



## ***FULL COUNCIL REPORT***

Date Written	25 <sup>th</sup> February 2016
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Service Area	Corporate Services Place and Transformation
Exempt/Non Exempt	Non Exempt
Committee Date	2 <sup>nd</sup> March 2016

*To: Mayor, Ladies and Gentlemen*

# **TRADE WASTE ENFORCEMENT – REMOVAL OF DISCRETIONARY EARLY PAYMENT DISCOUNT**

## **1.0 SUMMARY OF THE REPORT**

- 1.1 Currently MTCBC operates a policy of a Discount for Early Payment of Fixed Penalty Notices (FPNs) where FPNs are issued for Failure to furnish documents to include Waste Transfer Notes under s34 of the Environmental Protection Act 1990 (EPA 1990).
- 1.2 The Default Penalty for this offence is set at £300; however the discretionary discounted penalty for Merthyr Tydfil is set at £180 if this sum is paid within 10 days of the FPN being issued.
- 1.3 Given the Council's priority for a Sustainable Environment we wish to remove the early payment discount to maximise the deterrent of not complying with Environmental legislation.

## **2.0 RECOMMENDATIONS that**

- 2.1 In order to maximise the deterrent of businesses not complying with their duty of care in respect of Waste and failing to produce documents to include Waste Transfer notes the discretionary early payment discount be removed from FPNs issued pursuant to s34A of the Environmental Protection Act 1990.

## 3.0 INTRODUCTION AND BACKGROUND

- 3.1 Both businesses and householders are required by Law to deal responsibly with any waste they produce. This is known as a 'duty of care'.
- 3.2 With regard to businesses, business waste includes any waste that comes from:
- any commercial activity – including any you run from your home
  - construction
  - demolition
  - industry
  - agriculture
- 3.3 As part of the 'Duty of Care' all businesses must
- classify their waste and know if it's hazardous or non-hazardous so it can be dealt with correctly
  - register their premises if they produce or store hazardous waste
  - usually get a permit to store, treat, transport or dispose of their waste themselves
  - store their waste safely and securely
  - follow the rules for moving waste off their business premises
  - check that any business they use to deal with their waste is licensed, and keep proof of this – e.g. take a copy of their licence
- 3.4 The Local Authority uses the EPA 1990 amongst other legislation to deal with waste which includes household waste, trade waste, fly tipping and littering. One of the enforcement tools available to Local Authorities using the EPA 1990 and other legislation is the ability to issue Fixed Penalty Notices for certain offences.
- 3.5 Fixed penalty notices (FPNs) can be issued to deal with environmental offences such as:
- graffiti
  - littering
  - fly-posting
  - nuisance parking (people selling or repairing cars on the road)
  - abandoned vehicles
  - leafleting without permission on land where leafleting is restricted
  - failing to comply with a duty of care with regard to waste
  - failing to provide a waste carrier licence (for businesses transporting their own waste)
  - failing to provide a waste transfer note when moving non-hazardous waste

- 3.6 This report concerns FPNs issued by the Local Authority on businesses who fail in their duty of care to control their waste (S34 of the EPA 1990). Regulations made under section 34(5) of the EPA 1990 state that where a person has failed to comply with a duty to furnish documents to an enforcement authority, that person commits an offence. S34(6) of the EPA 1990 states that anyone convicted of an offence shall be liable on summary conviction to a fine not exceeding £5000 and on Indictment to an unlimited fine.
- 3.7 Section 34A of the EPA which was inserted into the EPA 1990 by the Clean Neighbourhoods & Environment Act 2005 provided Local Authorities dealing with breaches of s34 EPA 1990 (a failure to produce documentation to an Authority Waste Transfer notes, receipts etc.) with the ability to issue a Fixed Penalty of £300 as an alternative to a prosecution. S34A(11) of the EPA 1990 states that “The enforcement authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority”. This Authority has set the specified period for early repayment at 10 days from the date of issue of the FPN with the discounted rate being £180, which was the minimum amount the Local Authority were allowed to set as defined by statute namely the Environmental Offences (Fixed Penalties)(Miscellaneous Provisions )(Wales) Act 2008. If a fixed penalty is not paid within 14 days of the date of its issue it is usual for the breach of the EPA 1990 to be prosecuted via the Magistrates Court.
- 3.8 Failure to control waste is a major issue in the County Borough and it is felt that by offering the early FPN repayment fee we are lessening the deterrent to businesses who fail to comply with their statutory duties pursuant to s34 EPA.
- 3.9 There are other FPNs that are issued by the Local Authority in its attempts to control waste within the County Borough and it is proposed that a further report is put to Council for members to consider similarly removing from those FPNs the ability to make early reduced payments.

#### **4.0 FINANCIAL IMPLICATION(S)**

- 4.1 This policy should have a positive impact on income and cost of street cleansing and waste disposal as businesses comply with the relevant waste legislation. At this stage accurate numbers are not known and a further information report on the financial impact will be brought to Council in due course.

## **5.0 SINGLE INTEGRATED PLAN AND SUSTAINABILITY IMPACT SUMMARY**

5.1 The Single Integrated Plan & Sustainability Impact Assessment has been completed and the proposals positively impact on a number of aspects of the Corporate Plan and Single Integrated Plan, including people enjoying a vibrant, attractive, safe and sustainable place in which to live, work, play and visit; and Sustainable Development. No negative impacts have been identified.

## **6.0 EQUALITY IMPACT ASSESSMENT**

6.1 An Equality Impact Assessment (EqIA) form has been prepared for the purpose of this report. It has been found that a full assessment is not required at this time. The form can be accessed on the Council's website/intranet via the 'Equality Impact Assessment' link.

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**CABINET MEMBER FOR**  
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**PUBLIC PROTECTION**

<b>BACKGROUND PAPERS</b>		
<b>Title of Document(s)</b>	<b>Document(s) Date</b>	<b>Document Location</b>
<b>Does the report contain any issue that may impact the Council's Constitution?</b>		<b>No</b>

***Consultation has been undertaken with the Corporate Management Team in respect of each proposal(s) and recommendation(s) set out in this report.***