

For publication

Changes to littering legislation including the *Environmental Offences (Fixed Penalties)(England) Regulations 2017* and *The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018*

Meeting: Cabinet

Date: 2nd October 2018

Cabinet portfolio: Health and Wellbeing

Report by: Senior Environmental Health Officer

1.0 Purpose of report

- 1.1 To inform Members of the new powers for littering that came into force on 1st April 2018 under the *Environmental Offences (Fixed Penalties)(England) Regulations 2017*, which amends sections 34A(12), 47ZB(4)(5), and 73A(2)(b) (3) and (8) of the Environmental Protection Act 1990; and the *Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018*.
- 1.2 To seek approval to revise the current fixed penalty amount for littering to the new legal maximum Fixed Penalty Notice (FPN) level of £150 for all littering offences and to give a discount to £60 (i.e. discounted fine value of £90) for early payment provided payment is made within 14 days of the date the FPN was issued.

2.0 Recommendations

- 2.1 Members approve the proposals set out within the report to enable enforcement of the provisions of the *Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018* enacted under the *Environmental Offences (Fixed Penalties)(England) Regulations 2017*
- 2.2 Members adopt the new legal maximum FPN level of £150 for littering offence and to give a discount for early payment to £60 (i.e. discounted fine value of £90) provided payment is made within 14 days of the date the FPN was issued.
- 2.3 That Members approve the necessary amendments to the constitution to delegate authority to the Assistant Director for Health & Wellbeing to introduce and carry out the new powers and to authorise the appropriate officers to issue FPNs under the Environmental Protection Act 1990 and *The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018*.
- 2.4 Members agree that the level of penalty shall be reviewed within 12 months of the date of this report.

3.0 **Background – what is the issue with littering?**

- 3.1 Littering can be defined as what the law describes as “*throwing down, dropping or otherwise depositing litter in any place which is open to the air*”. It should not be confused with flytipping which is the “prohibition of authorised or harmful deposit, treatment or disposal of waste”.
- 3.2 Litter affects how places look and are perceived, how safe and happy people feel in an area, and how attractive it is to workers, visitors, and existing and new business investors.
- 3.3 Litter has an effect on residents, on people’s health, on the economy, on business, on tourism, on crime, on anti-social

behaviour and the environment. It can impact upon wildlife, attract more littering and vermin, and can cause damage to our watercourses. It is estimated that it costs the UK £682 million to keep the streets free from litter. In addition to this Highways England spends at least £6 million a year on collecting litter from the Strategic Road Network.

3.4 Not only is the effect of litter serious but it is widespread and a national issue. The organisation 'Keep Britain Tidy' believes that 62% of people drop litter (on the street and from vehicles) and 99% of the town centre streets have cigarette and chewing gum litter.

3.5 The Environmental Protection Team has participated in several national campaigns recently including 'The Big Spring Clean' in March and 'The Great Plastic Pick Up' in May. We regularly loan out our litter-picker packs to local community/volunteer groups, schools and youth organisations (such as Scouts and Brownies). The Housing Rangers carry out local/community litter picks once a month. Over the last 12 months, at least 100 black bags of litter have been collected.

4.0 **Background – littering data**

4.1 Since 2015, the Environmental Protection Team has received 162 complaints about litter in the street and has issued 126 Fixed Penalty Notices.

4.2 Of these 126 Fixed Penalty Notices, the majority were paid in full. In 24 cases, the recipient of the Fixed Penalty Notice was given extended time to pay and 5 cases resulted in a prosecution (for non-payment of the FPN).

5.0 **Background – legal framework**

- 5.1 The key piece of legislation governing litter is Part IV of the Environmental Protection Act 1990. A person found guilty of a litter offence may be fined up to level 4 on the standard scale (currently £2,500) in a magistrate's court. Section 88 allows an "authorised officer" of a "litter authority" to issue a "fixed penalty notice" as an alternative to prosecution (i.e. to discharge liability).
- 5.2 Currently the fixed penalty level is set at £60 as set under section 88(6)(a) of the Environmental Protection Act 1990.
- 5.3 On 1st April 2018 the Environmental Offences (Fixed Penalties) (England) Regulations 2017 came into effect. This change in legislation gave local authorities the ability to raise FPNs from the current maximum levels of £80, to a new maximum of £150, with a reduction for early payment (at the discretion of the local authority). The change in legislation only applies to Fixed Penalties issued for littering in the street/public spaces.
- 5.4 Alongside the aforementioned legislation relating to changes in the level of FPN charges for littering. The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 gives local authorities the ability to issue civil penalty notices to the registered keeper of the vehicle from which the litter has been thrown. Non-payment of fines can be pursued via the County Court.
- 5.5 *The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018* came into force on 1st April 2018 and effectively amends the Environmental Protection Act 1990 and inserts the following:
- (4D) No proceedings may be instituted for an offence under subsection (1) which is a littering offence in respect of a vehicle within the meaning of section 88A(2) if—***
(a) a penalty notice has been given under section 88A to the keeper of the vehicle in respect of which the offence was committed, and
(b) the fixed penalty has been paid or recovered in full.

5.6 The *Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018* makes provisions for local authorities to write to the registered keeper and ask for information as to who was driving/passenger of the vehicle at the time the littering offence took place. If the registered keeper provides this information, the local authority can issue a civil penalty to that named person. If the registered keeper does not provide the information, the local authority can issue the registered keeper with a civil penalty (even if they were not in the vehicle at the time of the incident).

5.7 Under the current legislation, if an officer observes someone littering from a vehicle, the investigating officer accesses the DVLA database, sends a letter to the registered keeper requiring the registered keeper to complete a form asking for information as to who was the driver/passenger in the vehicle at the time the littering offence took place. Under the current legislative provisions, the registered keeper is under no legal obligation to provide this information.

6.0 **Financial Implications – setting the FPN**

6.1 The legislation makes provision for the maximum fixed penalty level to be set at £150 with the option of a reduced fee for early payment.

6.2 Guidance from the government recommends that local authorities take into consideration factors affecting the local population when setting fixed penalty levels, including consideration of the local economy and affordability when setting fixed penalty levels – if the level is too high, the payment may not be made resulting in more cases for prosecution (i.e. for non-payment of the fixed penalty notice).

6.3 It is recommended that the maximum level be set at £150 with a reduction to £60 if paid within 14 days; this is to reflect the

seriousness of the offence, local demographics and to encourage early payment.

- 6.4 Failure to pay the fixed penalty notice for littering on the street/public space can result in prosecution. Failure to pay the civil penalty for littering from a vehicle can result in the local authority seeking to recover costs through the County Court.
- 6.5 If the registered keeper of the vehicle feels that they are not liable, they can make representations to the Council. If these are rejected, they can appeal to an independent traffic adjudicator (same process/people for appealing parking tickets not associated with the Council). Any such representations would be considered in line with the Council's Corporate Enforcement Policy.
- 6.6 In accordance with the Environmental Protection Act 1990 and the Environmental Offences (Fixed Penalties)(England) Regulations 2017, the income received from civil penalties for littering from a motor vehicle can only be spent on functions relating to litter and refuse (including keeping land and highways clear of litter and refuse, and further enforcement against littering from motor vehicles). It cannot be used as a means of generating income for other uses.

7.0 **Enforcement**

- 7.1 Enforcement is carried out primarily by the officers within the Environmental Protection Team.
- 7.2 Occasionally information in the form of a witness statement is provided by officers from other teams which is then acted upon by officers in the Environmental Protection Team.
- 7.3 Very infrequently we have received information from members of the public; the difficulty we have with using this

information is validity of evidence (unless there is video footage and even then, the imagery may not comply with surveillance regulations).

- 7.4 The Council's new powers for littering from a motor vehicle will be used as part of the package of enforcement options available in accordance with the Council's Corporate Enforcement Policy.
- 7.5 The increased penalty level of litter FPNs and the new penalties for litter will not be appropriate for repeat offenders, for those who are non-compliant or those who do not wish to be issued with a FPN. These types of offences will continue to be enforced on a case by case basis and if appropriate, prosecuted in line with the Council's Corporate Enforcement Policy.

8.0 **Equalities Impact Assessment (EIA)**

- 8.1 DEFRA and their Regulatory Policy Committee carried out an impact assessment with regards to *The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018* and determined there would be no costs to citizens provided that they do not litter (2017 Litter Strategy).
- 8.2 Local authorities already have the ability to issue fixed penalty notices for a range of issues and it is envisaged that implementing the new powers will be at a limited additional cost.
- 8.3 DEFRA states that the new powers will reduce enforcement costs for local authorities by allowing them to recover some of the costs without having to take a case to court.
- 8.4 Any reduction in littering in a local area would increase the quality of life of the local environment and generate improvements in public perception, health and civil pride.

- 8.5 The government has assessed this change in legislation and no specific equality considerations were identified. This has also been considered from a local perspective, no negative impacts have been identified.

9.0 Risk Management

- 9.1 Details of the risks associated with the new 2018 littering legislation.

Table 5 – risks with the new 2018 littering legislation

Risk	Likelihood	Impact	Mitigation Action	Revised Likelihood	Residual Impact
Non-compliance with the legislation	High	Low	Support from regulatory law team	Low	Low
Not having sufficient resources to issue the FPNs	High	High	Enforcement staff already issue FPNs. Seek support from other teams.	Medium	Low
Offenders not being able to afford the FPN	High	High	Law allows for reduction for payment within 28 days.	Medium	Medium
Offenders contest the fixed penalty notice	Medium	High	Support required from regulatory law team and lead enforcement officer	Medium	Medium

10.0 Recommendations

- 10.1 Members approve the proposals set out within the report to enable enforcement of the provisions of the *Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018*

enacted under the *Environmental Offences (Fixed Penalties)(England) Regulations 2017*.

- 10.2 Members adopt the new legal maximum FPN level of £150 for littering offence and to give a discount for early payment to £60 (i.e. discounted fine value of £90) provided payment is made within 14 days of the date the FPN was issued.
- 10.3 That Members approve the necessary amendments to the constitution to delegate authority to the Assistant Director for Health & Wellbeing to introduce and carry out the new powers and to authorise the appropriate officers to issue FPNs under the Environmental Protection Act 1990 and *The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018*.
- 10.4 Members agree that the level of penalty shall be reviewed within 12 months of the date of this report.

11.0 **Reasons for recommendations**

- 11.1 Littering is a significant blight on local environments; a source of pollution, a potential danger to public health and a hazard to wildlife, impose avoidable costs on the public purse and draws money away from other priorities.
- 11.2 The intention is that the level £150 of the new fixed penalty will act as a deterrent to people littering in the streets and on open spaces; and that local authorities using them will see a decrease in the number of littering incidents.

Decision information

Key decision number	834
Wards affected	All wards
Links to Council Plan priorities	To provide value for money services.

Document information

Report author	Contact number/email
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Background documents	
These are unpublished works which have been relied on to a material extent when the report was prepared.	
This must be made available to the public for up to 4 years.	