

FLYTIPPING UPDATE

**REPORT OF CABINET MEMBER FOR CLEAN STREETS,
RECYCLING AND ENVIRONMENT**

AGENDA ITEM: 6

Reasons for this Report

1. To consider new legislative powers through the Amendment of the Environmental Protection Act 1990 and The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 and endorsing the setting of the level of the fixed penalty for small-scale fly-tipping of £400 with no early payment option.
2. To consider the range of measures to improve the approach to address fly-tipping. The report outlines the opportunities of dealing with issues associated with fly-tipping through adopting new technologies and legislative powers.

Background

3. Tackling fly-tipping is a corporate priority in Capital Ambition. The Planning, Transport and Environment Directorate is committed to the aims and objectives to join up Council services and to keep our communities, parks and streets free from fly-tipping.
4. Natural Resources Wales is responsible for dealing with large scale illegal dumping, including incidents involving organised crime and certain hazardous wastes and contamination of water courses. However, Natural Resources Wales will only clear up such waste where there is an immediate risk to the environment or human health.
5. Natural Resources Wales is a Welsh Government sponsored body which became operational from 1 April 2013. It was formed from a merger of the Countryside Council for Wales, the Environment Agency Wales and the Forestry Commission Wales.
6. Local Authorities and Natural Resources Wales have powers under the environmental Protection Act 1990 to investigate fly-tipping incidents and to prosecute those who are found to have broken the law.

7. Investigation of fly-tipping is not a statutory duty and this means that neither body are legally required to investigate incidents of fly-tipping. Local Authorities deal with the majority of incidents such as construction waste, fridges, sofas, commercial and household waste.
8. Local Authorities are responsible for clearing fly-tipping from public land.
9. Local Authorities may also investigate incidents on private land and issue a notice to remove the accumulation, but they have no obligation to clear fly-tipped waste from private land.
10. Fly-tipping is the term used to describe waste illegally deposited on land. The offence of fly-tipping and the additional offences of 'knowingly causing' or 'knowingly permitting' fly-tipping are set out in Section 33(1)(a) of the Environmental Protection Act 1990.
11. The waste can be solid or liquid and can vary in scale from the size of a bin bag of rubbish to large scale dumping of construction and demolition waste. Each case is investigated on an individual basis and consideration as to the location of land is key to defining if the waste is fly-tipped or incorrect presentation of waste.
12. Fly-tipping may be found anywhere, including on roadsides, in lay-bys or on private land. Fly-tipping differs from littering and incorrect waste presentation in that it involves the removal of waste from premises where it was produced with the deliberate aim of disposing of it unlawfully.
13. By its nature, fly-tipping is a difficult crime to detect. Fly-tippers often operate under the cover of darkness and often leave little traceable evidence behind at the crime scene. Those who regularly fly-tip waste are increasingly aware not to leave traceable evidence within the fly-tipped waste, moreover, the nature of some fly tipped waste, such as rubble, means that there is unlikely to be traceable evidence found.
14. Cardiff Council recognises that residents of Cardiff often believe they are disposing of their waste correctly by giving it to a "man in the van" however in some cases this may end up fly-tipped. A key campaign is being developed and implemented to support our residents in the checks they need to make when disposing of their waste outside of normal waste collection services provided by Cardiff Council.
15. There has historically been no fixed penalty for fly-tipping. A person who commits a fly-tipping offence is subject to a summary conviction to imprisonment for a term not exceeding 12 months, or a fine not exceeding £50,000, or both. There must be appropriate and sufficient evidence, to a criminal standard of proof, to support the prosecution of the offence in the magistrates' court.
16. In some cases, Cardiff Council have been able to work with offenders, residents and businesses who breached their duty of care to recover costs as an alternative to prosecution.

17. The new legislative powers allow Local Authorities to set the amount of the fly-tipping FPN between £150-£400 with a default penalty of £200 if no amount is specified. An option for early payment of an amount no less than £120 can be made available.
18. FPN's provide an opportunity for first time non-habitual offenders to avoid court and a possible criminal record. They offer a more efficient and proportionate response to tackling small-scale fly-tipping incidents and help ease the burden on the court system.
19. Fly-tipping figures have varied over the last 7 years. However, due to changes in resource levels, reporting of fly-tipping and waste restriction in Cardiff it is difficult to provide any direct correlation to any particular change.

Year	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Fly-tipping incidents reported	11,185	10,957	4,621	3,905	6,241	7,993	5,928

20. Cardiff Council recorded 5,928 fly-tipping incidents in 2017/18. 4,794 were investigated and no waste was found on arrival at 1,134 of these reported incidents. Where waste was found and evidence was obtained the FPN could have been issued to tackle this type of behaviour. Instead where evidence has been obtained either we have prosecuted or recovered the cost.
21. There is a national Key Performance Indicator (KPI) for fly-tipping; 90% of reported fly-tipping incidents must be cleared within 5 working days. Cardiff Council have exceeded this target in recent years, achieving 98% in 2016/17 and 99% in 2017/18. Again officers are fully trained on how to lead fly-tipping offences versus waste and litter offences.
22. All Street Scene Enforcement Officers are able to deal with small-scale fly-tipping. The team will continue to undertake other duties, such as enforcing against littering offences, waste presentation offences, dog fouling, waste licenses and highway licenses.
23. CCTV assists in the prevention and detection of fly-tipping. By capturing vehicle registration Officers are able to obtain evidence to issue an FPN to the registered keeper or secure a prosecution.
24. There are three teams dedicated to searching and removing large-scale fly-tipping waste. These teams work alongside one Street Scene Enforcement Officer who is responsible for fly-tipping enforcement.
25. There have been three cases which have met the criteria of a criminal standard of proof to proceed to prosecution in court in the past 12 months.
26. The Street Scene Enforcement Team in 2017/18 had a gross budget expenditure of £1,321,000. Funding from the Single Revenue Grant

supports £415,000; £260,000 is funded through fines and £45,000 through enforcement service contracts. Therefore, there is a net budget of £601,000 to support the teams operations.

27. The Enforcement Team generated additional income of £137,466 from fines in 2017/18, however actual expenditure amounted to an additional £191,847, the additional expenditure mainly due to non-recurring staff costs and additional disposal costs.

Issues

28. The number of fly-tipping incidents is not reducing significantly across Cardiff and Local Members and citizens want more action to ensure the environment remains clean and free of fly-tipping.
29. The cost of managing small-scale fly-tipping significantly outweighs the income or cost recovery from fines. Therefore, the management of fly-tipping is not sustainable through the current prosecution offence or works in default and recovery of costs. The FPN will help support the service to tackle fly-tipping, supporting staff and CCTV to tackle the problem and improve street scene.
30. The number of fly-tipping incidents where no waste is found on arrival is high. The figure in 2017/18 was 1,134 or 19% of the total 5,928 fly-tipping incidents reported. This figure needs to decrease to improve service effectiveness and efficiency.
31. The process for dealing with the end-to-end management of fly-tipping is not digitalised. This means the capture and interrogation of data is time consuming, including a lack of detail on where offences take place. This creates issues with providing good information to the Cabinet Member, Local Members and citizens; whilst reducing the effectiveness of the management team to make informed decisions.
32. The number of large-scale fly-tipping in rural lanes and other hotspots across the city remain high. The three prosecutions in 2017/18 indicate the difficulty of providing evidence to build a case to take an offender to Court. Cctv again will support the gathering of evidence to secure a successful prosecution.
33. Fly-tipping in communal waste collection areas is a growing concern for Local Members and citizens. Due to difficulties in enforcement, the cost of cleansing communal waste collection areas are borne by the Council with limited improvement in tenant behaviours.

Opportunities

34. There are a number of opportunities to help tackle the issues relating to fly-tipping more effectively

Fly-tipping Fixed Penalty Notices (FPN's)

35. On 25th October 2017 an amendment of the Environmental Protection Act 1990 was introduced enabling an authorised officer of a Welsh waste collection authority to issue a Fixed Penalty for fly-tipping in contravention with The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017.
36. By setting the fine level for small-scale fly-tipping to £400 with no early discount there will be a clear message that Cardiff Council does not tolerate small-scale fly-tipping. The fine level will deter this illegal activity, whilst providing income from fines to support Street Scene Services to make the service more sustainable and not a burden to the law-abiding council taxpayer.
37. FPN's provide an opportunity for first time non-habitual offenders to avoid court and a possible criminal record and offer a more efficient and proportionate response to tackling small-scale fly-tipping incidents.
38. Cardiff Council would not issue an FPN of £400 to a resident or business where it has been given to a "man in the van" and they have subsequently undertaken the illegal fly-tipping. The FPN of £400 solely relates to the offender who committed the offence of fly-tipping. However, the resident or business may be prosecuted under household waste duty of care and charged the cost incurred by the Council to clear the waste.
39. The introduction of FPN's for fly-tipping will enable Local Authorities to issue FPN's to the registered keeper of the vehicle, thereby increasing the number of actions taken against fly-tipping. The use of CCTV will provide the evidence needed for this in hot spot locations.
40. Littering and waste presentation offences under section 87 and 46 of the EPA are treated differently to that of fly-tipping and will continue to be progressed in the same manner alongside small scale fly-tipping offences. Waste presentation and littering offences are not fly-tipping offences.
41. The FPN's can be used on both publicly and privately owned land providing evidence is gathered for the offending fly-tipper.
42. The list below provides guidance on what constitutes small scale and will help Local Authorities achieve a consistent approach to issuing small-scale fly-tipping FPN's in Wales to the offender who committed the fly-tipping incident.
 - First time non-habitual offenders only
 - Non-hazardous waste only
 - Up to a car boot load
 - Up to 8 black bags
 - One or two bulky items (e.g. furniture, white goods)

43. Consideration of individual circumstances will need to take place on occasion but the list should be followed where possible.
44. FPN's would not be issued to repeat offenders. Where an offender is taken to court, the fact they have been issued with previous FPN's may influence the court's assessment of the offender's suitability for a particular sentence.

Report-It App and Digital Systems

45. Cardiff Council are developing the Report It app to support citizens reporting concerns to the Council. Phase 1 includes the reporting of fly-tipping to the Council.
46. The data fields, including photographs and use of maps, means the information received should reduce the number of incidents where no waste is found.
47. The StarTraQ system will be the system which Street Scene enforcement use to undertake fly-tipping enforcement. The system is designed to support end-to-end processes and improved reporting. This will support improving informed decision making and providing good data to inform Local Members and Citizens via Ward Action Plans.
48. StarTraQ will support reporting all fly-tipping incidents to the Memex Intelligence system used by Natural Resources Wales, as part of National intelligence on fly-tipping and Fly mapper for hot spot heat maps. It will also feed into waste data flow as part of the current KPI to remove within 5 working days.
49. When officers are at the stage in their investigation where they are considering what enforcement action to take, they will search the Memex Intelligence system to check any potential offending history.

CCTV Initiatives

50. Unless the cameras are overt or there is clear signage indicating that the Local Authority is utilising surveillance techniques there are legal obligations which must be fulfilled under the Regulatory and Investigative Powers Act (RIPA) before covert surveillance can be undertaken.
51. To get permission under RIPA to install covert surveillance there must be sufficient evidence the Local Authority has undertaken steps to remove the concern by implementing other adequate measures.
52. Street Scene Enforcement are currently piloting the use of CCTV cameras to help prevent and detect fly-tipping offences and are working with 2 different service providers to identify improved surveillance opportunities.
53. Street Scene Enforcement are working with Vodafone to trial their new CCTV system with the trial of two cameras. The benefits of this technology

include that it can be used in overt or covert situations and it is easier to locate and relocate than previous systems. In addition, the cameras use infrared technology, meaning they work in the dark and are more adept at capturing registration details.

54. Street Scene Enforcement are also working internally with the ARC and WCCTV to trial two wireless cameras. These cameras are covert only cameras.
55. We currently have overt camera's installed in 2 locations, and will be introducing cameras to 2 further locations next month.
56. The introduction of FPN's for small-scale fly-tipping will enable Local Authorities to issue FPN's to the registered keeper of the vehicle, thereby increasing the number of actions taken against fly-tipping. The use of CCTV will provide the evidence needed for this in high frequency fly-tipping locations.

Education initiatives and VOSA days

57. Street Scene Enforcement Officers will be collaborating with Fly-Tipping Action Wales on their 'Catch a Fly-Tipper' education campaign. Officers will run a local campaign to educate residents of Cardiff on how to dispose of waste and the key checks to make when transferring waste to a third party. This should lead to a reduction of fly-tipping through safe transfers of waste and the prosecution of offenders that continue to fly tip.

Key messages include:

Responsibilities

- All of us have a duty of care to ensure waste from our property is disposed of correctly.
- When waste originating from your property is found fly-tipped after you have given it to a third party you could receive a fine for not making the correct checks.
- Even when you do not pay for removal and it is taken with your consent; including scrap metal, you are still responsible to make these checks.

Checks

- Ask the carrier to show proof that they are a registered waste carrier.
- Take the details of the carrier's name including the company name and contact details.
- Make a note of the vehicle used including colour, make and registration.
- Ask for a receipt in the form of a waste transfer note which details a description of the waste, the amount paid for waste removal, the date removed, and the company/carriers name and contact details.
- Ask where your waste is going.

58. Street Scene Enforcement are working with waste collections to identify areas to undertake blitz education. This could relate to issues of contamination of waste or areas where recycling need to improve. By undertaking this focused education and monitoring the outcomes Street Scene Services want to determine the impact of a concentrated education and enforcement approach.
59. Street Scene Officers continue to enforce businesses who are not managing their waste or appropriately controlling disposal. In 2017/18 a total of 367 fines were issued for not having appropriate waste transfer notes.
60. VOSA partnership days are where the police stop vehicles to check insurance, MOT and other details. Street Scene Enforcement Officers work in partnership with South Wales Police to request waste transfer notes and waste carrier licences for those vehicles carrying waste. If these details are not provided within 14 days, then a fixed penalty is issued for £300 for each offence.

Financial Implications

61. The cost of acquiring the CCTV equipment is projected to be c£25,000 and will be funded from a drawdown from Earmarked Reserves. The on-going operational costs are to be funded through the Fixed Penalty Notice (FPN) income. The Directorate will need to ensure that monitoring arrangements are in place to identify any shortfall in FPN income to ensure that mitigations can be actioned by the Directorate to ensure that these measures to reduce fly tipping are fully funded.
62. If there is a significant increase in the number of prosecutions undertaken by the Council Further discussions with other Service Areas, in particular Legal Services, may be required to consider the implications arising from this additional activity.

Legal Implications

- 58 The Director/Chief Officer of Planning, Transport and Environment can directly delegate the power to issue fixed penalties already granted under the constitution under Part 3 Section 4f “to exercise all functional responsibilities delegated under planning committee”.
- 59 The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 insert a new section 33ZB into Part II (Waste on Land) of the Environmental Protection Act 1990 (c.43) (“the Act”) to enable an authorised officer of a Welsh waste collection authority to issue a fixed penalty notice for contravention of section 33(1)(a) of the Act in the area of the authority.
- 60 Section 33(1)(a), subject to certain exemptions, prohibits the deposit of controlled waste or extractive waste in or on any land other than in accordance with an environmental permit. Contravention of that section is an offence.

- 61 Section 33ZB allows a Welsh waste collection authority to specify a fixed penalty of not less than £150 and not more than £400. If no amount is specified by the waste collection authority, the amount of the fixed penalty is to be £200. A Welsh waste collection authority may also make provision for a discount for early payment of a fixed penalty.
- 62 A regulatory impact assessment in relation to Wales has been prepared on the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.
- 63 The contents and procedures specified in this report comply with the legal requirements stated in the legislation.
- 64 Future legal input would be required in connection with securing RIPA licences for the installation of covert CCTV.
- 65 There is no EqIA required as the recommendation relates to a criminal offence.

RECOMMENDATIONS

The Cabinet is recommended to:

1. endorse the expansion of the Council's powers to support the Amendment of the Environmental Protection Act 1990 and The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017.
2. endorse the decision to set the amount of the small-scale fly-tipping FPN at £400 with no early payment scheme.

SENIOR RESPONSIBLE OFFICER	ANDREW GREGORY Director Planning, Transport & Environment
	7 June 2018

The following appendices are attached:

Appendix 1: Amendments to Fly-tipping Legislation

Appendix 2: Feedback from Local Authorities in Wales regarding small-scale fly-tipping FPN amount.