

**CYNGOR SIR POWYS COUNTY COUNCIL**

**PORTFOLIO HOLDER DELEGATED DECISION**

**by**

**COUNTY COUNCILLOR JONATHAN WILKINSON**

**( PORTFOLIO HOLDER FOR HOUSING AND COUNTRYSIDE SERVICES )  
AND COUNTY COUCILLOR PHYL DAVIES (PORTFOLIO HOLDER FOR  
PROPERTY AND WASTE)**

**February 2018**

**REPORT AUTHOR: Professional Lead-Environmental Health (Environmental Protection)  
Waste and Recycling Strategy Manager**

**SUBJECT: The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017.**

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**REPORT FOR: Decision**

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**1. Summary**

- 1.1 Fly tipping is the illegal deposit of waste and is an offence under the Environmental Protection Act 1990. In 2015/16, over 36,000 incidents of fly tipping were recorded in Wales. In 2016, there were 994 incidents of fly tipping recorded in Powys.
- 1.2 The effects of fly tipping are far reaching and include pollution of the environment and loss of amenity. Fly tipped waste also tends to attract further fly tipping. The clean- up costs are also significant and amounted to £65k for Powys County Council to clear public land in 2016/17. This does not take into the account the impact or clean-up costs for private land owners.
- 1.3 Fly tipping is regulated by both Natural Resources Wales (NRW) and local authorities. Typically NRW will deal with bigger incidents of fly tipping (generally involving more than a tipper load of waste), incidents involving organized crime and certain hazardous materials which have a greater capacity to damage the environment. Local authorities are responsible for dealing with most small scale fly tipping.
- 1.4 Within Powys County Council, responsibility for dealing with fly tipping is shared between Waste and Recycling Department which deals with incidents on public land and Environmental Protection who deal with incidents on private land.
- 1.5 Previously, the only enforcement available for fly-tipping was prosecution in the Magistrate's court where offenders could be fined up to £50,000. However on the 25<sup>th</sup> October 2017, The Unauthorised

Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 came into force which allows local authorities to issue a fixed penalty for certain types of fly tipping. The Regulations allow local authorities to set the amount payable for the fixed penalty notices (FPN's) and this is the purpose of this report.

## **2. Proposal**

- 2.1 Where possible, enforcement action is taken whenever there is evidence of an offender having fly-tipped waste. However investigations are notoriously difficult and time consuming as they involve site visits, interviews and case preparations for court. Once in the court, offenders are usually prosecuted but fines rarely exceed £1000. The introduction of FPN's is seen as an opportunity to offer a more efficient and proportionate response for dealing with small scale fly-tipping incidents which will also ease the burden on the court system. The issue of FPN's provide an opportunity for first time non-habitual offenders to avoid court and a possible criminal record.
- 2.2 The Regulations allow local authorities to set the amount of the fly-tipping FPN's between £150 and £400 with an early payment option of not less than £120. Local authorities can retain the receipts to help with the cost of dealing with fly-tipping.
- 2.3 Guidance has been provided on what constitutes small case fly tipping in order for local authorities to adopt a consistent approach to issuing FPN's in Wales. In general the following are considered to be small scale fly-tipping that can be dealt with by FPN's:-
  - Up to a car boot load
  - Up to 8 black bags
  - One or two bulky items (e.g. furniture, white goods)
  - A single full bin bag
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- 2.4 To give some context, in 2016/17, of the 994 incidents reported in Powys, 270 would fall into this category.
- 2.5 In an effort to address the increasing problem of fly-tipping it is proposed that the FPN fee should be set at the maximum of £400 with an early payment option of £200.

## **3. Options Considered / Available**

- 3.1 There is the option of setting the fee for FPN's at any rate between £150 and £400. However it is believed that in setting the rate at £400 will provide sufficient deterrent and increase the amount of revenue retained by PCC in dealing with fly tipping.

**4. Preferred Choice and Reasons**

- 4.1 The preferred choice is to set the fee at £400 with an early payment option of £200.

**5. Impact Assessment**

- 5.1 Is an impact assessment required? No

**6. Corporate Improvement Plan**

- 6.1 The proposal supports the Vision 2025 values of Health and Care and Residents and Communities.

**7. Local Member(s)**

- 7.1 N/A

**8. Other Front Line Services**

Does the recommendation impact on other services run by the Council or on behalf of the Council? Yes/No

If so please provide their comments

**9. Communications**

Have Communications seen a copy of this report? Yes

Have they made a comment? The report is of considerable public interest and requires use of a proactive news release and appropriate social media to publicise the decision.

**10. Support Services (Legal, Finance, Corporate Property, HR, ICT, Business Services)**

- 10.1 The Professional Lead-Legal notes the recommendation in the report and confirms that the level of fixed penalty is within the scope of the present legislation”

- 10.2 The Finance Manager Place and Resources notes the contents of the report, the FPN will help to offset some of the costs of dealing with fly tipping.

## 11. Scrutiny

Has this report been scrutinised? No

## 12. Statutory Officers

12.1 The Solicitor to the Council (Monitoring Officer) has commented as follows: "I note the legal comment and have nothing to add to the report".

12.2 The Head of Financial Services (Acting Section 151 Officer) notes the comments by the Finance Manager Place and Resources.

## 13. Members' Interests

13.1 The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If a Portfolio Holder has an interest he should declare it, complete the relevant notification form and refer the matter to the cabinet for decision.

<b>Recommendation:</b>	<b>Reason for Recommendation:</b>
<b>That the fees for Fixed Penalty Notices be set in accordance with Section 4.1 and be implemented with effect from 1<sup>st</sup> March 2018</b>	<b>In order to establish a suitable deterrent to fly tipping.</b>

<b>Relevant Policy (ies):</b>			
<b>Within Policy:</b>	<b>Y</b>	<b>Within Budget:</b>	<b>Y</b>

<b>Relevant Local Member(s):</b>	<b>N/A</b>
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<b>Person(s) To Implement Decision:</b>	<b>Nia Wyn Hughes/Ashley Collins</b>
<b>Date By When Decision To Be Implemented:</b>	<b>As soon as possible</b>

Contact Officer:	Nia Wyn Hughes/Ashley Collins
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**Background Papers used to prepare Report:**