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| Council name | COTSWOLD DISTRICT COUNCIL |
| Name and date of Committee | CABINET - 6TH JANUARY 2020 |
| Report Number | AGENDA ITEM (7) |
| Subject | HOUSEHOLD DUTY OF CARE OFFENCES - SETTING THE FIXED PENALTY NOTICE LEVEL |
| Wards affected | ALL |
| Accountable member | Cllr. Andrew Doherty - Cabinet Member for Waste, Flooding and Environmental Health Email: andrew.doherty@cotswold.gov.uk |
| Accountable officer | Philip Measures, Service Leader Tel: 01993 861000 Email: philip.measures@publicagroup.uk |
| Summary/Purpose | <p>The purposes of this report are:-</p> <ul style="list-style-type: none">a) <i>To inform Cabinet about the</i><ul style="list-style-type: none">i. <i>A householder's duty of care when disposing of waste other than by the normal household collection routes.</i>ii. <i>Fixed Penalty Notice (FPN) powers under the Environmental Protection Miscellaneous Amendments (England and Wales) Regulations 2018 which amend S 33 of the Environmental Protection Act 1990(the Act).</i>b) <i>To authorise the Council's Officers for Resident Services to issue FPNs under Section 34(2A) of the Environmental Protection Act 1990 to persons whom the officer has reason to believe have committed a breach of the household waste duty of care.</i>c) <i>To recommend the FPN fine levels in accordance with the options provided by the Act under section 34(ZA) of the Environmental Protection Act 1990.</i> |
| Annexes | None |
| Recommendation/s | <ul style="list-style-type: none">a) <i>That the report be noted.</i>b) <i>That the Cabinet agrees the recommended FPN level of £400 and early payment reduction of £200 provided payment is made within 10 days of the date the FPN was issued.</i>c) <i>That delegated authority be given to the Service Business Manager for Environment and Regulatory Services to authorise the Council's Officers for Resident Services to issue FPNs under Section 34(2A) of the Environmental Protection Act 1990 to persons whom the officer has reason to believe have committed a breach of the household waste duty of care.</i> |

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| Corporate priorities | Protect and enhance the local environment whilst supporting economic growth |
| Key Decision | Yes |
| Exempt | No |
| Consultees/ Consultation | Cabinet Members Senior Officers |

1. BACKGROUND

- 1.1.** An occupier of a domestic property has a duty to take all reasonable measures available to them to ensure they only transfer household waste produced on their property to an authorised person, business or organisation.
- 1.2.** Household waste is generally considered to be any waste produced within a domestic property. This is not just regular black bin bag waste, but other material such as old mattresses, furniture and household appliances. For waste duty of care, this includes septic tank sludge which is not used on agricultural land and construction and demolition waste.
- 1.3.** For household waste which cannot be appropriately disposed of through the normal local authority waste collection service and which is to be transferred to a third party for collection and disposal, the householder must check whether a person or business is authorised.
- 1.4.** An authorised person includes:
- the local authority that provides the normal waste collection service;
 - any person, business or organisation that has a valid registration as a carrier, broker or dealer of waste;
 - an operator of a waste site with an appropriate environmental permit or exemption.
- 1.5.** If a private business (e.g. skip hire, house clearance) is engaged to take away waste, they must be an authorised carrier with up-to-date and valid upper tier registration. This includes any person, business or organisation that approaches the householder and offers to take their waste. Every such carrier should have a registration number starting CBDU, followed by a set of numbers. In England it is possible to check whether a waste carrier is registered on the Environment Agency's online public register of waste carriers, brokers and dealers using the business registration number, business name, or postcode. The site can also be used to find registered carriers. A telephone enquiry service is also available.
- 1.6.** An upper tier registration allows a person or business to transport other people's waste, while lower tier registrations are primarily for organisations carrying their own waste. Charities, voluntary organisations and waste collection authorities can use lower tier registrations.

- 1.7.** If the householder is transporting their own waste for disposal, to a site run by a private business, in order to meet the duty of care, the householder should check that the site has a registered permit or exemption. In England it is possible to check if a waste site has a permit or exemptions through the Environment Agency's online public registers for waste operations and waste exemptions using their business registration number, business name, or postcode. A telephone enquiry service is also available.
- 1.8.** There is no legal requirement to keep records when the householder checks that a carrier is registered or that a site is permitted or exempt. A lack of records does not prove the duty of care was not satisfied. However, if the waste is subsequently fly-tipped and investigated by the local authority, records can quickly show that duty of care was met. The following records are therefore useful for this purpose:
- the operator's registration, permit or exemption number,
 - a receipt for the transaction which includes the business details of a registered operator,
 - a copy or a photograph of the carrier's waste registration or site's permit,
 - details of the business or of any vehicle used (registration, make, model, colour), which can be linked back to an authorised operator.
- 1.9.** These steps can also enable enforcement officers to identify those responsible if the waste is fly-tipped. Advice on the Council's website will be provided as guidance.
- 1.10.** The Council will be running a campaign in the New Year dealing with fly-tipping and the campaign will be used to publicise amongst other things, the responsibilities of householders and the steps they need to take to meet the duty of care requirements.
- 1.11.** It is a criminal offence if a householder does not take reasonable measures in exercising their duty of care to dispose of waste. Failure could result in prosecution and, on conviction, a fine and criminal record.
- 1.12.** The alternative is that the Council issues a fixed penalty notice for breaching the duty of care. If the householder chooses to accept it and pay within the specified period, they cannot be prosecuted for the offence. It is at the authority's discretion whether to proceed to prosecute. The advantage of issuing a fixed penalty notice is that it is a proportionate approach in dealing with lesser offences, in accordance with the Council's Enforcement Policy. Cases are resolved quickly and the Court's time is kept free.
- 1.13.** In the Act, the FPN levels are set at default levels, but enforcing authorities can decide to set their own levels within certain constraints and these are outlined as follows.

2. SETTING THE FPN LEVEL.

2.1. The default fine amounts in the Act are:

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| Default penalty | £200 |
| Minimum full penalty | £150 |
| Maximum full penalty | £400 |
| Minimum discounted penalty | £120 |

2.2. Currently the FPN fine for Fly-tipping (the unlawful depositing of waste) is set at £400, discounted to £200 if paid within 10 days. Therefore, to ensure deterrence and to be consistent, the FPN level for a householders failure of duty of care is recommended to be the same; £400, discounted to £200 following early payment.

3. FINANCIAL IMPLICATIONS

3.1. The Council does not have a budget for Fixed Penalty Notices. Any income received will be used to fund Council priorities.

4. LEGAL IMPLICATIONS

4.1. Failure to accept or pay the FPN could result in prosecution.

5. RISK ASSESSMENT

5.1. Provisions for the use of FPNs are already in place; therefore there is no additional risk in adopting the recommendations of this report.

6. EQUALITIES IMPACT (IF REQUIRED)

6.1. The recommendations of this report do not introduce new impacts on any particular section for the community.

7. CLIMATE CHANGE IMPLICATIONS (IF REQUIRED)

7.1. There are no identifiable climate change implications.

8. ALTERNATIVE OPTIONS

8.1. The alternative options are:

- (i) To use the default penalty and minimum discounted penalty.
- (ii) To not use Fixed Penalty Notices but to proceed with prosecutions.

9. BACKGROUND PAPERS

9.1. None.

(END)