

Title of Report:	Proposals to use new provisions to deal with illegal deposition of waste (fly tipping)
Committee Report Submitted To:	Environmental Services Committee
Date of Meeting:	14th May 2024
For Decision or For Information	For Decision
To be discussed in Committee	No

Linkage to Council Strategy (2021-25)	
Strategic Theme	Climate Change and Our Environment
Outcome	Increase capability to more effectively deal with illegal waste deposition (fly tipping) and set levels for relevant Fixed Penalty Notices
Lead Officer	Head of Health and Built Environment

Budgetary Considerations	
Cost of Proposal	N/A
Included in Current Year Estimates	N/A
Capital/Revenue	Unknown
Code	N/A
Staffing Costs	N/A

Legal Considerations	
Input of Legal Services Required	NO
Legal Opinion Obtained	NO

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	Yes/No	Date:
	EQIA Required and Completed:	Yes/No	Date:
Rural Needs Assessment (RNA)	Screening Completed	Yes/No	Date:
	RNA Required and Completed:	Yes/No	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	Yes/No	Date:
	DPIA Required and Completed:	Yes/No	Date:

1.0 Purpose of Report

- 1.1 The purpose of this report is to update members on new enforcement powers to deal with the illegal deposition of waste (fly tipping) under Article 4 and 5 of the Waste and Contaminated Land (Northern Ireland) Order 1997 and to set associated fixed penalty levels.

2.0 Background

- 2.1 Prior to 2023 Councils enforcement powers for fly tipping incidents lay within the Litter (Northern Ireland) Order 1994.
- 2.2 The Waste and Contaminated Land (Amendment) (2011 Act) (Commencement No.3) Order (Northern Ireland) 2022) which came into force in January 2023, gives Councils a joint responsibility with Northern Ireland Environment Agency (NIEA) to enforce two offences in relation to fly tipping.
- 2.3 The dual enforcement roles allows these offences to be enforced by either a District Council or NIEA. No additional funding has been provided to Councils to support the implementation of the new powers. These powers are discretionary for councils to use in circumstances where they choose to do so.
- 2.4 Due to a lack of clarity in demarcating these enforcement roles and a lack of agreed procedures, Council Officers have been liaising with other Northern Ireland Councils to agree a consistent and proportionate approach. As such, most Councils have deferred implementing these provisions until now. Implementation of the provisions will primarily fall to Council's Enforcement team who currently deal with litter and fly tipping incidents.
- 2.5 It has been agreed with NIEA that District Councils will take the lead role in enforcing these provisions where the amount of fly tipping is below 20 cubic meters. NIEA will take the lead enforcement role if the material deposited is more than 20 cubic meters, where there is large scale commercial operation of an unlicensed waste disposal site or when the material is deemed hazardous.

3.0 Article 4 Offence

- 3.1 Under Article 4 of the above Order a person shall not *(a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence; or (b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of (i) in or on any land, or (ii) by means of any mobile plant, except under and in accordance with a waste management licence; (c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.*

- 3.2 The offence under Article 4 is commonly referred to as fly-tipping. If a fly-tipping offence, under Article 4, is detected by an Authorised Officer the Officer may issue a Notice offering the opportunity of discharging any liability to conviction for the offence by payment of a Fixed Penalty Notice. The amount of the Fixed Penalty Notice cannot be set at less than £100 and not more than £400 and Council may offer an early payment discount.
- 3.3 Fixed Penalty Notices are available as a first option as an alternative to prosecution. In accordance with Council's Enforcement Policy any non-payment of a Fixed Penalty Notices result in legal proceedings being instigated against the offender for the original offence.
- 3.4 In the event of prosecution a person who commits an offence under this Article is liable
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £50,000 or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

4.0 Article 5 Offence

- 4.1 Article 5 of the Order imposes a *"duty of care"* on any person who imports, produces, collects, carries, treats, or disposes of controlled waste or, as a broker or dealer has control of such waste, shall take all such measures applicable to them in that capacity as are reasonable in the circumstances to prevent any contravention by any other person of Article 4 of the Order. Anyone who fails in this duty of care commits an offence.
- 4.2 Powers available under Article 5 are much broader and are more likely to involve illicit waste operations and other commercial and industrial entities. There is an extensive list of offences included in Article 5 of the Order, which would impact the volume of work and officer involvement and may require more consideration on resources needed. It is more likely, if Council were to exercise these discretionary powers, it would be done so in partnership with relevant bodies including NIEA.
- 4.3 It is proposed that Members would agree that use of Article 5 powers in relation to illicit waste operations and other commercial and industrial entities should only be implemented when there is a significant possibility of significant harm to the environment or where conditions are prejudicial to health or when there are no other means of resolving an issue other than to use Article 5 powers.
- 4.4 Notwithstanding the above, Article 5 introduces an important duty of care for householders to ensure any household waste is only collected and disposed of by responsible registered waste carriers. Previously, fly tipping investigations under the Litter (NI) Order 1994 encountered difficulty when householders claimed that an unidentified third party had been hired to

dispose of waste on their behalf as the legal burden of proof to demonstrate the offence could not be met. This loophole is now closed.

- 4.5 The legislation specifies that the level for a Fixed Penalty Notice for duty of care offences will be £300 and allows Council to offer an early payment discount. Any person who fails without reasonable excuse to comply with this duty shall be guilty of an offence and shall be liable -
- (a) on summary conviction, to a fine not exceeding the statutory maximum (£5000) and
 - (b) on conviction on indictment, to a fine.

5.0 **Considerations**

- 5.1 The new Article 4 and 5 powers will allow Council to deal with the ongoing issue of fly tipping more effectively and are a useful additional regulatory tool for small scale offending. The penalties for such offences are far greater than the current penalties under the Litter (N.I.) Order 1994.
- 5.2 Council's Enforcement Team is a small team and also has responsibility for the Dog Control Service. In the absence of funding to support the new enforcement duties there will be a need to assess and monitor the impact on the Department's resources and budgets.
- 5.3 The use of powers is discretionary and depending on the nature and scale of an incident, Council Officers may need to exercise discretion to determine whether an investigation by Council is appropriate.
- 5.4 When setting fixed penalty amounts and early payment discounts consideration should be given to the following:
- Fixed Penalty amounts should be sufficient to act as a deterrent to potential offenders and provide revenue to Council which can be used to further tackle the ongoing issues of fly tipping.
 - Fixed penalty amounts should be proportionate to the offence and set at a level where payment is likely.
 - It is Council policy to instigate legal proceedings in the event of non-payment of a fixed penalty. Increased non-payment rates would result in more legal proceedings being brought and increased legal fees being incurred by Council. Fixed penalty payments come to Council. Court fines go to the Court Service. Legal cost recovery is partial and limited.

6.0 **Recommendations**

- 6.1 It is recommended that Committee recommend to Council that the levels for Fixed Penalty Notices for the offence of illegally depositing waste contrary to

Article 4 of the Order is set at the maximum of £400 with an early payment option of £300 if paid within 14 days from receipt of the Notice.

- 6.2 It is recommended that Committee recommend to Council that the early payment option for the £300 Fixed Penalty Notice for the duty of care offence, contrary to Article 5 of the Order, is set at £200 if paid within 14 days from receipt of the Notice.
- 6.3 It is recommended that Committee recommend to Council that the use of these new provisions is implemented with immediate effect.
- 6.4 It is recommended that the Director of Environmental Services and the Head of Health and Built Environment be authorised to take decisions on behalf of Council as to when it is appropriate to use Council's discretionary powers under the Order.