

ENVIRONMENT SCRUTINY PANEL

9 NOVEMBER 2017

ADDITIONAL INFORMATION/CLARIFICATION REQUESTED FOLLOWING THE PANEL'S PREVIOUS MEETING ON 12 OCTOBER 2017

The Panel requested clarification on the following points:-

1. Please can you explain what Section 46/47, 33ZA and 34 notices are and what legislation the FPNs for fly-tipping are issued under.

A Section 46 legal notice served under Section 46 of the Environmental Protection Act 1990 requires the occupier of a domestic premises to provide containers for their waste and gives requirements for maintaining, storing and the placing for collection of those containers. We can also control what materials are placed in the container under this notice. So for example, this notice can be used to tell a resident on what day they have to present their waste, what materials are accepted in the containers, that they must obtain a refuse bin, that they must use bags/communal bins, that they cannot present excess waste etc. If a notice is not adhered to, a FPN can be issued. The offence of failing to comply with a S46 notice was decriminalised in 2015. This means that where as previously failure to pay the FPN would have ended up in court; now the process is a lot longer involving several letters and demands for the FPN. If at the end of the process the FPN has still not been paid, it is recoverable as a civil debt. The FPN for the failure to comply with a S46 notice is £110, reduced to £60 if paid within 10 days.

A Section 47 legal notice served under Section 47 of the Environmental Protection Act 1990 requires the occupier of a premises where commercial/industrial (i.e. businesses) waste is produced to provide containers for their waste and gives requirements for maintaining, storing and the placing for collection of those containers. We can also control what materials are placed in the container under this notice. Examples for this one would be requiring a food premises to get bins, to get suitable containers for fat, ensuring their bins are locked, ensuring the bins are not overfull etc. If the legal notice is not adhered to, a FPN can be issued. If the FPN is not paid, the offender can be prosecuted. The FPN for the failure to comply with a S47 notice is £110, reduced to £60 if paid within 10 days. Maximum penalty on conviction is £1000 (i.e. the max they could face if it ends up in court).

Section 33 of the Environmental Protection Act 1990 prohibits the unauthorised or harmful deposit, treatment or disposal etc of waste (i.e. fly tipping). Section 33ZA of the Environmental Protection Act 1990 is the fixed penalty notice for contravention of Section 33. The maximum FPN for fly tipping is £400. The minimum discounted penalty that can be given is £120. It is at officer's discretion how much is given. If the FPN is not paid, prosecution can follow. The maximum penalty on conviction for fly tipping is an unlimited fine and a custodial sentence. An officer can choose to go straight to prosecution if they feel the offence is aggravated or the offence is too serious to be dealt with by FPN (e.g. large scale fly tipping, repeat offenders, offenders who refuse to give details of any other parties involved etc).

Section 34 of the Environmental Protection Act 1990 imposes a duty of care on anyone who produces, imports, keeps, stores, transports, treats or disposes of waste and that reasonable steps are taken to ensure waste is managed properly. We use the S34 notice to require businesses to provide documents relating to the transfer of controlled waste (i.e. they have to be able to show what they do with their rubbish to ensure they are complying with their duty of care). A person who fails to comply with the notice and does not or cannot provide the documents within a specified time is committing an offence. A FPN can be issued for this of £300, reduced to £180 if paid within 10 days. If the FPN is not paid, prosecution can follow which can result in a maximum fine of £5000 in a Magistrates Court or unlimited fine in crown court.

2. Please can you provide information on the numbers of manually recorded fly-tips and their locations, recorded since 14 Sept 2017

Recorded 14th Sept – 30th Oct 2017	Area
41	NORTH
62	EAST
15	SOUTH
36	WEST
Total	154

Please note the above figures relate to the information sent to DEFRA (which equate to flytips which have been removed), not the number of actual reports received. As an example we may receive 200 reports in one month but on attending site the rubbish may have already gone or be on private land, these figures are not recorded for DEFRA.

3. Do you hold any Information on enforcement action levels prior to July 2017?

Please see information provided for January to December 2016 – Item 5 on briefing note.