

Item

FIXED PENALTY NOTICES REVIEW 2018/19



To:

Councillor Katie Thornburrow, Executive Councillor for Streets and Open Spaces

Environment & Community Scrutiny Committee 17/01/2019

Report by:

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Wards affected:

All

Not a Key Decision

1. Executive Summary

The purposes of this report are:

- a) To inform the Executive Councillor and Scrutiny Committee Members of the revised fixed penalty notice (FPN) levels for environmental crimes, namely commercial waste receptacles, flyposting, graffiti, that came into force under The Environmental Offences (Fixed Penalties) (England) Regulations 2017 (The 2017 Regulations) on the 1 April 2018, the revised FPN levels for community protection notices under the Anti-social Behaviour, Crime and Policing Act 2014 (The 2014 Regulations) and the revised FPN levels for domestic waste offences as amended by the Deregulation Act 2015 (The 2015 Regulations).
- b) To seek authority to revise the current fixed penalty for offences related to commercial waste receptacles, flyposting, graffiti, community protection notice and domestic waste offences to the new legal maximum FPN level; and to give a discount of 40% (i.e. discounted fine value) for early payment provided payment is made within 10 days of the date the FPN was issued.

2. Recommendations

The Executive Councillor is recommended to:

- a) Adopt the new legal maximum fixed penalty notice (FPN) level for offences related to commercial waste receptacles, flyposting, graffiti, community protection notice and domestic waste offences and to give a discount of 40% (i.e. discounted fine value), for early payment provided payment is made within 10 days of the date the FPN was issued, as detailed in the following table.

Offence	Maximum new fine level	Proposed discounted fine level	Summary of proposed fine amendment
Commercial waste receptacles	£110	£66	Increase of £10 to maximum fine level and £6 to discounted fine level
Flyposting	£150	£90	Increase of £75 to maximum fine level and setting of a discounted fine level
Graffiti	£150	£90	
Community protection notices	£100	£60	Increase of £40 to maximum fine level and £10 to discounted fine level
Domestic waste offences	£80	£48	Setting of a maximum and discounted fine level

3. Background

- 3.1. Littering, fly tipping and associated environmental offences, like side waste and flyposting, blight communities and impose avoidable costs on the public purse. They also undermine the actions of legitimate residents and businesses, where unscrupulous and irresponsible operators avoid paying legitimate waste disposal costs and so undercut those that operate within the law.

- 3.2. On the 1 April 2018, The Environmental Offences (Fixed Penalties) (England) Regulations 2017 (The 2017 Regulations) came into effect. This change in legislation gave local authorities the ability to raise fixed penalty notices (FPNs), from the current levels to a new maximum (varies depending on the offence), with a reduction for early payment. This is subject to the discretion of the local authority. Fixed penalty notices revised under the 2017 Regulations are detailed below:

Offence	Current fine level	Proposed fine level	Current discounted	Proposed Discounted
Commercial waste receptacles	£100	£110	£60	£66
Flyposting	£75	£150	None	£90
Graffiti	£75	£150	None	£90

- 3.3. Prior to the 2017 Regulations, the levels for fixed penalties for commercial waste receptacles, flyposting, graffiti had not changed since 2006 and were out of line with inflation, and practice in other parts of the UK.
- 3.4. The 2015 Regulations amended the penalty for domestic waste receptacles and reduced the maximum amount of the penalty to £80 (from £100). No penalty has previously been set under the 2015 Regulations by the Council; and so, it is proposed to now adopt the maximum of £80 and offer an early repayment rate of £48.
- 3.5. The 2014 Regulations introduced both the Public Spaces Protection Order and the Community Protection Notice FPNs. The default value of £75 has been set previously, so that the FPN was in line with littering. It is therefore proposed to increase the FPN for Community Protection Notices to £100.
- 3.6. A Community Protection Notice (CPN) is aimed to prevent unreasonable behaviour that is having a negative impact on the local community's quality of life. Any person aged 16 years or over can be issued with a notice, whether it is an individual or a business, and it will require the behaviour to stop and if necessary reasonable steps to be taken to ensure it are not repeated in the future. To date they have been used by the council for measures such as not having dogs under control when being walked, failing to clear up litter from customers of a business and not using waste bins correctly.

- 3.7. There is the potential to increase FPNs related to Public Spaces Protection Notices. The current fine level for Public Spaces Protection Orders are £75 and the maximum fine level available is £100 However, to increase the limit would require changes to the council’s existing Public Space Protection Orders (dog control, street drinking and punt touting), as changes to the FPN would be seen as a ‘variation’ to the order, and would require a new period of consultation for each order. It is not recommended to consider this at the current time, as the actions required in order to amend the order and signage would be resource-intensive, both in terms of time and money, and would not be offset by any potential increase in FPN income. As each Public Space Protection Order lasts for a maximum of three years the fixed penalty for each order could be reviewed at such a time that an order is reviewed.
- 3.8. In June 2016, FPNs were introduced by the council, as an alternative to prosecution, for small scale fly tipping that came into force under The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016. In introducing FPNs for small scale fly tipping, the Council adopted the upper limit level of £400 and to give discount of £240 for payment within ten days. In accordance with the City Council’s June, 2016, decision to adopt the FPN upper limit level for small scale fly tipping and the July 2018 decision to adopt the FPN upper limit for littering, it is proposed that the City Council also adopt the upper limit charge level for all available environmental offences as detailed in 2A. The following table shows the previously adopted maximum and discounted fine levels for littering and small scale fly tipping, which remain in place, unchanged.

Offence	Current fine level	Current discounted
Fly tipping	£400	£240
Littering	£150	£90

- 3.9. Defra (Department of Environment, Food and Rural Affairs) has indicated that it recognises that increasing the level of fixed penalties may create the perception that fixed penalties could be used to generate income for councils. Defra’s view is clear that fixed penalties should not be used in this way, and has given a public commitment to publish improved guidance on the proportionate use of these enforcement powers. In accordance with the Environmental Protection Act 1990 the income received by local authorities from FPN’s has to be

spent on functions relating to litter, dog fouling and cleansing. It is not to be used a means of generating income for other uses.

- 3.10. In determining the appropriate level of a fixed penalty, the council will need to take into account the deterrent effect of different levels, peoples' readiness to pay and the levels of fines currently imposed in the magistrates' courts. Fixed penalties that are set too high for local conditions, ,or are likely to be higher than the Court imposed fine in the event of non-payment, will lead to substantial non-payment rates and so are counter-productive.
- 3.11. There is a set legal standard payment period of 14 days for the payment of fixed penalties. Once an FPN has been issued, an authority cannot prosecute for the alleged offence if the fixed penalty is paid within this period, and this must be stated on the notice itself. For this reason, the period during which a discount for early payment is offered must be less than 14 days and in line with the Regulations cannot be more than 10 days. Again, this will be consistent with the standards set by other local authorities and the approach already in place for other environmental crime fixed penalty notices.
- 3.12. FPNs are not appropriate for repeat offenders or those responsible for large-scale environmental offences, the offences involving hazardous waste, for those who are non-compliant or those who do not wish to be issued a FPN. These types of offences will continue to be enforced by prosecution in line with the Corporate Enforcement Policy.
- 3.13. The intention is that the revised fixed penalties will act as a deterrent to offenders; and that local authorities using them will see a decrease in the number of environmental crime incidents and the number of prosecutions for these offences.
- 3.14. FPN's are an effective and visible way of dealing with low level environmental crime and will be supported by the public, provided they are used sensibly, enforced fairly and are seen as a reasonable response to genuine problems.
- 3.15. The council has already approved the use of FPNs as an alternative to prosecutions when dealing with other environmental crimes including littering, dog fouling, illegal advertising and abandoned vehicles. These FPNs are issued by authorised officers within the Council's Streets and Open Spaces service. The same authorised officers will be continue to

be responsible for issuing FPNs for offences related to commercial waste receptacles, flyposting, graffiti, community protection notice and domestic waste offences.

- 3.16. The council's revised FPN powers will continue to be used as part of the package of enforcement options available in accordance with the council's Corporate Enforcement Policy.
- 3.17. The council will continue not to accept payment by instalments or payment plans. Payment for fixed penalties can only be accepted by the council for the full amount. However in cases of extreme financial difficulties, officers will continue to have discretion to be able to extend the lower threshold payment period (subject to legal restrictions), and will work together with those issued fixed penalties to avoid prosecution where possible.

4. Implications

(a) Financial Implications

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The use of FPNs has the potential of yielding a modest income. In accordance with the Environmental Protection Act 1990, FPN receipts will be used for the purpose of exercising functions to improve street cleanliness and enforcement of offences; it is not being regarded as an 'income generator'. It is not envisaged that the revenue generated from the fines will be significant, but it will reduce the need to pursue costly prosecution in some cases and enable a more flexible approach in dealing with specific offences.

(b) Staffing Implications

The revision of the fixed penalties for environmental crimes and offences will be achieved within existing resources.

(c) Equality and Poverty Implications

An EQIA has been completed please see attached appendix A.

The impact on businesses, charities or voluntary bodies is expected to be positive, as these proposals should act as a deterrent to those committing environmental crime.

(d) Environmental Implications

There are no adverse environmental implications. The revision for FPNs will continue to deliver a net positive climate change impact, through the reduction in environmental crime and associated additional vehicle movements required to clear and dispose of it. A reduction in environmental crime will also deliver an increase in the quality of the local environment, a reduction in associated environmental pollution and contamination and associated improvements in public perception, health, civic pride and inward investment.

(e) Procurement Implications

No procurement is necessary for the revised level of FPNs. Any procurement involved in delivering the associated enforcement service will be undertaken in accordance with the procurement and financial regulations of the council.

(f) Community Safety Implications

There are no adverse community safety implications.

(g) Consultation and communication considerations

FPNs are an accepted means of discharging liability to deal with small scale environmental crime and have been used by the council, in accordance with national legislation and corporate policy, for more than 10 years.

As the proposed FPN level changes are made in accordance with legislation, no consultation is considered necessary. Central government issued a consultation document in April 2017, on the proposed 2017 Regulations, which ran for 10 weeks. The consultation document sought the public's views on whether to increase the levels for fixed penalties.

The introduction of the new legislation and adopted penalty changes will be advertised to the wider city community through news releases, social and web media and inclusion in future environmental campaigns

The Council departments and officers who will be responsible for the delivery of this enforcement procedure have been consulted.

6. Background papers

These background papers were used in the preparation of this report:

- Council's Corporate Enforcement Policy - <https://www.cambridge.gov.uk/content/enforcement-policy>
- Council Constitution - <https://www.cambridge.gov.uk/constitution>
- The Environmental Offences (Fixed Penalties) (England) Regulations 2017 - <http://www.legislation.gov.uk/uksi/2017/1050/contents/made>
- Explanatory Memorandum to The Environmental Offences (Fixed Penalties) (England) Regulations 2017
http://www.legislation.gov.uk/uksi/2017/1050/pdfs/uksiem_20171050_en.pdf
- The Deregulation Act 2015 - <http://www.legislation.gov.uk/ukpga/2015/20/section/58/enacted>
- Anti-social Behaviour, Crime and Policing Act 2014 - <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

7. Appendices

Appendix A: EqIA – Review of fixed penalties 2018/19

8. Inspection of papers

To inspect the background papers or if you have a query on the report please contact Wendy Johnston, Community Engagement and Enforcement Manager, tel: 01223 - 458578, email: wendy.johnston@cambridge.gov.uk.