

# Environment and Sustainability Committee

**Thursday 21 March 2019 at 7.30pm**

**Council Chamber  
Runnymede Civic Centre, Addlestone**

## Members of the Committee

Councillors Mrs G Warner (Chairman), D A Cotty (Vice-Chairman), R J Edis, T J F E Gracey, Mrs M T Harnden, D J Knight, M T Kusneraitis, Miss J K Sohi, N Wase-Rogers and M L Willingale.

In accordance with Standing Order 29.1, any Member of the Council may attend the meeting of this Committee, but may speak only with the permission of the Chairman of the Committee, if they are not a member of this Committee.

## AGENDA

### Notes:

- 1) Any report on the Agenda involving confidential information (as defined by section 100A(3) of the Local Government Act 1972) must be discussed in private. Any report involving exempt information (as defined by section 100I of the Local Government Act 1972), whether it appears in Part 1 or Part 2 below, may be discussed in private but only if the Committee so resolves.
- 2) The relevant 'background papers' are listed after each report in Part 1. Enquiries about any of the Agenda reports and background papers should be directed in the first instance to **Mrs C Holehouse, Democratic Services Section, Law and Governance Business Centre, Runnymede Civic Centre, Station Road, Addlestone (Tel: Direct Line: 01932 425628). (Email: [carol.holehouse@runnymede.gov.uk](mailto:carol.holehouse@runnymede.gov.uk)).**
- 3) Agendas and Minutes are available on a subscription basis. For details, please ring Mr B A Fleckney on 01932 425620. Agendas and Minutes for all the Council's Committees may also be viewed on [www.runnymede.gov.uk](http://www.runnymede.gov.uk).

4) In the unlikely event of an alarm sounding, members of the public should leave the building immediately, either using the staircase leading from the public gallery or following other instructions as appropriate.

5) **Filming, Audio-Recording, Photography, Tweeting and Blogging of Meetings**

Members of the public are permitted to film, audio record, take photographs or make use of social media (tweet/blog) at Council and Committee meetings provided that this does not disturb the business of the meeting. If you wish to film a particular meeting, please liaise with the Council Officer listed on the front of the Agenda prior to the start of the meeting so that the Chairman is aware and those attending the meeting can be made aware of any filming taking place.

Filming should be limited to the formal meeting area and not extend to those in the public seating area.

The Chairman will make the final decision on all matters of dispute in regard to the use of social media audio-recording, photography and filming in the Committee meeting.

**LIST OF MATTERS FOR CONSIDERATION**  
**PART I**

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**PART II**

**Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection**

a) Exempt Information

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(b) Confidential Information

(No reports to be considered under this heading)

1. **FIRE PRECAUTIONS**

The Chairman will read the Fire Precautions, which set out the procedures to be followed in the event of fire or other emergency.

2. **NOTIFICATION OF CHANGES TO COMMITTEE MEMBERSHIP**

3. **MINUTES**

To confirm and sign, as a correct record, the Minutes of the meeting of the Committee held on 22 November 2019. The Minutes of this meeting were emailed to all Members on 27 February 2019.

4. **APOLOGIES FOR ABSENCE**

5. **DECLARATIONS OF INTEREST**

If Members have an interest in an item, please record the interest on the form circulated with this Agenda and hand it to the Legal Representative or Democratic Services Officer at the start of the meeting. A supply of the form will also be available from the Democratic Services Officer at meetings. Members are advised to contact the Council's Legal Section prior to the meeting if they wish to seek advice on a potential interest.

Members are reminded that a non pecuniary interest includes their appointment by the Council as the Council's representative to an outside body and that this should be declared as should their membership of an outside body in their private capacity as a director, trustee, committee member or in another position of influence thereon.

Members who have previously declared interests, which are recorded in the Minutes to be considered at this meeting, need not repeat the declaration when attending the meeting. Members need take no further action unless the item in which they have interest becomes the subject of debate, in which event the Member must leave the room if the interest is a disclosable pecuniary interest or if the interest could reasonably be regarded as so significant to prejudice the Member's judgement of the public interest.

6. **ENVIRONMENTAL SERVICES AND PRIVATE SECTOR HOUSING ENFORCEMENT POLICIES, ENVIRONMENTAL CRIME, FIXED PENALTY AND CIVIL PENALTY NOTICE ENFORCEMENT PROTOCOL - (ENVIRONMENTAL SERVICES)**

**Synopsis of report:**

**To seek Member's endorsement of the updated Environmental Services and Private Sector Housing Enforcement Policies.**

**The Committee is further requested to endorse the Environmental Crime, Fixed Penalty and Civil Penalty Notice Enforcement Protocol.**

**Recommendation(s):**

- i) **Members approve the updated Environmental Services and Private Sector Housing Enforcement Policies attached at Appendix A and B respectively.; and**
- ii) **Members approve the adoption of the Environmental Crime, Fixed Penalty and Civil Penalty Notice Enforcement Protocol attached at Appendix C.**

**1. Context of report**

- 1.1. Since its last update in 2015 the Council's Environmental Services Enforcement Policy has been subject to administrative amendment, revision and updating on a continuous basis under delegated Officer authorisation. Whilst the overall ethos of the policy has remained unchanged, Members will be aware that the use of fixed penalty and financial penalty notice sanctions as an alternative to prosecution provided for under Environmental Health legislation has increased dramatically over the last couple of years and the latest update of the Enforcement Policy reflects this.
- 1.2 Insofar as the policy document outlines the general approach to how the Council deals with enforcement issues in the wider sense 'the policy' overarches a number of other related enforcement policies and protocols covering specific service areas e.g. private sector housing enforcement and domestic waste enforcement policies. Given the number of fixed penalty notices available to deal with environmental crime offences a separate Enforcement Protocol has been drawn up to cover this area of work.

**2. Report**

- 2.1 The Environmental Health and Licensing Enforcement Policy hereafter referred to as the Environmental Services (ES) Enforcement Policy last updated in 2015 has been reviewed and updated to reflect changes in legislation and in particular the expanded use of fixed penalty (FPN) and financial penalty notices (FPC). Members may be aware that the contents and implementation of the Environmental Services Enforcement Policy came under detailed scrutiny in the High Court in 2013 at which stage both the policy and its implementation was found to be compliant. See weblink below:

[https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2013/898.html&query=\(title:\(+barons+\)\)+AND+\(title:\(+v+\)\)+AND+\(title:\(+staines+\)\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2013/898.html&query=(title:(+barons+))+AND+(title:(+v+))+AND+(title:(+staines+)))

- 2.2 The latest version of the ES enforcement policy is at **Appendix A** together with an updated version of the Private Sector Housing enforcement policy at **Appendix B** which, whilst coming under the umbrella of the ES policy specifically deals with private sector housing legislation, including houses in multiple occupation (HMO) matters.
- 2.3 In addition given the number of fixed penalty notices available to deal with environmental crime offences, a separate Enforcement Protocol has been drawn up to cover this area of work **Appendix C**

**3. Policy framework implications**

- 3.1 The Council has a statutory duty as to enforce relevant legislation. Under section 222 of the Local Government Act 1972, a local authority has the power to prosecute (or defend) legal Proceedings.

3.2 The Council must have regard to any Statutory Guidance issued in relation to determining the level of fixed penalty notices or civil penalties.

**4. Legal Implications**

4.1 There is no statutory duty placed on the local authority to have regard to centrally issued guidance in formulating and implementing its enforcement policies.

**5. Equality Implications**

5.1 There are no Equality Implications arising from this report. The Enforcement Policy applies equally to all residents and businesses unless exempted by legislation with regard to a positive impact on equality e.g. dog fouling were it a blind person in charge of the dog or allowed for under a RBC specific enforcement policy or protocol such as not issuing litter fines to under persons under eighteen years of age.

**(To resolve)**

**Background papers**

The Environmental Health Enforcement Policy (Current edition April 2015)

E&S committee report 29 June 2016 Environmental Protection Act 1990: Enforcement of Part II – Waste on Land

Housing committee report 2 September 2015, Private Sector Housing (Enforcement policy)

**RUNNYMEDE BOROUGH COUNCIL**

**ENVIRONMENTAL SERVICES ENFORCEMENT POLICY**

**1. Background**

A clear Enforcement Policy which is monitored, regularly reviewed and updated is required to ensure that all those who work, live and visit the Borough of Runnymede have a clear understanding of the Environmental Services enforcement standards.

**2. Introduction**

Runnymede Borough Council Environmental Services enforcement policy covers;

- Food safety, health & safety at work, private water supplies, infectious disease control, and statutory nuisance. Control of certain permitted processes, pest control, contaminated land, air quality and seizure of stray dogs.
- Alcohol licensing (premises and personal licences), gambling, lotteries and scrap metal collectors. Animal welfare (licensing), tattooing and other skin piercing activities and park home site licensing
- Private sector housing including houses in multiple occupation.
- Domestic waste collection, fly tipping, abandoned vehicles and littering

2.1 Enforcement includes council officers giving advice, carrying out visits and inspections, responding to complaints and service requests, assisting consumers and businesses to comply with statutory duties, licensing requirements and taking formal enforcement action where warranted against those who breach the law.

2.2 The primary aim of our enforcement policy is to protect the health, safety and welfare of the public and the environment in its widest sense.

2.3 The enforcement policy outlines how the wider Environmental Services carries out its enforcement role when delivering the various services outlined above and sets out what businesses, residents and visitors can expect from Enforcement Officers. In addition to the main policy individual areas of work may also be covered by a more focused enforcement protocol or policy such as;

- The Private Sector Housing Enforcement Policy
- Enforcement of Household Waste Receptacles Policy

Runnymede may also from time to time publish and enforce 'area or activity specific' policies for example under a Public Spaces Protection Order Enforcement Protocol.

2.4 All policies and protocols will be reviewed and updated at least every five years to take into account new legislative requirements, guidance from central government, respective national bodies and best practice.

**3. Objectives of the Enforcement Policy**

3.1 To ensure protection of the public and the environment, from unsafe food, premises, work practices, products, unscrupulous and illegal traders, noise, atmospheric or land pollution, public health pests, stray dogs, unsafe accommodation or rogue landlords.

- 3.2 To stop, control and prevent any untoward practices prejudicial to the health of the public and thereby protect the health of the public.
- 3.3 To achieve compliance through informal action and through an enabling and supportive relationship with businesses and the public. Formal enforcement procedures, including prosecution, will only be used where in the opinion of the Council or its officers there is a serious or imminent risk of injury to health or personal injury, a blatant disregard for the law, deliberate intent or serious negligence or in accordance with a specific protocol.
- 3.4 To ensure a consistent approach with regard to openness, helpfulness and proportionality to the risk posed.
- 3.5 To promote and maintain a consultative and participatory relationship with businesses, consumers and service users.
- 3.6 To have a better informed community and thus reduce the need to rely on regulatory intervention for compliance with legislation.
- 3.7 The Environmental Services are committed to implementing policies and procedures that subscribe to principles of good enforcement. In forming this policy due consideration has been paid to the Department for Business Innovation & Skills Better Regulation Delivery Office (BRDO), Regulators' Code April 2014 and centrally issued guidance.

#### 4. **The Key Aspects of the Policy**

- 4.1 All enforcement actions and investigations work whether formal or informal will be undertaken in accordance with and are based on applicable legislation and guidance including
  - Relevant Acts of Parliament
  - Codes of Practice made under the key relevant acts for each enforcement area e.g. Home Office Code of Practice Powers of Entry December 2014
  - Central & National Guidance from the Food Standards Agency (FSA) and the Local Government Association (LGA), The Health & Safety Executive (HSE), The Local Authority Unit (LAU), The Department of Environment, Food & Rural Affairs (DEFRA), The Environment Agency (EA), The Chartered Institute of Environmental Health (CIEH) and The Department for Business, Energy & Industrial Strategy (BEIS).
  - Benchmarking exercises, Best Practice arising from liaison groups.

#### 5. **Prevention and Promotion**

It is recognised that most businesses, licensees, landlords and individuals want to comply with the law and the Environmental Services actively seeks to promote awareness about the standards it applies through: -

- routine inspections of premises and practices
- investigatory visits in response to complaints
- persuasion, advice, information and training
- where requested and if required requested, providing translation where English is not the principal language of communication
- rewarding business operating exceptionally high standards of food hygiene under the FSA (Food Hygiene Rating Scheme) FHRS via positive endorsement via the Council's twitter account and/or other social media

- taking firm action against blatant breaches of the law

## 6. **Enforcement Actions**

In the event of non-compliance with statutory requirements, a range of enforcement actions are available, these include: -

### 6.1 **Informal Action**

Use of compliance advice, guidance and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an 'informal caution') will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. However any failure to honour voluntary undertakings is taken very seriously and formal enforcement action is likely to result.

### 6.2 **Formal Action**

6.2.1 **Statutory notices:** Notices requiring compliance immediately or within a specified time, and prosecutions will normally be confined to serious breaches of the law. For breaches posing a nuisance or considerable risk to the health of the public, specific individuals or the environment The Council will serve either an improvement or abatement notice requiring compliance immediately or within a specified time. Where there is imminent risk of serious personal injury, prohibition powers in the form of prohibition notices/orders will be used to stop the activity or close down the premises. These powers may involve seizure and detention of the offending equipment where necessary. In addition the proprietor/landlord or individual responsible may be prosecuted in the Magistrates Court.

6.2.2 **Simple Caution where an offence is admitted:** This procedure is an alternative to taking action in the Courts. Once a simple caution has been administered, should a further offence be committed, it may be cited in any subsequent Court proceedings. A Simple Caution is a serious matter and it is recorded by the Council and where applicable on the Police National Computer. Cautioning is recognised as an increasingly important way of keeping offenders out of Court and in many circumstances reducing the risk that they will re-offend. In considering and issuing simple cautions we will have regard to the Ministry of Justice Guidance April 2015 – Simple Cautions for Adult Offenders. The caution will be administered by a Senior Officer who has been designated a 'Cautioning Officer' (e.g. the Corporate Director of Planning and Environmental Services or the Environmental Health and Licensing Manager).

6.3 **Fixed Penalty Notices (FPN)/Penalty Charge Notices (PCN):** The Council has powers to issue fixed penalty notices in respect of some breaches of legislation. A fixed penalty notice is not a criminal fine, and does not appear on an individual's criminal

record. If a fixed penalty is not paid, The Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach The Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at The Council's discretion. With respect to litter and dog fouling issues The Council via its contractors operates a 'zero tolerance' policy, a FPN will be offered in all cases. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

**6.4 Prosecutions** The decision to prosecute does not preclude the issue of legal notices as well. Prosecutions have a preventative role in drawing attention to the need for compliance and the maintenance of good standards. We will apply the principles of "Criminal Procedures & Investigations Act 1996" the "Crown Prosecutors" statutory Code of Practice and the Regulators' Code as well as Home Office Guidance, when making decisions on the course of action to be taken in any particular case.

**6.4.1 In deciding whether to prosecute or not, we will consider the following matters: -**

**6.4.1.1 The gravity of the offence/s, for example whether: -**

- there has been blatant disregard for the law, deliberate intent or serious negligence
- there are persistent poor standards and/or malpractice
- there has been ill health as a result of a substantial legal contravention
- a particular contravention has caused serious public alarm
- those affected are particularly vulnerable
- failure to comply with the requirements of notices issued

**6.4.1.2 The general record and approach of the offender, for example: -**

- repeated breaches of legal requirements or license conditions or various breaches of a multiple concern and, where it appears that an individual or a company is neither willing nor able to deal adequately with these
- failure to comply with statutory notices where matters of significant concern are persistent rather than transitory
- previous convictions or cautions which are relevant to the offence
- offending was or is likely to be continued, repeated or escalated

## **7. Our Standards**

**7.1 Consistency: We will: -**

- carry out our duties in an efficient, fair, courteous and consistent manner
- have in place in-house procedures and arrangements which are reviewed and updated regularly to promote consistency in the way we deliver the service

- have in place effective arrangements for liaison with other Local Authorities and enforcement bodies such as LGR, FSA, HSE, Fire Authority, Police Authority, EA, etc., particularly where there is a shared enforcement role.
- draw up yearly activities, priorities and targets, setting out the level of service and performance the public and businesses can expect to receive through our Annual Service Plans
- publish our performance against the plans annually

## 7.2 **Openness: We will: -**

- provide information and advice in plain language on the rules we apply
- be open about how we set about our work, including the charges that we set
- discuss general issues and specific compliance failings or problems
- provide an opportunity to discuss the circumstances of a case and, if possible, resolve points of difference before enforcement action is taken (unless immediate action is required)
- give an explanation of why immediate action is required
- provide information on the rights of appeal against formal action

## 7.3 **Helpfulness: We will: -**

- actively work with individuals, businesses, especially small and medium sized businesses, to advise on and assist with compliance
- provide a courteous and efficient service and our staff will identify themselves by name
- provide a contact point and telephone number for further dealings with us and we will encourage individuals and businesses to seek advice/information from us
- deal with applications for licences, registrations and consents in accordance with service standards
- ensure that wherever practicable our enforcement services are effectively coordinated to minimise unnecessary overlaps and time delays
- have provision to visit a business out of normal office hours at times when the business is available
- attempt to provide translation and interpretation facilities

## 7.4 **Proportionality: We will: -**

- minimise the costs of compliance for individuals and businesses by ensuring that any action reflects the risks involved
- as far as the law allows, take account of the circumstances of the case and the attitude/actions of the individual or organisation when considering action
- take particular care to work with individuals, small businesses, voluntary and community organisations so that they can meet their legal obligations without unnecessary expense
- ensure that information given to a business, landlord or individual, whether written or verbal, will clearly identify those requirements which are mandatory and those which are advisory or are recommendations of best practice

## 8. **Publicity**

- 8.1 The Council may publicise cases of businesses, licensees, landlords and individuals it successfully prosecutes for relevant offences as well as those it rewards for implementing very high standards. Names of companies and individuals convicted of offences may be

published on the Council's website or through social media. Cases subject to an active appeal will not usually be published, until the applicable appeals process has elapsed.

8.2 Information related to enforcement notices issued by the Council may appear on the Council's website or social media outlets. Notices which are withdrawn or subject to an active appeal will not be published.

**9. Consultation With Customers: We will: -**

- endeavour to make everyone in the Borough of Runnymede aware of our enforcement standards and policy, and assist them to comply with the law.
- consult businesses and other interested parties on our enforcement policy regularly and our Annual Service Plans.
- consult businesses, residents and service users for feedback on our service and policies.

We want to provide the best service possible. Help us to achieve this by telling us when you are satisfied with our service and when you are not. We welcome any suggestions as to how the service may be improved.

**10. Complaints and Appeals**

We subscribe to the Council's Corporate Complaints and Appeals Procedure. In addition, the majority of legislation enforced by officers of the Environmental Health, Licensing or Private Sector Housing Service has an in built appeals procedure prescribed within.

If you do not agree with any action taken by an officer you should contact the Environmental Health and Licensing Manager whose details are given below.

If you feel we have given an unsatisfactory service contrary to these criteria, you can complain direct to:

**Environmental Health and Licensing Manager  
Runnymede Borough Council  
Runnymede Civic Centre  
Station Road  
Addlestone  
Surrey KT15 2AH  
Tel. No. 01932 425734**

**This Enforcement Policy supersedes and replaces all earlier enforcement policies relating to Runnymede Borough Council Environmental Health Services. January 2019**



**Environmental Services**

**Private Sector Housing Enforcement Policy**

DRAFT

January 2019

## **1. Background**

A clear Enforcement Policy which is monitored regularly reviewed and updated is required to ensure that all those who work and live in the Borough of Runnymede have a clear understanding of the Private Sector Housing section's enforcement standards.

## **2. Introduction**

The aim of this policy is to set out how the Private Sector Housing Team deal with hazards found in private sector dwellings and the licensing of Housing in Multiple Occupation (HMO). Whilst this policy is specific to private sector housing issues the document should be read in conjunction to the overarching Environmental Services Enforcement Policy.

The Private Sector Housing Team is part of the Environmental Services of Runnymede Borough Council. The aim of the teams work is to ensure the standard of private sector housing is safe and suitable for the occupants and that premises subject to Housing in Multiple Occupation (HMO) licensing are compliant.

The aim of this enforcement policy is to ensure that people who own and rent property within the borough of Runnymede are aware of what they can expect from officers of the Private Sector Housing Section. The policy is designed to ensure fair, consistent, and transparent delivery of enforcement activity from the Private Sector Housing Team.

The Private Sector Housing Section raises housing standards by responding both reactively and proactively.

In the case of reactive enforcement work, the section responds to:

- Complaints from private sector tenants who contact the Council complaining about deficiencies found in the properties they live in;
- Complaints about private sector properties that are causing problems for neighbouring occupiers;
- Requests for service from private sector landlords;
- Requests for service from owner occupiers.

Proactively the private sector housing team:

- Identifies and inspects houses in multiple occupations (HMO's) by carrying out surveys of the district and prioritising inspections by focusing on high risk HMO's.
- Operates a mandatory HMO Licensing Scheme for HMO's.
- Enforces private sector housing related legislation e.g. The Housing Act 2004, The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 and the Redress Scheme for Lettings Agents Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

## **3. Principles of Good Enforcement**

The Private Sector Housing Section is committed to implement policies and procedures that subscribe to principles of good enforcement. In forming this policy due consideration has been paid to the Department for Business Innovation & Skills Better Regulation Delivery Office (BRDO), Regulators' Code April 2014 and centrally issued guidance.

## **4. Approach to enforcement action**

There are two types of enforcement work the Private Sector Housing Team engage in: Formal and Informal.

#### **4.1 Informal Action**

Informal Action will be considered where one or more of the following circumstances apply;

- there is no legislative requirement to serve formal notice or an order and
- the circumstances are not serious enough to warrant formal action;
- past history suggests informal action will achieve compliance;
- there is confidence in the management or the individual;
- the consequences of non-compliance will not pose a significant risk to occupiers or others.

Informal action usually involves officers undertaking one or more of the following actions:

- No action where complaints or allegations of breaches in housing legislation are unsubstantiated or formal action is inappropriate in the circumstances;
- Verbal advice;
- Verbal request for action;
- Written request for action;
- Written warning of formal action if faults are not corrected.

Circumstances in which informal action is likely to be appropriate include situations where:

- The landlord is willing to undertake the required remedial action;
- The act or omission is not serious enough to warrant formal action;
- The individual or company's past history suggests informal action will achieve compliance;
- The Officers confidence in the management of the property or premises is high;
- Standards are generally good suggesting a high level of awareness of statutory responsibilities; and
- The consequences of non-compliance with standards are acceptable e.g. minor matters, or the time period allowed to seek compliance does not present a significant risk to public health.

A re-visit may be carried out where informal action has been agreed to confirm that identified faults have been corrected.

#### **4.2 Formal Action**

The use of formal enforcement action will at all times be consistent with the principles set out in the Regulators Compliance Code. Formal action usually consists of one or more of the following:

- Service of appropriate statutory notices/orders;
- Undertaking emergency remedial works;
- Undertaking works in default of a statutory notice;
- Issuing formal (simple) cautions;
- Civil penalties;
- Prosecution;

In coming to a decision Officers will in every case have regard to:

- The seriousness of the hazard;
- Whether the Council has a duty or a discretionary power to take action;
- The individual's or company's past history in terms of compliance;
- The Officers confidence in the management of the property or premises;
- The consequences of non-compliance in terms of risk to people, property or the environment;
- The likely effectiveness of the various enforcement options; and
- The risk to public health or the health and safety of the occupant(s).

### Statutory notices/orders

Appropriate statutory notices/orders that may be served include;

- Hazard awareness notices
- Improvement notices
- Prohibition orders
- Emergency prohibition orders
- Demolition orders

### Power to Take Action without Agreement

Where the Council considers that reasonable progress is not being made for completion of an action specified in an improvement notice, the Council may consider serving a notice before entering the premises for the purpose of taking remedial action in relation to the hazard.

The Council will take action to recover expenses in all cases where action is required in default of a statutory notice.

### Simple Caution where an offence is admitted

The use of a simple caution offers an alternative to prosecution and will be considered during any decision to prosecute. Before issuing a caution, the following conditions must be satisfied:

- There must be evidence of guilt sufficient to give a realistic prospect of conviction if the case were to be taken to prosecution
- The offender must understand the significance of the simple caution and consent to it
- The offender must admit the alleged offence by signing a simple caution form.

A simple caution is a serious matter, which will influence any future decision should the company or individual offend again. Where the offer of a simple caution is refused, a prosecution will generally be pursued.

### Civil Penalties

Under s249A of the Housing Act 2004 the Council may decide to impose a financial penalty as alternative to prosecution for the following offences under the Housing Act 2004 (as amended):

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of HMOs (section 72);
- Offences of contravention of an overcrowding notice (section 139);
- Failure to comply with management regulations in respect of HMOs (section 234)
- Breaching a Banning Order (Housing and Planning Act, section 23)

The amount of a financial penalty is determined by the Council but it must not be more than £30,000 for each offence.

### Prosecution

Consideration to prosecute for breach of any offence will be based on the Code for Crown Prosecution Guidance and in particular regard will be given to the following:

- There is sufficient and reliable evidence that an offence has been committed;
- Recklessness, obstruction or assault involved;
- There is a realistic prospect of conviction;
- There are public interest factors.
- Consideration of personal circumstances of the offender;
- The likelihood of a significant sentence;
- The need to deter.

### **4.3. Additional enforcement powers**

In addition to the formal powers detailed the Council may also instigate a number of other enforcement powers including;

- Declaration of clearance area. A clearance area is an area that is to be cleared of all buildings. The Council may declare an area to be a clearance area if the majority of the buildings in the area are classed as unfit or by virtue of their bad arrangement, are dangerous. The Council is required to consult on the declaration of a clearance area and publish its intentions. Owners and in certain cases occupiers of properties are compensated accordingly.
- Compulsory purchase orders (CPO) used for regeneration and urban renewal, and may be utilised by the section as a last resort to facilitate bringing an empty dwelling into use, or as an enforcement tool for dealing with seriously deficient premises. CPO will only be considered by the Council when all other appropriate modes to resolve the problem have been exhausted
- Enforced sale of a property. The legislation allows the local housing authority to recover charges under section 49 (charges for certain enforcement actions) of the same Act by the enforced sale or lease of a property

### **5. Power of Access**

Section 239 of the 2004 Act gives the Council power of entry to properties in pursuance of the duties under parts 1 to 4 and part 7 of the Act when certain conditions are met. Officers of the Council will have written authorisation when exercising power of access which sets out the purpose for which entry is authorised and will give at least 24 hours to the owner or occupier of the premises that they intend to enter.

Section 240 enables a Justice of Peace to issue a warrant for admission to premises. This includes power of entry by force if necessary. This power will only be exercised when entry under section 239 has been refused; or the property is empty and immediate access is necessary; or prior warning is likely to negate the purpose of access.

### **6 Policy Review**

This enforcement policy will be reviewed at least every five years.

### **7. Complaints and Appeals**

We subscribe to the Council's Corporate Complaints and Appeals Procedure. In addition, the majority of legislation enforced by officers of the Private Sector Housing Service has an in built appeals procedure prescribed within.

If you do not agree with any action taken by an officer you should contact the Private Sector Housing Manager whose details are given below.

If you feel we have given an unsatisfactory service contrary to these criteria, you can complain direct to:

**Private Sector Housing Manager  
Runnymede Borough Council  
Runnymede Civic Centre  
Station Road  
Addlestone  
Surrey KT15 2AH  
Tel. No. 01932 425888**

This Enforcement Policy supersedes and replaces all earlier enforcement policies relating to Runnymede Borough Council Private Sector Housing Section

# **Runnymede Borough Council's Enforcement Protocol on the use of Fixed Penalty and Civil Penalty Notices for Environmental Offences**

## 1. Introduction

1.1 Both the Environmental Protection Act 1990 and the Clean Neighbourhoods and Environment Act 2005 (and associated regulations) provide local authorities with an extended range of fixed penalty notices to address low-level environmental crime and anti-social behaviour that has a detrimental impact on our neighbourhood. Subsequent legislation provided for the use of civil penalty notices for domestic waste receptacle offences and littering from vehicles.

1.2 The quality of the local environment affects and reflects the well-being of the people living there. Whether it's a town centre, local park or street where we live, we all want to feel that these are attractive and safe places to be. Runnymede Borough Council (RBC) and its partners are committed to providing and maintaining a cleaner, safer and visually more appealing environment for all our residents and visitors.

1.3 In order to support this commitment the Council, recognise the key role that “good” enforcement practice has in promoting, encouraging and regulating the behaviour of businesses and individuals to secure of a clean and safe environment.

1.4 The Government actively encourages the use of fixed penalty and civil penalty notices by local authorities and other agencies for offences where they can be served. Experience has shown that the public generally welcomes the use of fixed and civil penalties, provided that they are issued sensibly, enforced even-handedly and are seen as a response to genuine problems.

1.5 Fixed penalty and civil penalty notices are one of a number of enforcement tools used to tackle environmental crime and as a means to change offending behaviour, and are used as an alternative to prosecution. This protocol should ensure an effective, consistent and targeted approach to environmental enforcement across the entire Council.

1.6 The use of fixed penalty and civil penalty notices for the offences outlined in this document will enhance of effective enforcement of environmental offences. This approach means that costly court cases should be avoided however, it will also ensure that court action is taken where appropriate to do so.

## 2. Aim

2.1 The aim of this protocol is to apply the general principles of enforcement in respect of fixed penalty and civil penalty notices to ensure that any enforcement action is transparent, accountable, proportionate, consistent and targeted.

## 3. Objectives

3.1 To provide a consistent borough-wide enforcement regime to address lower-level environmental crime.

3.2 To provide a cost-effective and timely enforcement service that reduces the burden on the Courts and reduces the time between the offence and the penalty.

3.3 To increase public awareness of environmental offences in Runnymede.

## 4. Delegations

4.1 All Officers who issue fixed penalty and civil penalty notices for any of the offences covered by this protocol shall be authorised in writing under delegated authority by the Corporate Director of Planning and Environmental Services or the Environmental Health and Licensing Manager. Authorised officers are expected to provide evidence of their authorisation when requested to do so at any time whilst operating under this protocol.

## 5. Offences

5.1 The relevant environmental offences covered by this protocol are detailed at page 7 of this protocol

## 6. Appropriate Use of fixed and civil penalty notices

6.1 Fixed penalty and civil penalty notices shall only be used for the offence for which they were created.

6.2 An element of discretion may be used by the investigating officer in issuing a fixed penalty or civil penalty notice dependent of any prevailing policy covering specific environmental crimes for instance, active enforcement of specific crime areas by RBC or its contractors e.g. a zero tolerance policy in relation to littering offences.

6.3 A fixed penalty or civil penalty notice shall only be issued where there is sufficient admissible evidence to support a prosecution, including offences directly witnessed by an authorised officer, or where there is reliable witness testimony.

6.4 A fixed penalty or civil penalty notice shall only be issued where the enforcement officer is confident that the correct identity details have been provided. Failure to supply a name and address, or to supply false details, to an authorised officer is a criminal offence and RBC will work with Surrey Police, where relevant, to ensure that correct details are obtained.

6.5 All reasonable efforts will be made not to issue fixed penalty notices to 'vulnerable' persons. A vulnerable person is defined for the purpose of this protocol as someone who leads a 'chaotic' lifestyle, such as the homeless, or those that suffer from a mental impediment.

6.6 Fixed penalty notices shall not be issued to persons who are not resident within the United Kingdom.

6.7 Where the offence that has been committed is considered to be too serious in scale or effect, in accordance with published government guidance a fixed penalty notice may not be appropriate.

6.8 A fixed penalty or civil penalty notice shall not be issued where the offence committed is so small or trivial in its effect that the action may not be in the public interest, in accordance with published government guidance.

6.9 A fixed penalty notice shall not be issued where the offence has been committed by someone that has previously received a fixed penalty for the same offence in the last 12 months. Prosecution proceedings shall be instigated directly in respect of repeat offenders.

6.10 A fixed penalty notice should not be issued where false identity details have been provided by the offender, and where the enforcement officer later determines the correct details. In this event, the use of a fixed penalty notice is inappropriate and as such prosecution proceedings should be instigated directly.

## 7. Service of Fixed Penalty Notices

7.1 In order to achieve good quality control (i.e. verification of name and address, repeat offender check etc.) and to minimise the risk of a confrontational situation and the associated hazards, the

majority of fixed penalty notices shall generally be served through the post. 'On-the-spot' notices may still be issued by any officer of a contractor or third party working on behalf of RBC who is authorised to do so following appropriate checks and verification of name and address details.

7.2 A fixed penalty notice may be served up to a maximum of three months after the date of the offence, where there is a justifiable reason for the delay. A civil penalty notice in respect of littering from a vehicle must be given within a period of 35 days beginning with the day on which the littering offence in question occurred.

## 8. Young people

8.1 Unless specifically allowed for in the applicable policy/protocol fixed penalty notices will not be issued to anyone under the age of 18.

8.2 Any person under the age of 18 who commits a relevant environmental offence shall receive an official warning letter.

## 9. Appeals

9.1 Unless catered for in the legislation i.e. littering from vehicles noticed served on a register keeper, there is no statutory right of appeal to a fixed penalty notice. However, all recipients of a fixed penalty notice for an environmental offence shall be offered the opportunity to appeal to RBC via a non-statutory, informal appeals process (in some cases this may be handled by the contractor working on behalf of RBC).

9.2 All informal appeals should be directed to [environmentalhealth@runnymede.gov.uk](mailto:environmentalhealth@runnymede.gov.uk) or via post to Environmental Health and Licensing at the Runnymede Civic Offices unless, specifically directed otherwise on the actual notice itself. Full details of all appeals and decisions shall be recorded and used in future decisions to ensure consistency in similar situations.

9.3 Where an appeal is refused the appellant shall be informed by RBC or its agents within 10 working days of the decision and the original payment terms, including the opportunity to pay the charge at the discounted rate, shall apply from the date of letter notifying the offender of the results of the decision.

9.4 Where an appeal is upheld the appellant shall be informed by RBC or its agents within 10 working days of the decision and the fixed penalty notice shall be withdrawn or cancelled depending on the circumstances.

## 10. Cancellation of Fixed Penalties

10.1 RBC (or its agents) may cancel fixed penalty notices in the following circumstances;

- a. Where a person issued with a fixed penalty notice falsely provides the identity details of another person, and that person then successfully challenges the notice on that basis; or
- b. Where further information comes to light about the personal circumstances of the recipient of a fixed penalty notice, who it later transpires is 'vulnerable'.
- c. Fixed penalty notices may not be cancelled, but may be withdrawn where there are relevant extenuating circumstances as determined by RBC via the non-statutory appeals process.
- d. For the purpose of reporting, a withdrawn fixed penalty notice shall count as an unpaid fixed penalty notice for which no further action has been taken.
- e. RBC may cancel a civil penalty notice at any time by informing the recipient in writing.

## 11. Levels of fixed penalty notices

11.1 RBC is permitted to set its own level of penalty for some specified environmental offences within a range prescribed within the relevant legislation.

11.2 RBC is also permitted to set its own level of penalty discount for early payment, the minimum value of which is prescribed normally within the relevant legislation

11.3 Payment of either the full or discounted fixed penalty charge within the specified time period will discharge the offender's liability to conviction for the offence.

11.4 Unless provided for elsewhere the full charge shall be paid after 14 days following the date of the fixed penalty notice. The discounted charge will be applied if payment is made within the set

period for early payments e.g. if paid within 10 days or 14 days of the notice being issued (see page 7).

11.5 The level of fixed penalties for environmental offences may be subject to review within the prescribed limits at any time.

## 12. Payment Options

12.1 Unless provided for under separate arrangements i.e. notices issued by a contractor of RBC – payment of fixed penalty notices can be made either

- a) In person at the RBC offices via the self-payment machines (the notice reference and cost code specified on the notice will be required)
- b) By phone during working hours on 01932 838383 option 4 (notice reference and cost code specified on the notice will be required).
- c) Payment by instalment may be considered on a case by case basis, however any failure to make the appropriate payments will result in prosecution for the original offence.

## 13. Prosecution

13.1 Where the fixed penalty notice remains unpaid, or partially paid, prosecution proceedings will be instigated by RBC.

## 14. Use of Receipts

14.1 Fixed penalty receipts for environmental offences will only be used to meet the cost of undertaking specific or related functions or enforcement action under the relevant legislation or to provide additional supporting services e.g. increasing the numbers of waste bins in an area.

## 15. Records

15.1 Full and accurate details of all fixed penalty notices shall be recorded at all stages from issue to closure.

## 16. Monitoring and Review

RBC Protocol on the use of Fixed Penalty Notices for Environmental Offences

16.1 This protocol shall be reviewed at least every three years, or at such time as deemed appropriate.

16.2 This protocol shall be published on the website, allowing members of the public and businesses to have the opportunity to comment on the policy and to provide feedback.

**Environmental related offences with can be dealt with via a fixed penalty notice 2018**

Description of offence	Section and legislation	Amount
Littering	s.87 Environmental Protection Act 1990 (EPA 1990)	£100 (£80 if paid within 14 days)
Littering from Vehicle ( <b>Civil penalty</b> )	s.88A EPA 1990	£100 (£80 if paid within 14 days) £200 if not paid within 28 days
Nuisance parking	s.6(1) Clean Neighbourhoods and Environment Act 2005	£100 (£80 if paid within 10 days)
Failure to nominate key-holder (within an alarm notification area) or to notify local authority in writing or nominated key-holder's details	s73(2) Clean Neighbourhoods and Environment Act 2005	£80 (£64 if paid within 10 days)
Unauthorised distribution of literature on designated land	Schedule 3A para. 7(2) EPA 1990	£100 (£80 if paid within 10 days)
Failure to produce authority (waste carrier's license)	s. 5B(2) Control of Pollution (Amendment) Act 1989	£300 (£240 if paid within 10 days)
Waste deposit offence	s.33ZA EPA 1990	Between £150 - £400 (£120 - £320 if paid within 10 days)
Failure to furnish documentation (waste transfer notes)	s.34A(2) EPA1990	£300 (£240 if paid within 14 days)
Breach of a duty of care by householder	s.34(2a) EPA 1990	Either £150 or £400 (£120 - £320 if paid within 10 days)
Offences in relation to domestic waste receptacles ( <b>Civil penalty</b> )	s. 46A EPA 1990	£80 (£40 if paid within 14 days)
Offences in relation to commercial waste receptacles	s. 47ZA EPA1990	£100 (£80 if paid within 14 days)
Abandoning a vehicle	s. 2A (1) Refuse Disposal (Amenity) Act 1978	£200 (£160 if paid within 10 Days)
Noise from dwellings	s. 8 Noise Act 1996	£80 (£64 if paid within 10 days)
Noise from licensed premises	s. 8 Noise Act 1996	Amount fixed at £500
Offences in relation to community protection notices e.g. graffiti and fly posting	s. 58 Anti-Social Behaviour, Crime and Policing Act 2014	£100 (£80 if paid within 14 days)
Offences in relation to public space protection orders e.g. dog control	s. 68 Anti-Social Behaviour, Crime and Policing Act 2014	£100 (£80 if paid within 14 days)

## 7. AIR QUALITY UPDATE - (ENVIRONMENTAL SERVICES)

### **Synopsis of report:**

**To provide the Committee with estimated costings for the purchase of an analyser that could measure particulate matter at and below the 2.5 micrometre level (PM<sub>2.5</sub>).**

**In addition to inform Members of updated air quality information within the Borough as set out in the Runnymede Borough Council 2017 Air Quality Annual Status Report (ASR) which was submitted to the Department for Environment, Food & Rural Affairs (Defra), in December 2018 and an overview of the Government's latest Clean Air Strategy.**

### **Recommendation:**

**Members are informed the estimated costs for a PM<sub>2.5</sub> analyser together with the contents of the Runnymede Borough Council 2017 Air Quality Annual Status Report (ASR) and the Government's Clean Air Strategy.**

### **1. Context of report**

- 1.1 This report provides Members with estimated costs for an analyser to sample particulate matter at and below the 2.5 micrometre level (PM<sub>2.5</sub>) requested by Members following the Environment and Sustainability Committee of 22 November 2018; It was resolved that 'Officers cost and identify the method, cost and location of sampling the levels of PM<sub>2.5</sub> in the Borough in readiness of the Government's targets to be reached in 2020'.
- 1.2 In addition the report provides Members with updated Air Quality information within the Borough in the form of The Runnymede 2017 Air Quality Annual Status Report (ASR) submitted to Defra in December 2018 together with an overview of the Government's Clean Air Strategy published on 14 January 2019.

### **2. Report**

- 2.1 Following a report to the Committee in November 2018 Members requested Officers to cost and identify methods for the monitoring of PM<sub>2.5</sub> within the Runnymede area. Particulate matter is a complex mixture of material emanating from a wide range of diverse sources. The term is used to describe solid or liquid particles suspended in the atmosphere. It includes materials referred to as dust, smoke/soot and compounds, as well as pollen and sand/soil particles. Particulate matter may be directly emitted into the atmosphere or subsequently formed by the reaction of atmospheric gases.
- 2.2 PM<sub>2.5</sub> are very fine inhalable particles, with diameters that are 2.5 micrometers and smaller. Since PM<sub>2.5</sub> is small in size they have the ability to penetrate deep into the respiratory tract and have been linked to effects such as: cardiovascular symptoms; cardiac arrhythmias; heart attacks; respiratory symptoms; asthma attacks; and bronchitis.
- 2.3. Members will be aware that there is no statutory duty placed on the local authority to monitor PM<sub>2.5</sub> under the Local Air Quality Management (LAQM) Regulations and it is

recognised by Government that the costs involved in doing so can be prohibitive (Governments technical guidance 2016. Para 2.61 TG16). The reference method for measuring PM<sub>2.5</sub> is described within EN 14907 which effectively defines what is meant by PM<sub>2.5</sub> for regulatory monitoring purposes within the European Union (EU). The method is a manual gravimetric method for daily concentrations.

2.4 For local authorities looking to monitor PM<sub>2.5</sub> there are basically two options in terms of automated instruments capable of operating to the reference method, a Filter Dynamic Measurement System (FDMS) and the Beta Attenuation Monitor (BAM). The FDMS analyser generally is a more expensive monitor than a BAM monitor. As a result the costs of only a BAM monitor have been obtained and included within this report.

## 2.5 Costs

Indicative costs of a BAM monitor were provided by ET Environ one of the main suppliers of air quality equipment as follows;-

*“-A smart heated BAM1020 PM<sub>2.5</sub> unit*

*-Fan cooled BAM1020 Roadside enclosure. Dimensions 400mm(l)x430mm(d)x1135mm(h). Enclosure is supplied in green; other colours are available at an additional cost of £300.00)*

*-Delivery, installation & commissioning of the equipment by one ET Engineer over one day.*

*-One year service contract for the BAM1020 PM<sub>2.5</sub>*

***Total Price: £23,725.00”***

Further costings are required be added to this since there would be a requirement to install electrical power (£2,000), lay a base for the unit to be mounted on (£600), cost of electricity for a year's operation (£600), data collection and quality assurance checking (£1,800), and consumables (£900). (Extras costing -£5,900). The total price for the supply and installation of the monitor in first year would be **£29,625**

The above costs exclude “Officer time” to prepare a quotation exercise for the purchase of all the equipment plus arrange for all the other peripheral aspects required e.g. base construction contract, electrical power supply, quality assurance /data check provider. A provisional sum needs to be added to allow for the procurement costs and general supervision/running of the site cost. A tentative figure of £4,500 has been suggested for the Procurement Officer time costs and operating the site for the first year and a provisional sum of £1,500 per year thereafter for the ongoing Officer input in order to oversee the functioning of the analyser and its support services. = **£6,000**

In summary total costs for the first year would be as follows;-

1. Costs of a PM<sub>2.5</sub> analyser and initial installation costs = **£29,625**
2. Procurement, running costs and projected officer costs for year one = **£6,000**

Total cost year one = **£35,625**

Running costs per year thereafter; - electricity cost to run monitor (£600), data collection and quality assurance checking (£1,800), servicing / breakdown cover (£1,500), and consumables (£900) plus officer costs of £1,500 = **£6,300**

Members are made aware that dependent on the intended purpose of monitoring e.g. single point or Borough wide coverage, effective monitoring may require more than one analyser unit.

#### Monitoring location

Whilst the equipment can be readily moved from one site to another each site location has to be suitable in terms of the following;

- a. Relatively secure site in order to prevent tampering or vandalism.
- b. Ability to be able to supply the monitor with an electrical supply.
- c. Analyser and housing mounted on a suitable hard standing.
- d. Suitable access to facilitate routine servicing and maintenance.
- e. Land owner's permission to site the analyser on their land.

### 3. **Runnymede Air Quality Annual Status Report and Government Clean Air Strategy**

- 3.1 Members are informed that the 2017 Runnymede Air Quality Annual Status Report (ASR) was submitted for Defra consideration on the 29 December 2018. The report fulfils Runnymede's obligations with respect to managing the AQMA's within its area. A hard copy of the ASR report along with the latest Government Clean Air Strategy published on 14 January 2019 can be found in the Member's Room for reference purposes. The latest Clean Air Strategy which can also be viewed at <https://www.gov.uk/government/publications/clean-air-strategy-2019> reports the Government investing £10 million in improving modelling, data and analytical tools to give a more precise picture of the current and future air quality and the impacts of policies to improve it. PM<sub>2.5</sub> being one of 5 pollutants that the Government intends to focus on going forward.

### 4. **Policy framework implications**

- 4.1 PM<sub>2.5</sub> is not a pollutant that RBC has a direct requirement to monitor within the current Air Quality obligations placed on it. The Government have indicated that they are confident that the UK's targets for PM<sub>2.5</sub> for the year 2020 will be achieved.

### 5. **Legal Implications**

- 5.1 There is no statutory duty placed on the local authority to monitor PM<sub>2.5</sub> under the Air Quality Standard Regulations 2010.

### 6. **Equality Implications**

- 6.1 There are no Equality Implications arising from this report.

### 7. **Conclusion**

- 7.1 Given the Government's latest Clean Air Strategy includes PM<sub>2.5</sub> monitoring coupled with the substantive costs of the purchase and operation of the appropriate equipment, the overall value and outcome of Runnymede undertaking such monitoring at this stage needs careful consideration.

**(For information)**

## Background papers

Air Quality (Environmental Services) Report to Environment and Sustainability Committee 22 Nov 2018  
Defra Clean Air Strategy 2019

### 8. **DUTY OF CARE, AS RESPECTS WASTE (FIXED PENALTIES) – (ENVIRONMENTAL SERVICES)**

#### **Synopsis of report:**

**To inform the Committee of the coming into force on the 7 January 2019 of The Environmental Protection (Miscellaneous Amendment) (England and Wales) Regulations 2018. The regulations insert provisions into the Environmental Protection Act 1990 (the Act) to allow an enforcement authority in England to issue a fixed penalty notice on the occupier of a domestic property for a contravention of section 34(2a) of the Act, Duty of Care, i.e. where a person has failed to comply with the duty relating to the transfer of household waste.**

**To seek Members approval for the amount of fine which the authority may specify in relation to the issuing of fixed penalty notices under the Regulations.**

#### **Recommendation(s):**

- i) Members note the coming into force of The Environmental Protection (Miscellaneous Amendment) (England and Wales) Regulations 2018 and delegate authority to the CDPES and the EH&L Manager to authorise any employees of RBC and other persons who, in pursuance of arrangements made by the authority, has the function of giving such notices, as “authorised Officers” for the purposes of giving notices under section 34(ZA) of the Act requiring the payment of fixed penalties under the same Act and associated regulations made under it; and**
- ii) Members set the amount of fixed penalty specified by the Council at two levels, £150 in respect of low level ‘duty of care’ offences e.g. single items of waste etc. and £400 in respect of higher level ‘duty of care’ offences e.g. multiple items. With a lesser amount of £120 (low level) and £320 (higher level) specified for treating the fixed penalty as having been paid if paid before the end of the period of 10 days following the date of the notice.**

#### **1. Context of report**

- 1.1 The Environmental Protection (Miscellaneous Amendment) (England and Wales) Regulations 2018 insert provisions into the Environmental Protection Act 1990 (“the Act”) to allow a waste collection authority (WCA) in England to issue a fixed penalty notice for a contravention of section 34(2a) of the Act. Section 34(2a) imposes a duty on the occupier of any domestic property in England (or Wales) to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.

1.2 In plain language, if the occupier hands over waste to an unauthorised person and that waste is then fly-tipped the domestic occupier can be issued with a fine for their failure to take reasonable precautions in ensuring that the person receiving the waste was a registered waste carrier. The new provisions provide for a fine of not less than £150 and not more than £400 as specified by the waste collection authority and £200 if no amount is specified.

## 2. Report

- 2.1 Section 34 of the Environmental Protection Act 1990 (“the Act”) imposes a ‘duty of care’ on a number of persons with respect to waste. A person who contravenes any of these provisions commits an offence and is liable to prosecution either summary or on indictment. Presently, persons importing, producing, carrying, keeping, treating or disposing of waste who breach their duty of care can be issued with fixed penalty notices (FPN’s) as an alternative to prosecution. However, occupiers of domestic properties failing in their duty of care can only be dealt with via the courts.
- 2.2. The Environmental Protection (Miscellaneous Amendment) (England and Wales) Regulations 2018 insert provisions into the Environmental Protection Act 1990 (“the Act”) to allow a waste collection authority (WCA) in England to issue a fixed penalty notice for a contravention of section 34(2a) of the Act. The new 2018 regulations will now bring the domestic occupier in line with other persons and allow for contraventions to be dealt with by the service of an FPN.
- 2.3 Where an authorised Officer of an English waste collection authority has reason to believe that a person (an occupier of a domestic property) has committed a duty of care offence in the area of the authority, the Officer may give the person a notice under the section 34ZA of the Act offering the person the opportunity to discharge any liability to conviction for the offence. Where a notice is given no proceedings may be instituted for an offence before the end of a period of 14 days following the date of the notice.
- 2.4 The new provisions provide for a fine of not less than £150 and not more than £400 as specified by the waste collection authority, to be imposed via the service of a FPN to deal with the duty of care offence (£200 if no amount is specified). Recognising fly tips can range from a single bag of waste up to a lorry load by specifying two amounts, £150 at the lower end and £400 at the upper end provides the Council with an element of discretion. If fines are paid within 10 days the amount will be reduced by 20% to £120 and £320 respectively this and is in line with the reduction applied by the Council with regard to other environmental crimes.
- 2.5 Other provisions relate to the details which must be included in the notice, the power for the Officer to require the person to whom they may serve notice on to provide the Officer with their name and address and makes it is an offence to fail to give that detail or provide false details to the Officer. The regulations also allow the authority to make provisions for treating the fixed penalty as having been paid if a lesser amount of not less than £120 is paid before the end of the period of 10 days following the date of the notice.
- 2.6 An authority may not give a person a FPN if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence. Further the waste collection authority must at the time of giving the FPN to a person give a copy of that notice to the Environment Agency and if it appears to the waste collection authority that the failure to comply with the duty of care took place in the area of another waste collection authority also give that other authority a copy of the notice. There are reciprocal arrangements in place for notices issued by the Environment Agency.

### **3. Policy framework implications**

- 3.1 FPNs are one of many enforcement mechanisms that are utilised within the RBC, EH&L Enforcement Policy, which is designed to address a range of aspects of environmental crime and to help make RBC a cleaner, greener and safer environment to live, work and play. The Enforcement Policy is used to help to ensure that resources are focused on priority areas and problems and that an appropriate balance is struck between the use of FPNs and other existing enforcement tools.

### **4. Resource implications**

- 4.1 Only Officers authorised in writing by the WCA (i.e. an employee of RBC, a person under arrangements made by the authority for this function or an employee of such a person) can issue a FPN offering the opportunity to discharge any liability to conviction for the offence to which it relates under the legislation i.e. the duty of care failure 34(2a) of the Act. All Officers involved in the process should be appropriately trained with the lead for any enforcement actions in this area being taken by Officers of the Environmental Health and Licensing section.
- 4.2 Officers are of the opinion that the introduction of a FPN as a means of dealing with domestic occupier duty of care offences provides a quick and readily enforceable mechanism for dealing with this type of offence. Higher level failures where there is blatant disregard for the law are still able to be dealt with through the courts system in line with existing RBC enforcement policies. There may be some financial resource implications associated with recovery of costs and/or in exceptional cases possible court action. Disposal of offences utilising FPN provisions are catered for in the Council's Environmental Health Enforcement Policy and are seen as part of a graduated and proportionate response to dealing with non-compliance.

### **5. Legal Implications**

- 5.1 Runnymede Borough Council is an enforcing authority in England as defined in s.1 (7) of the Environmental Protection Act 1990 and therefore has the power to impose an FPN for breach of the household waste duty of care. If an individual is considered to be a vulnerable person (for example due to age related ill-health or a mental or physical disability or divergence), the Council should give close consideration as to whether it is proportionate and in the public interest to proceed with enforcement, on a case-by-case basis.

### **6. Equality Implications**

- 6.1 There are no Equality Implications arising from this report.

### **7. Conclusions**

- 7.1 Members are asked to note the coming in to force of The Environmental Protection (Miscellaneous Amendment) (England and Wales) Regulations 2018 and authorise the CDPEs and the EH&L Manager to authorise any employees of RBC and other persons who, in pursuance of arrangements made by the authority, has the function of giving such notices, as "authorised Officers" for the purposes of giving notices under section 34ZA of the Act requiring the payment of fixed penalties under the same Act and associated regulations made under it.
- 7.2 Members are asked to set the amount of fixed penalty specified by the Council at two levels, £150 in respect of low level 'duty of care' offences e.g. single items of waste etc. and £400 in respect of higher level 'duty of care' offences e.g. multiple items. With

a lesser amount of £120 (low level) and £320 (higher level) specified for treating the fixed penalty as having been paid if paid before the end of the period of 10 days following the date of the notice.

**(To resolve)**

**Background papers**

The Environmental Protection Act 1990

The Environmental Protection (Miscellaneous Amendment) (England and Wales) Regulations 2018

The Environmental Health Enforcement Policy (Current edition April 2015)

Sentencing Council, Environmental Offences Definitive Guidelines 1 July 2014

**9. EXCLUSION OF PRESS AND PUBLIC**

**OFFICERS' RECOMMENDATION that –**

**the press and public be excluded from the meeting during discussion of the following report under Section 100A(4) of the Local Government Act 1972 on the grounds that the report in question would be likely to involve disclosure of exempt information of the description specified in paragraph 3 of Part 1 of Schedule 12A of the Act.**

**(To resolve)**

**PART II**

**Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection**

a) Exempt Information

10. Contaminated Land Investigation Update 2019

b) Confidential Information

(No reports to be considered under this heading)