principle the review of the FPN's and support the implementation of Section 46A EPA 1990.

3.2 The Council wishes to review the current FPN's for Section 34(2A) and Section 33 of the EPA 1990 to ensure that failure to comply with these is a deterrent to those who do not comply with the law. The Council wishes to implement the use of Section 46A to deal with a long standing issue of household refuse and recycling bins being left on streets. The Council will create a policy to deal with abandoned and nuisance bins which will incorporate the use of the Section 46A.

- Implementation of Section 46A 1990 – to tackle domestic waste issues.
- Section 33Za of the EPA 1990 (Fly-tipping) – remove the reduced payment of £350 for this offence. Increase the penalty for this in line with government guidance pending the implementation of the new ASB action plan.
- Section 34(2A) – current penalty is set at £200 reduced to £120. Increase this to £400 in line with Stoke-on-Trent City Council reduced to £350 if paid within 10 days.

4. Legal and Statutory Implications

- 4.1. The Council has enforcement powers under the Environmental Protection Act 1990 to issue Fixed Penalty Notices for specified offences. A policy will be drawn up for the implementation of Section 46.

5. Equality Impact Assessment

- 5.1. The recommendations in this report do not adversely affect any protected groups.
- 5.2. Those who the Council discovers are vulnerable and need support will be engaged with via the Vulnerability Hub and other partnership groups in order to address those issues.

6. Financial and Resource Implications

- 6.1. The staff resource implications of these proposals will be absorbed within the duties of the Mobile Multi-Functional Team.
- 6.2. There are no financial implications associated with this report.

7. Major Risks

- 7.1. Whilst the majority of residents are likely to support pragmatic and practical controls, there is a risk that some may choose to disregard controls if they feel they are unfair. This risk will be mitigated by communicating and publicising the proposed changes.

8. Key Decision Information

8.1. This is not a key decision.

9. Earlier Cabinet/Committee Resolutions

10. List of Appendices

10.1. None

11. Background Papers

12.1 <https://www.newcastle-staffs.gov.uk/directory-record/30/fees-and-charges>

12.2 <https://www.newcastle-staffs.gov.uk/policies-1/environmental-health-enforcement-policy>

12.3 <https://www.newcastle-staffs.gov.uk/fixed-penalty-notices/fixed-penalty-notice-can-issued/5>

12.4