

Public
Key Decision – No

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: Review of Fixed Penalty Notices 2023/24

Meeting/Date: Licensing and Protection Committee – 25 January 2024

Executive Portfolio: Executive Councillor for Customer Services – Councillor Stephen Ferguson.

Report by: Community Protection and Enforcement Team Leader.

Ward(s) affected: All.

Executive Summary:

Following a period of consultation conducted by the Department for Environment, Food & Rural Affairs (DEFRA), on 31/07/2023 the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 (The 2023 Regulation) came into effect. The 2023 Regulation revised fixed penalty notice (FPN) levels available for environment crimes, namely fly-tipping, littering, household waste duty of care, graffiti, and flyposting.

The 2023 Regulation provides Local Authorities the discretion to increase the level of FPNs issued to offenders of environment crime, to be better commensurate to the effect this offending has on our communities.

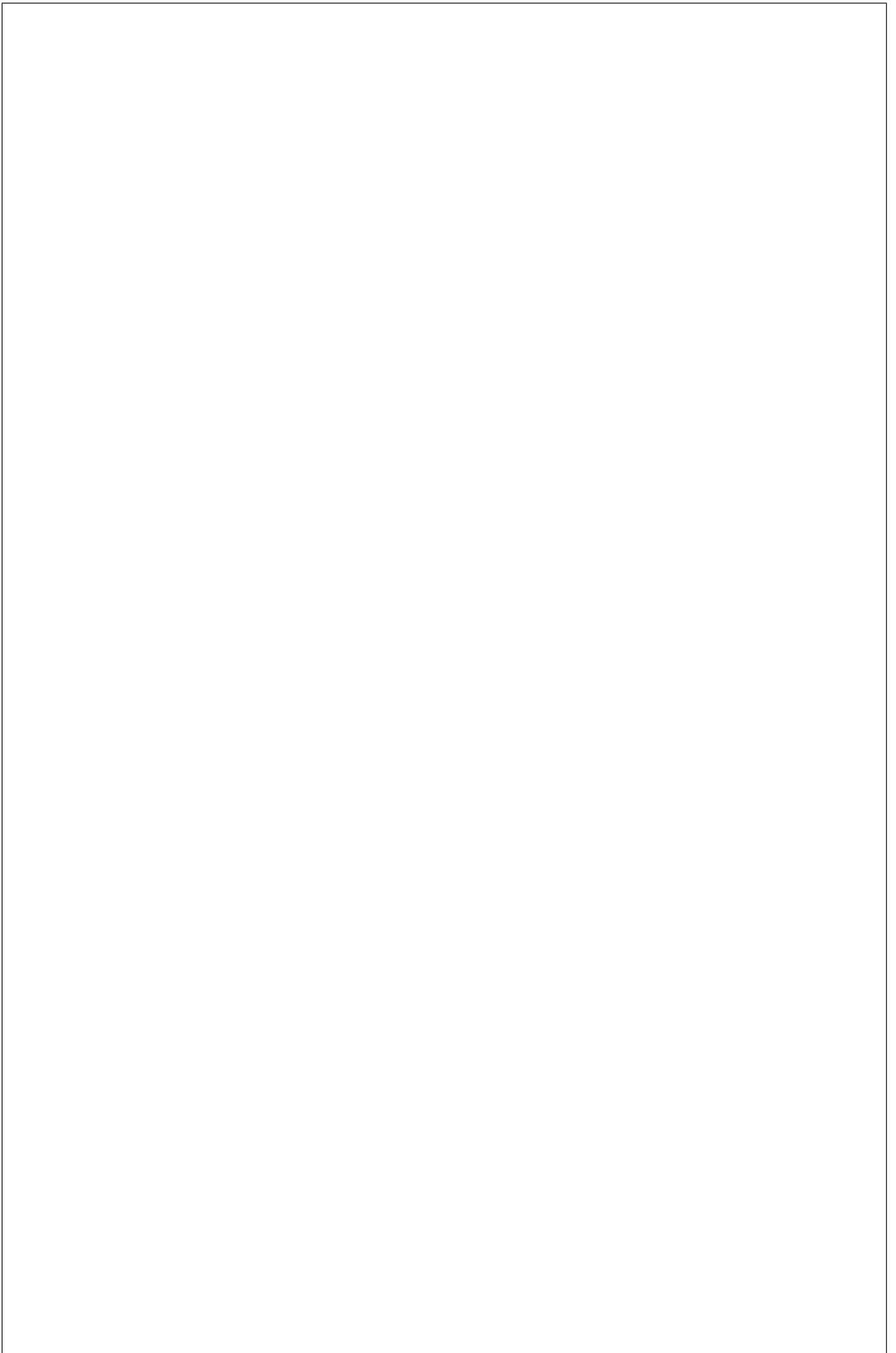
Recommendation(s):

The Licensing and Protection Committee is

RECOMMENDED

- 1. To adopt new higher value and tiered levels of FPN for offences related to littering, fly-tipping, and household waste duty of care.**
- 2. To offer recipients of FPN the option of a 25% discount against the value of the FPN for early payment.**
- 3. To amend the payment period for FPNs for littering, fly-tipping, and household waste duty of care to 28 days and the early payment (discounted FPN level) period to 14 days.**

Note: Further details on fine levels and discount for early payment are detailed in section 3.3 of this report.



1. PURPOSE OF THE REPORT

- 1.1 To inform the Executive Councillor and Licencing and Protection Committee Members of the revised fixed penalty notice (FPN) levels available for environmental crimes, namely fly-tipping, littering, household waste duty of care, graffiti, and flyposting, which came into force under the 2023 Regulations on the 31st July 2023.
- 1.2 To seek authority to revise the current fixed penalty for offences related to littering, fly-tipping, and household waste duty of care to new levels; and to give a discount of 25% (i.e., discounted fine value) for early payment, whilst extending the period during which a payment for FPNs can be made.

2. WHY IS THIS REPORT NECESSARY

- 2.1 Environment crime offences such as littering and fly-tipping have a considerable impact on both urban and rural locations across the Huntingdonshire District. The cost to HDC for the disposal of fly tipped waste in financial year 2022/23 was £67,522; however, the impact on residents and businesses is incalculable, especially for those who have the misfortune of an offender disposing of waste on their private property, or a legitimate waste disposal business who are undercut by illegal operators.
- 2.2 On 31st July 2023, the 2023 Regulations came into effect. This change in legislation provides Local Authorities the ability to raise FPNs from the current levels to new maximum levels (varied per offence) for various environment crime offences.
- 2.3 Prior to the 2023 Regulations, the levels for FPNs for Environment Crime offences were last increased in 2017 (by the Environmental Offences (Fixed Penalties) (England) Regulations 2017). The current levels of FPNs adopted by HDC can be found in section 3.2.
- 2.4 Raising the financial value of an FPN may prompt the perception that the increased amount generated may be considered an increase in revenue to HDC. Defra guidance is clear that FPNs should not be used in this way, and in accordance with legislation income received must be spent towards specified functions. The Code of Practice on Litter and Refuse, Section 1a (Section11) sets out what income from FPN may be spent on. It is important that the correct narrative is made clear when deciding on whether to increase the value of an FPN.

3. OPTIONS CONSIDERED

- 3.1 Options to consider are:
 - 3.1.1 Do not increase the value of FPNs for Environment Crime.
 - 3.1.2 Increase the value of FPNs for Environment Crime and provide a 25% discount for early payment (within 14 days) of an issued

- 3.1.3 FPN for Environment Crime, and extend the maximum payment period of an issued FPN from 14 days to 28 days. Increase the value of FPNs for Environment Crime, with some variation to the above option in 3.1.2 (this would need to be revised and discussed, before resubmission to Committee).

3.2 The current level of environment crime FPN's as indicated in 3.1.1 are:

Offence	FPN Amount	Payment deadline
Littering	£150	14 Days
Household Duty of Care	£200	14 Days
Fly Tipping	£400	14 Days

3.3 The proposed changes to environment crime FPN's as indicated in 3.1.2 are:

Littering		
	Issued	Discounted
Tier 1 (single item)	£100	£75
Tier 2 (multiple)	£125	£94
Tier 3 (large litter)	£200	£150
Household Duty of Care		
	Issued	Discounted
	£400	£300
Fly Tipping		
	Issued	Discounted
Tier 1 (Domestic)	£400	£300
Tier 2 (Domestic)	£700	£525
Tier 3 (Commercial)	£1,000	£750

3.3.1 Recipients will have 28 calendar days to pay, in most cases with an additional offer of 25% discount for early payment within 14 days.

3.3.2 The proposed 'Tiers' of environment crime offences are described as follows:

Littering: **Tier 1** issued for littering of a single item, such as a cigarette butt or food packet from a car. **Tier 2** issued for littering multiple small items, including fast food bag/packaging. **Tier 3** issued for larger litter such as a single bag of waste.

Household Duty of Care: Proposal for a single tier for Householder Waste Duty of Care, when a person has failed to ensure their household waste was transferred to a suitable person.

Fly Tipping*: **Tier 1** issued to a person who committed a fly-tipping of domestic waste, consisting of waste equivalent to more than one refuse bag, up to a quantity that would fill a small car boot. **Tier 2** issued to a person who committed fly-tipping of domestic waste of an amount equivalent to the size of a large car boot, up to panel van. **Tier 3** is issued when evidence demonstrates a suspect transported and fly-tipped waste which was generated directly from a financial transaction (hired to clear waste or tipped waste following a commercial job).

*HDC will not issue a fixed penalty notice for fly tipping where we believe those responsible are repeat offenders (domestic or commercial), if the fly tip is of a large quantity, is hazardous waste, if the offender is a self-employed transporter of waste without Waste Carrier Licence and Waste Transfer Notes, or evidence is shown that the person responsible is regularly advertising their waste carrying business. In such circumstances, we will seek appropriate prosecution for the offence.

4. KEY IMPACTS RISKS

4.1 When determining whether FPNs should increase and to what level, HDC must consider the following impacts and risks;

1: the deterrent effect of the FPN level,
2: an offender's ability and willingness to pay, and
3: whether the FPN level is commensurate to fines likely imposed by Court in cases where an FPN is not paid by the recipient.

4.2 It is important that an FPN balances the three points highlighted in 4.1. The value of an FPN should not be so low that the incentive of offending outweighs the impact of enforcement. Conversely, the value of an FPN should not be so high that either payment is unaffordable to the recipient, or non-payment is a lesser risk to the recipient than facing prosecution at Court. In such cases where a person does not pay an FPN and is summoned to Court for prosecution, fines and costs issued by Court may be less than the overall cost to the Local Authority. Therefore, it is in the best interest of HDC to set FPN values at a rate which is a detriment to offending, but realistically payable by the recipient.

5. TIMETABLE FOR IMPLEMENTATION

5.1 The changes to the maximum available level of FPNs came in to force on 31 July 2023. The proposal is for HDC to adopt its new level of FPNs and changes to payment schedule from the new financial year, 01 April 2024

6. LINK TO THE CORPORATE PLAN, STRATEGIC PRIORITIES AND/OR CORPORATE OBJECTIVES

- 6.1 The proposed changes to environment crime FPN's are linked to priorities one and three of HDC's Corporate Plan, 'improving quality of life for local people', and 'delivering good quality, high value-for-money services with good control and compliance with statutory obligations'. Specifically, the proposed changes to environment crime FPN's balances a number of delicate factors by ensuring those deemed responsible for environment crime are duly punished, whilst maintaining affordability during the current cost of living crisis and facilitating a sustainable service by utilising funds received from paid FPN's towards improved service delivery.

7. LEGAL IMPLICATIONS

- 7.1 Issuing of FPN's for littering, fly tipping and household duty of care offences are detailed in the Environmental Protection Act 1990.
- 7.2 Warranted Officers hold the statutory discretion to issue FPN's for environment crime, proceed to prosecution or issue civil warnings.
- 7.3 Under the Legislative and Regulatory Reform Act 2006, HDC's Officers have a duty to carry out their activities in a way which is transparent, accountable, proportionate and consistent, and targeted against cases in which action is needed. Under no circumstances should FPN's be used to generate income.
- 7.4 HDC's Community Protection and Enforcement team operate to a process by which non-payment of FPN will result in prosecution for the original offence, resulting in the termination of the FPN.
- 7.5 FPN's will not be issued in cases when opting for prosecution at Court is deemed more appropriate.
- 7.6 Within the capacity of their statutory provision, HDC's Community Protection and Enforcement Team offer recipients of FPN's the option to appeal. This can only be done within the deadline of payment. Appeal requests are reviewed by the Community Protection and Enforcement Team Leader.
- 7.7 Complaints against an unsuccessful appeal of FPN's are processed in line with HDC's complaints process.

8. RESOURCE IMPLICATIONS

- 8.1 Issuing FPN's as an enforcement outcome is a process requirement and statutory power. This expectation is managed within the structure of the Community Protection and Enforcement Team.
- 8.2 The changes to environment crime FPN's by implementing a discount for early payment will be communicated to HDC's Customer Service, Finance

and Business Support departments to manage incoming enquiries and payment.

- 8.3 Generating, monitoring, and processing payments for FPN's will be managed on the HDC Tech One system by the Communities Business Support Assistants.
- 8.4 Upon approval of the proposed changes to environment crime FPN's the Community Protection and Enforcement Team will undertake a social media campaign, update the HDC website and refresh signage to reflect the changes in fine levels, to inform and deter offenders. Any payment for signage will be paid for from the Community Protection and Enforcement Team FPN accounts.

9. EQUALITIES IMPACT ASSESSMENT

- 9.1 The Community Protection and Enforcement Team follow set procedures, policy, guidance, and legislation to guide towards determining the best course of action in respect to enforcement outcomes. However, Officers are granted some discretion in their use of stator powers, which presents a risk of unconscious bias influencing enforcement action. The impact of unconscious bias on enforcement outcomes is mitigated by the use of Officer training, and case reviews and gatekeeping by the Community Protection and Enforcement Team Leader.
- 9.2 All Officers are appropriately trained in respect to the Equalities Act 2010 and are able to manage bias with respect to enforcement outcomes.
- 9.3 There is a risk of inequality of outcomes if offenders most commonly prosecuted are people who are unable to afford to pay FPN's due to low income. In developing the proposed changes to FPN levels for environment crime, thorough consideration has been given towards the current cost of living crisis and the disproportionate impact increased FPN levels could have on offenders of environment crime who may be experiencing financial hardship. This consideration has led to the proposal of the extended payment deadlines and discount for early payment. Additionally, offenders who are believed to be committing acts of environment crime for financial gain will be served with the maximum FPN level for fly tipping (£1000) or considered for prosecution, rather than FPN.

10. REASONS FOR THE RECOMMENDED DECISIONS

- 10.1 The proposed increase in FPN levels is in line with Defra guidance, following an extensive period of consultation carried out by Defra on behalf of Government. HDC's Community Protection and Enforcement Team Leader has consulted with counterparts across the Cambridgeshire County and designed the recommended decisions based on being commensurate to other Local Authorities proposed changes. Thorough consideration has been placed on the various impacts this decision may have on HDC, its residents and recipients of FPN's (Offenders).

11. LIST OF APPENDICES INCLUDED

None.

12. BACKGROUND PAPERS

None.

CONTACT OFFICER

Name/Job Title: Ashley Dolling, Community Protection and Enforcement Team
Leader

Tel No: (01480) 388102

Email: Ashley.Dolling@huntingdonshire.gov.uk