

Public

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: The Environmental Offences (Fixed Penalties) (England) Regulations 2017

Meeting/Date: Licensing and Protection Committee - Wednesday 20th June 2018

Executive Portfolio: Executive Councillor for Regulation and Operations - Councillor Jim White

Report by: Community Resilience Manager

Ward(s) affected: All

Executive Summary:

On 30th October 2017 new regulations were passed amending the current regulations relating to Fixed Penalty Notices for Environmental Offences such as littering, graffiti, fly posting and fly tipping.

The new regulations, the Environmental Offences (Fixed Penalties) (England) Regulations 2017 (the Regulations), came into force on 1st April 2018.

Fixed Penalty Notices ("FPNs") are a civil enforcement sanction and are used by Local Authorities and some other authorised persons including Police Community Support Officers and the Environment Agency as an alternative to prosecution for certain offences. FPNs usually specify a fixed fine but can offer a discounted fine if payment is made early; the Regulations refer to this as the "lesser penalty".

A consultation for the new regulations took place between April and June 2017. The consultation focused on fines not having been changed since 2006, fines not being consistent with other parts of the UK and fines not being consistent with similar types of offending, such as dog fouling. The new regulations make changes to the level of penalties setting a default, minimum, maximum and lesser penalty amount.

Recommendation(s):

1. That the Licencing and Protection Committee update the Council's Scheme of Delegation to adopt the powers contained within the Environmental Offences (Fixed Penalties) (England) Regulations 2017
2. That the Licencing and Protection Committee agree that Fixed Penalty Notices will be issued at the 'maximum penalty amount' and that a lesser amount for early payment will not be offered, as defined within the Environmental Offences (Fixed Penalties) (England) Regulations 2017 or any future amendment to the Regulations involving fine levels.

- 3. That the Licencing and Protection Committee delegate the responsibility for the creation and maintenance of policies and procedures regarding the Environmental Offences (Fixed Penalties) (England) Regulations 2017, to the Head of Community, in consultation with the Executive Councillor for Regulation and Operations.**

- 4. That the Licencing and Protection Committee authorised the Head of Community for the purposes for enforcement of the Environmental Offences (Fixed Penalties) (England) Regulations 2017, with the ability for the Head of Community to authorise such other Officers as considered appropriate. In the case of any legal action, any decision to be made in consultation with the Head of Legal Practice.**

1. WHAT IS THIS REPORT ABOUT/PURPOSE?

- 1.1 This report seeks to obtain the approval of the Licencing and Protection Committee for delegated officers of Huntingdonshire District Council to be able to issue Fixed Penalty Notices at the maximum level and not to offer a lesser amount option for early payment.
- 1.2 The report also seeks approval for delegated authority to be given to the Head of Community to approve the setting of Fixed Penalty Notices at the maximum level and without an early payment option, should new regulations be introduced in the future.

2. WHY IS THIS REPORT NECESSARY/BACKGROUND

2.1 Local Authorities have the power to issue Fixed Penalty Notices (FPNs). Issuing an FPN, discharges the individuals' responsibility in relation to the offence and once paid, no further action can be taken. A number of Huntingdonshire District Council services have an enforcement arm, these include:

- Community Protection and Enforcement (Anti-social behaviour, Fly-tipping, Littering, Abandoned Vehicles, Dog Controls, Waste);
- Environmental Health;

2.2 Within these services, officers with delegated authority use FPNs where they feel an offence has been committed and issuing an FPN is proportionate or where other interventions have been tried but have not been successful.

2.3 For a number of years, Local Authorities have been able to issue FPNs but more recently, there has been more opportunities to utilise this power such as under the Anti-Social Behaviour, Crime and Policing Act 2014. Following a restructure of the Community Division at the end of 2016, the Community Protection and Enforcement Team was created. This team has responsibility of investigating reports of anti-social behaviour, fly-tipping, littering, abandoned vehicles, dog related issues and incorrect storage and disposal of waste. Over the last 12 months, this team has issued the following FPNs:

Offence	Number of FPNs issued 1 st April 2017 – 31 st March 2018
Anti-Social Behaviour	16
Fly-Tipping	0
Littering	11
Abandoned Vehicles	1
Dog Control	1
Waste	0

2.3.1 This has increased to 1,450% on the same period for the previous 12 months.

2.4 The issuing of FPNs is not considered as the first or last resort and in all cases, a clear and evidenced process is followed to ensure that the decision to issue is

proportionate and reasonable. More recently, the decision to issue FPNs is in line with the new Corporate Enforcement Policy that was approved by Full Council in February 2018.

2.5 There is a misconception that Local Authorities use fixed penalty notices as a method of generating income but there is insufficient evidence to suggest that this is the case. In Huntingdonshire, with 'Clean, Green and Safe' featuring as one of the priorities within the current Corporate Plan, the issuing of FPNs is being used to change the mind set of our communities to ensure that Huntingdonshire remains a safe place to live, work and visit.

2.6 Across the legislation available to the Local Authority for enforcement activity, fines are set at different levels. This paper aims to advise of the fine levels currently applied by Huntingdonshire District Council, the fine levels allowed under the Environmental Offences (Fixed Penalties) (England) Regulations 2017 and the fine levels that this report is requesting approval for.

3. OPTIONS CONSIDERED/ANALYSIS

3.1 The table below details the fine levels that this report requests permission to apply from 1st July 2018:

Offence	Current Penalty Amount	Maximum Penalty Amount
Littering	£75	£150
Dog Control Offences	£100	£100
Fly-posting	£75	£150
Graffiti	£75	£150
Unauthorised distribution of free literature on designated land	£75	£150
Alarm noise: failure to nominate key-holder or to notify local authority of key-holder's details	£75	£80
Nuisance Parking	£100	£100
Abandoning a Vehicle	£200	£200
Fly-tipping	£0	£400
Failure to produce a waste transfer note	£300	£300
Domestic waste receptacle offences	£80	£80
Industrial and commercial waste receptacle offences	£80	£110
Noise exceeding permitted levels – domestic premises	??	£110
Noise exceeding permitted levels – Licensed premises	??	£500

3.1.1 The request is that officers be given permission to issue Fixed Penalty Notices at the maximum level available under the regulations and that an early payment of a lesser amount will not be offered on any of the offences. All other current fine levels will remain unchanged.

**4. KEY IMPACTS/RISKS?
HOW WILL THEY BE ADDRESSED?**

- 4.1 There is a risk that by setting the fine level at the maximum amount and not offering an early payment option of a lesser amount, offenders will suggest that due to affordability, they are unable to make payment. A non-payment of the fine would result in prosecution which in turn would have a cost to the Council and an increased demand on the Council's Legal services.
- 4.2 As previously detailed at point above, the issuing of FPNs has increased in the last 12 months. This increase has not led to a reduction in the percentage of fixed penalties being paid within the specified times.
- 4.3 The risk will be addressed by ensuring that the decision to issue a Fixed Penalty Notice in each case, will be proportionate and the existing procedure adhered to in all cases.

5. WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION

- 5.1 Information relating to current fine levels is widely available to the public on the Huntingdonshire District Council web site as well as the internet in general. It is presumed that residents' are aware of current legislation and the potential consequences should they choose to break the law.
- 5.2 Should the increase of specific fine levels be approved, a media campaign will be carried out utilising local newspapers, social media as well as an update to the Huntingdonshire District Council web pages.
- 5.3 As the amendments have been available since 1st April 2018, some residents may already be aware of the potential increases. The proposal is that any new fine levels will be implemented from 1st July 2018 to allow time for the media campaign to be implemented.

6. LINK TO THE CORPORATE PLAN

- 6.1 One of the strategic priorities and objectives of the Corporate Plan 2018 – 19 is Enabling Communities. The aim of the Enabling Communities strand of the Plan is to make Huntingdonshire a better place to live, to improve health and well-being and for communities to get involved with local decision making. Part of the work programme includes:
- Create, protect and enhance our safe and clean built and green environment; and
 - Develop stronger and more resilient communities to enable people to help themselves
- 6.2 In February 2018, Huntingdonshire District Council approved a Corporate Enforcement Policy. This policy enables Council Officers to apply the policy and matrix toolkit to ensure suspected breaches are investigated and resolved in a prioritised and proportionate manner. The issuing of Fixed Penalty Notices

features as part of the delivery of this policy and in turn, will help the Council meet their strategic priorities and objectives as detailed within their Corporate Plan.

7. CONSULTATION

- 7.1 A country-wide consultation for the new regulations took place between April and June 2017. The consultation focused on fines not having been changed since 2006, fines not being consistent with other parts of the UK, and fines not being consistent with similar types of offending, such as dog fouling.

8. RESOURCE IMPLICATIONS

- 8.1 It is considered that there will be minimal resource implications because delegated officers of the District Council already issue Fixed Penalty Notices. The only implications relate to the media campaign and the need to produce amended Fixed Penalty Notices to reflect the alterations to fine levels.

10. REASONS FOR THE RECOMMENDED DECISIONS

- 10.1 Local Authorities have the ability to issue Fixed Penalty Notices in relation to a number of environmental offences. This is a power that delegated officers of Huntingdonshire District Council already utilise but in some cases, the fine level has not increased since 2006.
- 10.2 Huntingdonshire District Council recognises the impact that environmental crime has on our communities and has already demonstrated that this type of behaviour will not be tolerated and in all cases, appropriate action will be taken.
- 10.3 The intention is that by increasing the fine levels and not specifying different amounts, the fine levels will be easier for our communities to understand and also encourage them to think about the potential consequences before committing an offence.

BACKGROUND PAPERS

- **The Environmental Offences (Fixed Penalties) (England) Regulations 2017**
<http://www.legislation.gov.uk/uksi/2017/1050/made>

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