



ARTICLE NO: 2B

**CORPORATE & ENVIRONMENTAL
OVERVIEW & SCRUTINY
COMMITTEE**

**MEMBERS UPDATE 2015/2016
ISSUE: 1**

Article of: Assistant Director Community Services

Relevant Managing Director: Managing Director (People and Places)

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**SUBJECT: DEFRA CONSULTATION ON PROPOSALS TO ENHANCE
ENFORCEMENT POWERS AT REGULATED FACILITIES.**

Wards affected: Borough wide

1.0 PURPOSE OF ARTICLE

- 1.1 To advise Members of the contents of a DEFRA consultation and the response agreed, in consultation with the relevant Portfolio Holder.
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2.0 BACKGROUND

- 2.1 On the 26th February 2015, DEFRA launched a consultation in relation to the proposals to enhance measures to tackle waste crime and entrenched poor performance in the waste sector. The Consultation documentation is available via Gov.uk. There are two parts to the consultation, as follows:-

Part I: A consultation on proposals to enhance enforcement powers at regulated facilities

Seeks comments on proposals to enhance and strengthen regulators' existing enforcement powers to regulate all types of facilities that operate under an environmental permit. The proposed enhancements broaden the scope of the regulators' powers to prevent or remedy pollution.

Part II: A call for evidence on other measures to tackle waste crime and entrenched poor performance in the waste management industry

Seeks views on measures to strengthen the demonstration of technical competence to operate a site; require the clean-up of abandoned and orphaned waste management sites; adopt fixed penalties for fly-tipping; and measures to protect landowners/ landlords from the impacts of waste crime.

- 2.2 There are 40 individual questions in the consultation and the deadline for responses is Wednesday 6th May 2015.
- 2.3 Much of the consultation relates to matters not under the control of Local Authorities, as sites with a greater potential to pollute, such as Waste Management sites all operate under a permit or an exemption from the Environment Agency (EA). The new powers would be available to regulators in relation to all types of permits, but it is expected that they will generally only be used in relation to waste crime. There have been examples of sites not adhering to their permits, operators not having the financial capacity to remediate sites and also illegal acts that blight sites (permitted or otherwise). There are some examples given where the “public purse” has had to be used to remove environmental pollution at a high cost and the proposals are looking to introduce greater enforcement options and powers for the EA, to assist prevent this and reduce waste crime in general.

3.0 CONSULTATION

- 3.1 The most directly relevant section of the consultation for West Lancashire relates to proposals in relation to Fly-tipping. An amount of waste greater than one bin bag in size, can be classed as fly-tipping. At the other end of the spectrum it could consist of thousands of tonnes and could even be damaging to the environment. It has been estimated that Local Authorities spent £45million clearing fly tipped waste in 2013/14. This relates to 852,000 reported incidents. Where evidence is available, the Council’s Environmental Enforcement Officers will, with the assistance of the Legal team, prosecute alleged offenders. There is, however, some thought in the document that Local Authorities sometimes struggle to justify legal action as they may not recover their full costs or certain cases may not be in the public interest to pursue. One of the proposals therefore is to introduce the ability to allow Local Authorities some discretion to serve fixed penalty notices (fpns) in relation to fly-tipping.
- 3.2 Currently, in relation to waste offences, the Council issues fixed penalty notices for litter and dog fouling offences and also in relation to the incorrect disposal of waste. All income from fixed penalty notices is kept by the Council and they offer a relatively quick alternative to prosecution in the courts. One of the issues concerns the amount of the fixed penalty. It would need to be sufficient to act as a deterrent, while not being so high that offenders would not pay it in the hope that a court fine may be less. In Scotland, the level of this fixed penalty has recently been increased to £200 and this would seem appropriate. It is worth noting that the litter and dog fouling fixed penalties are currently £75 with the failure to comply with a waste receptacle notice set at £60. This proposal would give the Council the option of spending less time investigating smaller fly-tips and preparing court files, but would still allow larger scale issues to be dealt with through the courts.
- 3.3 The consultation raises the Government’s concerns about landowners being unaware of illegal activity or poor performance on their land, or even being complicit in the illegal actions. As well as increasing the powers available to regulators, questions are raised concerning raising awareness amongst landowners.

- 3.4 The other proposals all generally relate to additional or enhanced powers to regulators, with these being the Environment Agency in principle. Waste permits are issued by them and they also deal with all larger scale (i.e. potentially more serious) fly tips. Generally they will deal with anything over a “tipper load” of waste.
- 3.5 The proposals relate to increasing permit regulators enforcement powers, improvement of landowner awareness re waste, permitted site operator competencies, financial provisions for site operators, management of sites, abandoned waste sites, re-charging for works and permit exemptions.

4.0 PROPOSED RESPONSES

- 4.1 Five of the questions in the consultation relate to the proposal for fixed penalties for fly-tipping. These questions (and the proposed responses) are contained in 1-5 in Appendix 1. Questions 6-8 relate to landowners and the potential issues facing them and the proposed responses are included in Appendix 1. Questions A, B and 9-38 are concerned with proposals that it is not expected will be relevant to Local Authorities directly. However, greater regulation and powers, that result in better run waste sites, reduced pollution incidents and less public money being spent cleaning up illegal or harmful waste should only be seen as a good thing. It is therefore proposed that a generic response to the rest of the consultation is provided.
- 4.2 The proposed response is as follows, “West Lancashire Borough Council is not involved in the issuing and enforcement of waste permits and therefore cannot provide technical responses to the relevant questions relating to these matters. However, the Council is supportive of all proposals which are aimed at improving enforcement and reducing environmental pollution”.

5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 5.1 The proposed changes are aimed at reducing fly-tipping and encouraging the appropriate disposal of waste with a view to positively affecting the environment. There is also a potential direct link to the Community Strategy in relation to protecting and improving West Lancashire’s environment including safeguarding our biodiversity (**better environment**).

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 6.1 There are no significant financial or resource implications arising from this report. The Council already employs three Environmental Enforcement Officers and the proposals for fixed penalties could reduce the amount of time spent preparing court documents. It is not envisaged that any income will be “significant”.

7.0 RISK ASSESSMENT

- 7.1 This report highlights a consultation that the Council can respond to, but does not have to. As a result no risk assessment is necessary at this stage, but if the proposals are enacted into legislation a risk assessment will be undertaken at that time.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The Article is for information only and does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

1. Consultation questions and proposed responses.

Appendix 1

Question number	Question	Proposed response
Part 1 A	<u>Do you agree with the proposals, A to F? Please provide any additional comments to support your answer against each proposal and, if possible outline any additional measures needed to underpin them?</u>	West Lancashire Borough Council is not involved in the issuing and enforcement of waste permits and therefore cannot provide technical responses to the relevant questions relating to these matters. However, the Council is supportive of all proposals which are aimed at improving enforcement and reducing environmental pollution.
B	<u>Do you have any views on whether there are unforeseen costs or benefits to legitimate operators, the regulators or any other organisation that may result from any of the proposals A-F?</u>	As A
Part 2 1	<u>Would the introduction of fixed penalty notices for the offence of fly-tipping help tackle the problem?</u>	They would be a welcome addition to the enforcement options available to officers. Their use could be publicised to act as a deterrent.
2	<u>What are the advantages of the use of fixed penalty notices for fly-tipping?</u>	If, as is the case for litter fixed penalty notices, they can be served when an officer has “reason to believe” an offence has been committed, they will be simpler to administer. Local Authorities can also keep any receipts. Their use could also free up valuable court time. Their use could also reduce the amount of time investigating an issue and preparing the matter for court.
3	<u>What are the disadvantages of the use of fixed penalty notices for fly-tipping?</u>	The role of Local Authorities is not to punish as this is the courts role, therefore we could not publicise that a person had paid one. Also, some people may not pay and the LA then has to undergo court proceedings anyway.
4	<u>If a proposal was made to introduce fixed penalty notices for fly-tipping, how much should the fixed penalty be set at to act as a sufficient deterrent?</u>	£200 seems reasonable. This should be enough of a deterrent. Depending on the scale of the issue, the option to prosecute would still be available

5	<u>Do you have any views on the possible cost or benefits of issuing fixed penalty notices?</u>	Negligible costs will be involved. Benefits as above in advantages
6	<u>Please provide evidence including examples of the extent to which waste is being abandoned and landowners are being left to tackle waste or pollution caused by current or former tenants.</u>	The Council is unable to provide evidence of this issue in relation to its own land.
7	<u>Do you have any proposals on the best way to educate and increase awareness amongst landowners of their potential liabilities?</u>	There should be a National campaign, possibly co-ordinated by Encams, targeting, The National Farmers Union, Utility companies, the Forestry Commission, the National Trust, Local/County Councils and other major land owners.
8	<u>What more can be done through the lease arrangements with tenants to prevent or mitigate the potential liability of landowners?</u>	Raising awareness with major landowners should prompt change.
9	<u>Would you like to see operators provide evidence to the regulators of their landowner's awareness and consent to the proposed waste activity as part of the permit application process?</u>	As A
10	<u>Do you have any views on the ability of liquidators to disclaim environmental permits as 'onerous property' in England and Wales?</u>	As A
11	<u>What are your views on amending legislation to formally require operators of regulated waste management facilities to be competent in respect of: (a) technical competence (b) financial provision and (c) operator performance?</u>	As A
12	<u>If a proposal were put forward to enshrine the components of the test in legislation, should the legislation apply to just waste management activities or some or all other types of regulated facility?</u>	As A
13	<u>Would it be appropriate for operator competence to be re-assessed if a company changed its directors, company secretary or similar managers?</u>	As A

14	<u>If proposals to assess operator competence on a change to directors etc were put forward, would it be appropriate to apply that requirement to all companies?</u>	As A
15	<u>If an operator competence test were to be enshrined in legislation, in what way might that be done? Examples might include the inclusion of an operator competence requirement in permit conditions, the creation of a specific new offence for failure to maintain operator competence or the extension of existing suspension and revocation powers to breach of the operator competence test.</u>	As A
16	<u>What are the arguments for applying technical competence to all types of permitted waste management facility, through one of the two currently approved schemes?</u>	As A
17	<u>What are the arguments against applying technical competence to all types of permitted waste management facility, through one of the two currently approved schemes?</u>	As A
18	<u>If this were proposed, would it pose a difficulty for any particular part of the waste industry?</u>	As A
19	<u>Please provide views on the ways in which the regulators are made certain of the name(s) of the technically competent manager(s) at permitted sites.</u>	As A
20	<u>Please provide views on how those providing technically competent management at a site should be held to account for the standards of performance.</u>	As A
21	<u>Please provide views on the amount of time those responsible for managing the site should be present and what factors should determine that period.</u>	As A
22	<u>Should financial provision for some or all permitted waste operations be reintroduced on a</u>	As A

	<u>site-specific basis linked to the type of activity and the type of wastes received?</u>	
23	<u>If so, should the amount of the financial provision be linked not only to returning the land to a satisfactory state to meet permit surrender requirements but also to foreseeable clear-up costs resulting from a breach of a permit or after an environmental accident?</u>	As A
24	<u>For landfill sites, should the scope of financial provision be extended to cover operational costs that are incurred during the period when waste is accepted for disposal and/or after waste disposal has ceased?</u>	As A
25	<u>What is the best mechanism or combination of mechanisms for waste operators to make and maintain financial provision for their sites so that they are secure and available to fulfil permit obligations and deal with the consequences of breaches of the permit or environmental accidents?</u>	As A
26	<u>If required to make financial provision, what would be the likely costs of making financial provision and the impact on waste operators of different sizes?</u>	As A
27	<u>If you support amending legislation to require operators of waste management facilities to demonstrate operator competence, are changes needed to the particular aspects of past performance, including spent convictions, that should be taken into consideration in determining an application for a permit?</u>	As A
28	<u>Should the requirement for operators' site management plans be embodied in legislation or are they and their content best left to the regulators to determine?</u>	As A
29	<u>Does the Government need to make a scheme to cover the full</u>	As A

	<u>costs of clearing and remediating abandoned or orphaned sites mandatory so that they do not rely on the public purse or would a voluntary approach work?</u>	
30	<u>Should joining such a scheme be an alternative to, or additional to site-specific financial provision?</u>	As A
31	<u>If you think such a scheme is desirable, please provide your views on how it should be funded and administered, including how decisions on the need to draw from it would be made?</u>	As A
32	<u>Do you have any evidence or views on what level of funding would be required for such a scheme so as to be proportionate to the risk?</u>	As A
33	<u>Do you have any evidence or views of the costs and impacts incurred by the public sector, businesses or landowners in cleaning up and remediating land or premises which have been used for waste management operations and then abandoned?</u>	As A
34	<u>Do you have evidence of pollution caused by the deposit of waste on land by waste operations or abandoned waste that might merit powers to remediate?</u>	As A
35	<u>What are your views on widening the scope of the regulators powers to recover the costs of investigations and remedial works undertaken to prevent or remedy pollution caused by the deposit of waste on land?</u>	As A
36	<u>Do you have any evidence of the extent of waste crime and poor performance from those operating under registered exemptions from environmental permitting?</u>	As A
37	<u>Is there a need to tighten up the process for the registration of exempt waste operations? If so, what steps would you wish to see introduced into the registration process?</u>	As A
38	<u>Would you wish to limit the scope of the activities that are exempt</u>	As A

	<p><u>from the need for an environmental permit? If so, which exemptions would you want to see further restricted and why?</u></p>	
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