

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL**

**Cabinet**

**30 March 2021**

<b>TITLE:</b>	<b>Household Duty of Care</b>
<b>PORTFOLIO HOLDER:</b>	<b>Councillor Sav Scalise - Portfolio Holder for Environment</b>
<b>CONTACT OFFICER:</b>	<b>David Smith - Principal Officer Communities &amp; Partnerships</b>
<b>WARDS INVOLVED:</b>	<b>(All Wards)</b>

**Appendices Attached – None**

**1. Reason for the Report**

- 1.1 To help to prevent unlawful depositing of waste within the District by agreeing the level of fixed penalty notices that can be issued to those individuals that do not take reasonable measures to ensure proper disposal of their household waste.

**2. Recommendation**

- 2.1 That the Cabinet sets the fixed penalty amount for failure to comply with the household duty of care at the maximum permitted level of £400.

**3. Executive Summary**

- 3.1 Occupiers of domestic properties in England have a duty to take reasonable care of the waste that they produced (the 'household duty of care').
- 3.2 Anyone who fails to comply with the household duty is liable on conviction to an unlimited fine. As an alternative to prosecution, local authorities have the power to issue a fixed penalty notice.
- 3.3 Currently, the fixed penalty amount is set by statute at £200 with no reduction for early payment.

#### 4. **How this report links to Corporate Priorities**

4.1 Aim 4: To protect and improve the environment and respond to the climate emergency.

#### 5. **Alternative Options**

5.1 The Council could keep the fixed penalty amount at the statutory level (£200) with no reduction for prompt payment.

#### 6. **Implications**

##### 6.1 Community Safety - (Crime and Disorder Act 1998)

The proposal would assist the Council to address environmental crime

##### 6.2 Workforce

Responsibility for enforcement will rest with the current Enforcement Officer.

##### 6.3 Equality and Diversity/Equality Impact Assessment

The fixed penalty amount will apply equally to all.

##### 6.4 Financial Considerations

The Council will need to revise the fixed penalty notice booklets to reflect any changes.

##### 6.5 Legal

The power to prosecute for failure to comply with the duty of care in respect of household waste, or to offer a fixed penalty notice, as an alternative is found within s34 (2A) Environmental Protection Act (EPA) 1990 and the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018/1227 Pt 2 reg.3(2).

##### 6.6 Climate Change

The setting of an appropriate level of Fixed Penalty Fine may assist in reducing the instance of cases of failure to comply with the household duty of care and, therefore, reduce the climate change impacts of such offences.

##### 6.7 Consultation

N/A

## 6.8 Risk Assessment

N/A

Mark Trillo

### **Executive Director (People) and Monitoring Officer**

#### **Web Links and Background Papers**

#### **Contact details**

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## 7. **Detail**

- 7.1 Occupiers of domestic properties in England have a duty to take reasonable measures to ensure that any household waste is only transferred to (i) an authorised person or (ii) a person for authorised transport purposes. This is commonly referred to as the 'household duty of care'.<sup>1</sup> Authorised persons includes waste collection authorities and registered carriers of controlled waste.
- 7.2 Anyone who fails to comply with the household duty is liable on conviction to an unlimited fine. As an alternative to prosecution, local authorities have the power to issue a fixed penalty notice.<sup>2</sup> Councils can set the fixed penalty amount between £150 and £400 (inclusive). By default, the amount is set at £200 by statute. Councils can also introduce a reduced amount of no less than £120 if payment is made within 10 days to encourage prompt resolution of matters.
- 7.3 To successfully prosecute someone for fly-tipping, the Authority must show that they deposited controlled waste (or knowingly caused or knowingly permitted it to be deposited) on land without authorisation. This can be difficult to prove beyond reasonable doubt when waste containing identifiable material is found on land within the district without any witnesses to the deposit of the waste.
- 7.4 It is generally easier to prove that the owner of the illegally deposited waste did not comply with their duty of care and failed to transfer their household waste to an authorised person. Increased use of this power would hopefully increase enforcement levels, discourage people from depositing waste themselves or from passing it onto unlicensed waste collection services.
- 7.4 The Council's Constitution delegates the authority to enforce the provisions of Part II of the Environmental Protection Act 1990, which includes the household

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<sup>1</sup> s34 (2A) Environmental Protection Act (EPA) 1990

<sup>2</sup> Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018/1227 Pt 2 reg.3(2)

duty of care, to the Chief Executive and Executive Director. However, the Council has not set levels for the associated fixed penalty amounts and thus the statutory default of £200 with no reduction for prompt payment.

7.5 In general, the Council will seek to issue a fixed penalty notice in response to someone's failure to comply with their household duty of care but this will be decided by the authorised officer on a case-by-case basis taking into account all relevant facts. There are a number of situations when the Council would consider that the issuing of a fixed penalty notice may not be appropriate and instead would seek to prosecute under the relevant legislation in accordance with the Council's Policy on the Enforcement of Environmental Crimes . These include:

- Large-scale depositing of waste items.
- When the offence is committed by someone that has previously received a fixed penalty notice for the same offence; and
- Where the offender is aggressive to an Enforcement Officer(or other staff member and/or refuses to provide their name and address.