

LEISURE AND ENVIRONMENT COMMITTEE

26 JUNE 2018

THE USE OF FIXED PENALTY NOTICES AND ASSOCIATED PENALTIES RELATING TO ENVIRONMENTAL OFFENCES AND ANTISOCIAL BEHAVIOUR

1.0 Purpose of the Report

1.1 To present the revised schedule of Fixed Penalty Charges (FPN's), as introduced by Statutory Instrument on the 1st April 2018 and to consider the introduction of new penalty fees, where legislation allows Local Authorities discretion in setting the penalty amount and additionally for Members to consider the adoption of a policy on the use of FPN's to tackle Environmental Offences and Anti-social Behaviour (ASB).

2.0 Background

2.1 The Environmental Protection Act 1990 and The Dog (fouling of land) Act 1996 significantly extended the use of Fixed Penalty Notices by Local Authorities to tackle Enviro-crime and ASB. Many of the powers included in these Acts have since been revoked or amended. A fixed penalty notice is not a fine, it is different because it is a penalty which if accepted and paid by a person, who is found to have committed an offence it allows that person to discharge their liability for the offence and avoid further criminal action. An unpaid fine is not pursued as a debt, it is seen as a decision by the offender not to avoid liability and as a result further formal action will be taken. These actions can include Prosecution, Work in Default or applications for Court Orders.

2.2 The use of Fixed Penalty Notices is recognised in government guidance as being a valuable enforcement tool and over the last 10 years they have been adopted into a plethora of legislation. A revised national schedule of FPN penalties was introduced on the 1st April 2018 allowing Local Authorities certain discretion in settling local penalty charges. This has provided an opportunity to harmonise the use of FPN's across the council and to bring together and to adopt a published policy document, demonstrating how they will be used proportionately as part of a transparent and consistent approach to tackling ASB and Environmental Offences.

3.0 Introduction

3.1 Our Council Priorities include taking steps to provide a safe and clean place that our residents, business and visitors can enjoy. In addition to proactive provision of information, advice and educational campaigns, effective enforcement is also necessary to tackle irresponsible behaviour that has a detrimental effect on our district. The councils Enforcement Strategy ensures that a proportionate and professional approach is taken. However specific guidance has now been issued by DEFRA titled "Fixed Penalty Notices: Issuing and Enforcement by Councils". It required an Enforcement Strategy to be published that includes:

- Offences included in your FPN scheme
- How much you will fine people for each offence
- Details of early payment discounts
- How FPN's will be issued

- How you deal with juvenile offenders
- What you will do if they do not pay
- How to appeal
- How FPN receipts will be spent
- What record will be kept

The policy must specifically consider if young people will be offered Fixed Penalty Notices and if they are the Local Authority must consult partner agencies and prepare a detailed procedure to cover their use. The Enforcement Procedure covering all these points is attached as Appendix 1

3.2 The offences to be included in the enforcement scheme cover the following areas of Environmental Crime and Anti-Social behaviour.

- Fly Tipping
- Improper presentation of domestic and commercial waste
- Littering
- Public Space Protection orders for alcohol and dog control and low level ASB
- Breach of a Community Protection Order

3.3 The Table below shows the specific offences and sets out the new scale of potential charges when issuing a FPN. If a local authority does not agree a set of charges there are default amounts set out in the regulations. These are shown in column 1 of the table. The regulations then go on to set maximum and minimum amounts that a council can set as well as a maximum discounted amount for early payment of the penalty.

Offence	Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty
Littering	£100	£50	£150	£50
Littering from vehicles	£100	£65	£150	£50
Public Space Protection Orders	£75	LA	£100	LA
Graffiti	£100	£50	£150	£50
Fly-posting	£100	£50	£150	£50
Unauthorised distribution of free literature on designated land	£100	£50	£150	£50
Community Protection Notice	£100	LA	£100	LA
Exposing vehicles for sale on a road	£100	£100	£100	£60
Abandoning a vehicle	£200	£200	£200	£120
Fly-tipping	£200	£150	£400	£120
Failure to produce a waste transfer note	£300	£300	£300	£180

Domestic waste receptacle offences	£60	£60	£80	£40
Industrial and commercial waste receptacle offences	£100	£75	£110	£60

4.0 **Proposals**

4.1 As set out above the Council is required to set its own level of FPN charges unless it is content to accept the default levels set in the table above. Officers from the Business Units responsible for these offences have been consulted and it is proposed that the level of charges for Fixed Penalty Notices be set out the figures included in the table below.

Offence	Proposed penalty	Early Payment	Enforced by:
Littering	£150	£75	Waste Management (WM)
Littering from vehicles	£150	£75	WM
Public Space Protection Orders	£75	£40	Environmental Health (EH), WM, police, park wardens
Graffiti	£150	£75	WM
Fly-posting	£150	£75	WM
Community Protection Notice	£100	£75	EH, WM, police, park wardens
Exposing vehicles for sale on a road	£80	£40	Planning
Abandoning a vehicle	£200	£120	WM
Fly-tipping	£400	£200	WM
Failure to produce a waste transfer note	£300	£150	WM
Domestic waste receptacle offences	£80	£40	WM
Industrial and commercial waste receptacle offences	£110	£75	WM

4.2 In the majority of cases the proposed fee is the maximum that can be charged.

4.3 It is further proposed that the draft procedure on the use of Fixed Penalty Notices set out in Appendix one to this report is adopted. With regards to young people it is proposed that restorative justice is used as an alternative to the issue of a Fixed Penalty Notices for people under the age of 18.

5.0 **Equalities Implications**

5.1 Young people have been considered separately and the Enforcement Policy provides for an appeal to the Business manager on grounds of public interest. This will provide protection to vulnerable people or people with a relevant protected characteristic, to be decided on a case by case basis. There are no other implications arising from these proposals.

6.0 Impact on Budget/Policy Framework

6.1 It is not anticipated that there will be any substantial income generated from the issue of fixed penalty notices. Local authorities are permitted to keep any income generated and are required to use the income generated in the functional areas from where it was generated.

7.0 RECOMMENDATIONS that:

- (a) the procedure on the use of Fixed Penalty Notices for Environmental Crime and ASB be adopted; and**
- (b) the fixed penalty penalties listed in paragraph 4.1 of the report be adopted.**

Reason for recommendation

To fulfil the council priority to provide a clean and safe District and to protect and enhance the environment of Newark and Sherwood.

Background papers

Statutory Instrument 2017 No. 1050 ENVIRONMENTAL PROTECTION, ENGLAND: The Environmental Offences (Fixed Penalties) (England) Regulations 2017

Fixed Penalty Notices: Issuing and Enforcement by Councils

Statutory Guidance for the Issuing of Fixed Penalty Notices by Enforcement Officers.

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