

**Public**

**HUNTINGDONSHIRE DISTRICT COUNCIL**

**Title/Subject Matter:** The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

**Meeting/Date:** Licensing and Protection Committee - Wednesday 20<sup>th</sup> June 2018

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

**Report by:** Community Resilience Manager.

**Ward(s) affected:** All

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**Executive Summary:**

The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 introduces the new fixed penalties for littering from vehicles from powers conferred by inserting section 88A of the Environmental Protection Act 1990, which came into force on 1<sup>st</sup> April 2018. The new power is conferred on litter authorities in England (outside London) to require the registered keeper of a vehicle to pay a fixed penalty notice if there is reason to believe that a littering offence from a vehicle has been committed.

Huntingdonshire District Council as a Local Authority has a duty to keep land in its authority, including the highway and roads clean, so far as practicable, under section 89(1) of the Environmental Protection Act 1990. Historically, identified officers have been given delegated authority to issue Fixed Penalty Notices under the Act of £75 following a report of an incident of littering. The same process was applied when an offence of littering from a vehicle was witnessed.

In summary, Huntingdonshire District Council has been issuing Fixed Penalty Notices in relation to littering from a vehicle for the last 5 years. This report requests permission for identified officers to be delegated the new power contained under 88A of the Environmental Protection Act 1990, enabling them to issue Fixed Penalty Notices of £150 to the registered keeper of a vehicle believed to be involved in a littering from a vehicle offence.

**Recommendation(s):**

- 1. That the Licensing & Protection Committee update the Council's Scheme of Delegation to adopt the powers contained within The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018**

- 2. That the Licensing & 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 Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 or any future amendment to the Regulations involving fine levels.**
- 3. That the Licensing & Protection Committee delegate the responsibility for the creation and maintenance of policies and procedures regarding The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, to the Head of Community, in consultation with the Executive Councillor for Regulation and Operations.**
- 4. That the Licensing & Protection Committee authorised the Head of Community for the purposes for enforcement of The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, 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.**
- 5. That the Licensing & Protection Committee authorise the Head of Community to determine representations against the penalty notice as defined within Part 4 of The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 or any future amendments to the Regulations**

## **1. WHAT IS THIS REPORT ABOUT/PURPOSE?**

- 1.1 London borough councils are currently able to issue a penalty charge notice to the keeper of a vehicle from which litter is thrown, even if they cannot establish the identity of the person who threw the litter. Section 154 of the Anti-social Behaviour, Crime and Policing Act 2014 enables the Government to make regulations which would extend similar powers to other local authorities. Introducing these regulations will improve the suite of enforcement powers available to councils to tackle littering offences.
- 1.2 On 1st April 2018, the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 came into force and amends section 88 of the Environmental Protection Act 1990 by inserting a new section 88A, granting powers to litter authorities to issue Fixed Penalty Notices (FPNs) for littering from vehicles. These Regulations introduce powers to issue a Fixed Penalty Notice to the owner of a vehicle when an delegated officer of the District Council believes that litter was thrown from that vehicle onto land owned by or the responsibility of Huntingdonshire District Council.
- 1.3 Since 2013, delegated officers of the Council have been investigating reports that litter has been thrown from a vehicle. In the first instance, a letter detailing the alleged offence is sent to the registered keeper. Only if they admit to the offence an FPN is issued, if they deny the offence, no further action is taken.
- 1.4 As a result of new legislation, this being 88A of the Environmental Protection Act 1990, Local Authorities have been granted a power that enables them to issue FPNs specifically for the offence of littering from a vehicle.
- 1.5 The purpose of this report is to obtain the Committee's permission to utilise this power and for the fine level to be set at the maximum amount of £150 with no lesser amount for early payment offered.

## **2. WHY IS THIS REPORT NECESSARY/BACKGROUND**

- 2.1 Between 1<sup>st</sup> April 2017 and 31<sup>st</sup> March 2018, the Street Cleansing Teams based within the Operations Division removed 55.6 tonnes of discarded litter from the roads and highways that fall within the responsibility of Huntingdonshire District Council.
- 2.2 Section 24 of the London Local Authorities Act 2007 (amended in 2012) confers powers to councils in London to issue a penalty charge notice on the owner of a vehicle from which litter is thrown. A penalty charge notice is a civil fine which unlike a criminal penalty does not carry the risk of a criminal prosecution. However, these powers have not previously been available in respect of the rest of England.
- 2.3 Section 88A of the Environmental Protection Act 1990 empowers the Secretary of State to confer similar powers on authorities in England. The Littering From

Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 is the first exercise of that power.

- 2.4 The amount of a Fixed Penalty Notice is the amount specified by the litter authority, this being Huntingdonshire District Council, under section 88(6A)(a) of the EPA 1990 (which relates to Fixed Penalty Notices for leaving litter).
- 2.6 The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 confers powers on litter authorities (defined in Regulation) to issue civil penalty notices to the keeper of a vehicle when the council has reason to believe, to the civil standard of proof, that litter was thrown from that vehicle on the authority's land. To avoid a double jeopardy effect, this Act also provides that a council may not issue a civil penalty notice against the keeper if a fixed penalty notice (in lieu of prosecution) is or has been issued in respect of the same littering offence.
- 2.7 Public service vehicles, hackney carriages and private hire vehicles are exempt from liability for a civil penalty notice if the offence is committed by a passenger. The Regulations also provide for businesses engaged in the hiring of vehicles to appeal a civil penalty notice in connection with one of their vehicles by providing evidence that the vehicle was not being kept by the business at the time of the offence by virtue of the relevant vehicle hire agreement.
- 2.8 A Fixed Penalty Notice can be challenged by the person who it has been issued to up to 28 days after the date of issue. On receipt of the representation, the District Council must decide whether or not the grounds of the challenge are upheld. It is proposed that the Head of Community will have delegated authority to determine whether or not one of the regulations applies and notify the applicant of the outcome.
- 2.9 If the Fixed Penalty Notice is not been paid within the payment period, the fixed penalty increases by 100% with effect from the day after the last day of the fixed penalty payment period. The Council may recover any unpaid amount of the fixed penalty (being the increased amount referred to earlier) and any related costs awarded by an adjudicator as a civil debt or as if payable under a county court order.

### **3. OPTIONS CONSIDERED/ANALYSIS**

- 3.1 The fine levels relate to the report considered by the Committee on The Environmental Offences (Fixed Penalties) (England) Regulations 2017 that fines be set at the maximum amount available. The maximum amount in the Act is £150, For a number of years, the Council have been issuing Fixed Penalty Notices at a fine level of £75 for a littering offence. An established procedure is in place for the issuing of FPNs, including the offender having the opportunity to challenge the penalty that they have been issued.

- 3.2 The following table details the number of FPNs issued for littering in the last 12 months compared to the number paid within the specified timescales:

Quarter	No. of FPNs Issued for Littering	No. of FPNs Paid
Quarter 1 (April – June)	3	3
Quarter 2 (July – September)	3	3
Quarter 3 (October – December)	3	3
Quarter 4 (January – March)	2	1

- 3.3 The above suggests that where an FPN has been issued, the offender is more likely to pay the penalty than not. This also increases the likelihood of the person responsible taking the situation seriously and reduces the likelihood of them being a repeat offender.
- 3.3.1 Huntingdonshire District Council takes the offence of littering very seriously and it is one of the issues that is of most concern to our communities. By setting the fine level at the maximum amount and by not offering an early payment option, it is the intention that residents will be discouraged from littering.

#### **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 could result in it being doubled and the amount and associated costs being recovered as a civil debt or by way of a County Court Order, which in turn would have a cost and resource impact to the Council as well as an increased demand on the Council's Legal services.
- 4.2 The risk will be addressed by ensuring that the decision to issue a Fixed Penalty Notice in each case will be proportionate and beyond reasonable doubt that an offence has been committed.

#### **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 fine level 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 power has been available since 1<sup>st</sup> April 2018, some residents may already be aware of the potential increase to the fine level. The proposal is that the new fine level will be implemented from 1<sup>st</sup> August 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 The Department for Environment Food and Rural Affairs (DEFRA) ran a consultation between April – June 2017 in relation to the implementation of the littering from a vehicle offence. All Local Authority areas as well as a number of other bodies across England had the opportunity to comment on the proposed legislation.

- 7.2 It is evident that by the legislation becoming statute, that this is a provision that is widely supported across the country.

## **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 level.

## **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 in relation to a number of different offences.

- 10.2 Littering and associated environmental offences like dog fouling blight our communities and impose avoidable costs on the public purse, meaning that the money is not being spent on the services that genuinely need it. 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 adopting the new power and setting the fine level at the maximum amount and not offering an early payment option will encourage our communities to think seriously before littering from a vehicle. In turn, this could reduce the amount of litter on roads and land across the District and allow the Operations Division to target their resources at other more important issues.

## **BACKGROUND PAPERS**

- **The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018**

## **CONTACT OFFICER**

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