

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO COMMUNITY SERVICES COMMITTEE

Agenda Item No. 10

meeting date: 13 MARCH 2018
title: PROPOSALS TO TACKLE CRIME AND POOR PERFORMANCE
IN THE WASTE SECTOR
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1 PURPOSE

1.1 In 2015, DEFRA and Welsh Government published a call for evidence setting out a range of measures in response to calls from the waste industry for Government to do more to prevent waste crime. They have worked with regulators and the waste industry, and have tested the direction of the proposals on improving the standard of operator competence.

In 2016, a Cutting Red Tape Review also asked businesses, trade associations and industry experts where regulation causes barriers to growth, innovation and productivity in the waste sector. It was recognised that the two issues were closely related. Smart and proportionate regulation, effectively enforced, is essential in managing waste.

The consultation closes on 26 March 2018.

1.2 Relevance to the Council's ambitions and priorities

Community Objectives: Safeguards the environment & human health and protects legitimate operators from those who break the rules

2 Part A – Raising the Standard of Operator Competence at Permitted Waste Sites

Operators of permitted waste sites need to be competent to run their site successfully to protect the environment and human health. Competence in this context means the ability to comply with the conditions of their permit and run a waste site effectively. The four elements of operator competence are outlined in the core guidance:

- **Past operator performance** - wideness of scope of offences, behaviour and relevant persons that the regulators can take account of when assessing competence
- **Management systems** – require all permitted waste operators to manage and operate in accordance with the written management system.
- **Technical competence** – require all permitted waste operators to demonstrate appropriate technical knowledge of their waste skills and provide details of the technically competent manager
- **Financial competence/provision** - requires the operator of any permitted site to be financially capable of running their waste business and provide financial security.

The regulators use Operator Risk Assessment Appraisal to determine the level of risk from an activity. It is proposed to raise the bar to hold and obtain a waste permit by strengthening the regulator's assessment and enforcement of the competence of waste operators.

3 PROPOSALS

- **Past Performance**

There are proposals to change and strengthen the regulator's assessment and enforcement of past performance. Widening the definition of relevant offences will enable the regulators to make a more informed decision about operator past performance.

The impact of this change is that there is no anticipation of any direct costs to operators.

- **Management Systems**

Operators should have effective management systems in place. There is a proposal to amend the Environmental Permitting Regulations to require all regulated facilities that undertake waste operations to be managed and operated in accordance with the written management system.

- **Technical Competence**

All permitted waste sites need to demonstrate appropriate levels of technical competence. It specifies the two Government approved schemes that currently meet the criteria given by the regulators are CIWM/WAMITAB Scheme of individual operator competence and the ESA/EU Skills Scheme of corporate competence.

Operators need to keep up their technical competence throughout the life of the permit and demonstrate their continuing competence to the regulators.

It is proposed to make it explicit in the Environmental Permitted Regulations that all permitted waste sites need to demonstrate technical competence through a scheme approved by the Government.

- **Financial Competence and Provision**

All operators are expected to be in a financial position to comply with the obligations of their permit throughout the life of that permit. This includes during day-to-day operations and when returning the site to a satisfactory state prior to surrendering the permit.

It is proposed to introduce the Financial Competence Assessment and some form of financial provision from waste operators. The impact of this change is that an operator will need to obtain an independent financial report when applying for a new permit or transferring a permit.

- **Estimates Costs and Benefits of the above Proposals**

An Impact Assessment was developed to estimate the costs and benefits on the economy, environment and society from the proposals so strengthen operator competence. The costs will be on waste site operators and the regulator. Operators will face transition costs to become technically competent, produce management systems and there will also be an ongoing cost on operators to obtain a Financial Competence Report.

Ribble Valley Borough Council would have no objections to the suggestions made in the Consultation regarding strengthening the regulators enforcement of poorly managed waste sites.

4 Part B – Reforming Waste Exemptions

Ribble Valley Borough Council does not have any waste exemptions and therefore would not be appropriate to comment. The 10 waste exemptions being of most concern in the consultation are:

- U1 – Use of Waste in Construction;
- U16 – Use of Depolluted End of Life Vehicles for Parts;
- T4 – Preparatory Treatments (bailing, sorting, shredding etc);
- T6 – Treatment of Waste Wood;
- T8 – Mechanical Treatment of End of Life Tyres;
- T9 – Recovery of Scrap Metal;
- T12 – Manual Treatment of Waste;
- D7 – Burning Waste in the Open;
- S1 – Storage of Waste in Secure Containers;
- S2 – Storage of Waste in a Secure Place.

Waste Codes

Having reviewed the waste codes used across exemptions it is proposed to introduce a number of changes to make them clearer and less ambiguous.

5 Part C - Duty of Care of Fixed Penalty Notices FPN (Head of Environmental Services)

Environmental Health is in support of the introduction of FPNs for essentially small-scale fly tipping within England. Environmental Health believes there will be a consensus of other local authorities that this will offer a more effective and proportionate response to tackling the incidents. This would release resources, improve enforcement action and ease the burden on further legal action.

There is potentially a degree of scepticism as to how effective the new powers will be if local authorities do not have the capacity to enforce them; this is not the case at RVBC as there is capacity to enforce the regulations within the environmental health department.

Environmental health believes there is a need for an FPN fine to be high enough to act as a deterrent but not so high as to discourage payment. It should also be noted that high rates of non-payment would result in local authorities having to chase cases through the relevant systems. It is believed that the intention for FPNs to deal with small-scale low volume fly tips would be beneficial and should the fly tipping be of a significant size, that it would warrant a higher level of fine. It would be expected that the local authority would then exhaust existing powers rather than using an FPN.

There will be a requirement for a definition of 'small-scale'. The local authority should receive additional support from central government in determining when a small-scale FPN is served.

Looking at neighbouring authorities where private enforcement companies are being used for enforcement functions, then there is a perceived risk of FPNs being used inappropriately. This would not be an issue at Ribble Valley Borough Council, where

appropriate training and guidance would be given to the Council-employed enforcement officers.

6 RISK ASSESSMENT

The approval of this report may have the following implications:

- Resources - no extra resource, currently 2 members of staff are completing a WAMITAB qualification
- Technical, Environmental and Legal – a management system working plan is currently being updated
- Political - none
- Reputation – to comply with the Environmental Permit issued by the Environment Agency
- Equality & Diversity – none

7 RECOMMENDED THAT COMMITTEE

Delegates responsibility for responding to the questions in the consultation to Director of Community Services, and Head of Environmental Services.

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