



**TO:** Portfolio Holder for Public Protection, Cllr Anthony Casson

**REPORT OF:** Christian Allen, Assistant Director Regulatory

**REPORT AUTHOR:** Donna Hall, Group Manager Public Protection

**SUBJECT:** Environmental Crime – Offences and Fines

**PURPOSE:** To agree the use of fixed penalty notices for additional enviro-crime offences and to review fine levels for litter and fly-tipping

**KEY DECISION:** NO

**WARDS AFFECTED:** ALL

**EXEMPT REPORT:** NO

## **SUMMARY**

A review of environmental crime offences and fixed penalty notices has been carried out, and as a result it is recommended that the Council adopts some additional offences and powers as set out in the report.

A review of the current fixed penalty notice fines has also been carried out. The fines are currently set below the former statutory maximum levels and it is recommended that these are increased. The new Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 increase the maximum fines for some offences, and these are noted with a view to conducting a further review in 2024.

## **RECOMMENDATIONS**

- 1) That the content of the report be noted
- 2) That the new Fixed Penalty Notices are authorised and adopted
- 3) That the fine levels be agreed for all Fixed Penalty Notices detailed within this report

- 4) That the delegations are agreed for the Fixed Penalty Notices to be issued and enforcement action taken

## REASONS FOR RECOMMENDATIONS

Adopting the additional offences and increasing fixed penalty notice fines for environmental crime enables the Council to effectively tackle offenders. Fixed penalty notices provide a swift and proportionate response to such crimes, although the Council recognises that prosecution will be an appropriate response in some cases.

## OTHER OPTIONS CONSIDERED

Do nothing.

This would mean that the Council will not be able to issue Fixed Penalty Notices for the additional offences or increase the penalty level for the offences of fly-tipping, graffiti, littering and fly-posting

Or,

Choose an alternative fine level within the boundaries dictated by legislation.

## 1.0 BACKGROUND

1.1 The types of offences where Fixed Penalty Notices (FPN) can be issued by or on behalf of the Council have been reviewed and the following are recommended to be authorised and adopted to assist officers with their investigations and enforcement:

- New: Duty of Care offence
- New: Nuisance Parking - businesses selling vehicles or repairing vehicles on a road
- New: Failure to Produce a Waste Transfer Note
- New: Failure to Produce Waste Carrier Registration Documents
- Amended: Fly Tipping/Unauthorised deposit of controlled waste fine
- Amended Litter fine
- Amended graffiti fine
- Amended fly-posting fine

1.2 Fixed Penalty Notices provide an alternative to prosecution. It allows an individual to discharge liability for an offence by payment of a financial penalty. The council is not obliged to offer an alleged offender the option to discharge liability through an FPN; however, it can be deemed more proportionate than prosecution through the courts in some cases.

1.3 This report seeks to increase the enviro-crime fixed penalty fines. The 2023 South and East Lincolnshire Councils Partnership Litter and Fly-Tipping Enforcement and Engagement Strategy recognises that tackling enviro-crime is a local priority and the accompanying Action Plan committed to review fines and enforcement tools.

- 1.4 In May 2023 the Government published an Anti-Social Behaviour Action Plan which prioritised tackling graffiti, fly-tipping and littering and recognise them as forms of anti-social behaviour contributing to people not feeling safe in their local area.

## **2.0 REPORT**

### **2.1 Duty of Care**

- 2.1.1 Fly-tipping significantly impacts on local communities, blighting our neighbourhoods and rural communities and places a significant financial burden upon the council (or the landowner where rubbish is fly tipped on private land). In addition, the actions of unscrupulous waste operators undercut legitimate businesses which are operating within the law. Under Section 34 of the Environmental Protection Act 1990, all occupiers of domestic properties are required to take reasonable measures to ensure that waste produced on their property is only transferred to an authorised person for proper disposal.
- 2.1.2 An FPN can be issued under section 34(6) when an individual appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990. For example:
- a. where fly tipped waste can be traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person
  - b. where an unauthorised carrier is found to be carrying household waste that was directly transferred to them by the occupier of a domestic property
  - c. where an individual is found to have transferred their household waste to an unauthorised person at a site that does not have a permit or exemption
- 2.1.3 The duty of care requires occupiers of a domestic property to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on that property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly tip.
- 2.1.4 An authorised person may still fly tip waste so tracing fly tipped waste to a household does not necessarily demonstrate a breach of the duty of care. An individual should be given an opportunity to demonstrate that they took reasonable steps to determine the person that took their waste was authorised to do so. If fly tipped waste is traced to an individual and they are unable to identify who took their waste, or the carrier they identify is unauthorised, then it is reasonable to believe their duty of care was not met.
- 2.1.5 Under previous legislation, local authorities were allowed to set a fine under legislation between £150 and £400 with a minimum discounted penalty of £120. New legislation from 31<sup>st</sup> July 2023 has enabled the fine to be increased to a maximum of £600. FPNs should not be given where prosecution through the courts is more appropriate.
- 2.1.6 It is recommended that the level for the Duty of Care FPN should be set initially at the former maximum of £400 with a reduced penalty of £300 if paid within 14 days. This would allow for smaller offences to be dealt with via the Fixed Penalty Notice route whilst leaving the ability to prosecute more serious offences through the courts.
- 2.1.7 It is recommended that FPN levels are reviewed again in 2024 in light of the new legislation.

### **2.2 Nuisance Parking**

- 2.2.1 Some garages and businesses which sell or repair cars can park them for long periods of time on the road causing a nuisance to local residents.
- 2.2.2 A Fixed Penalty Notice can be issued under Section 6 of the Clean Neighbourhoods and Environment Act 2005 if a person at any time breaches section 3 (1) where –
- a) he leaves two or more motor vehicles within 500 metres of each other on a road or roads where they are exposed or advertised for sale.
  - b) he causes two or more vehicles to be so left.
- This offence is aimed at businesses and garages and therefore would not apply to an individual selling a vehicle privately and not as part of his business.
- 2.2.3 A Fixed Penalty Notice can also be issued under Section 6 of the Clean Neighbourhoods and Environment Act 2005 if a person at any time breaches section 4 (1) where they carry out restricted works on a motor vehicle on a road. “Restricted works” means: “works for the repair, maintenance, servicing, improvement or dismantling of a motor vehicle or of any part of or accessory to a motor vehicle; works for the installation, replacement or renewal of any such part or accessory.” This applies where the work is carried out in the course of a business of carrying out such works or is for gain or reward.
- 2.2.4 The legislation sets a maximum fine of £100 by fixed penalty notice.
- 2.2.5 It is recommended that the level for the FPN for Nuisance Parking under sections 3 and 4 of the Clean Neighbourhoods and Environment Act 2005 should be £100.

### **2.3 Failure to Produce a Waste Transfer Note**

- 2.3.1 A Waste Transfer Note is a record to acknowledge waste has been transferred from a business to another business who is legally allowed to accept it. It contains a description of the waste, along with other information to show it has been disposed of correctly.
- 2.3.2 A Fixed Penalty Notice can be issued under s.34A (2) in relation to the offence under s.34 (6) of the Environmental Protection Act 1990 when an individual fails to produce a waste transfer note to a local authority officer. Records must be kept for a minimum of two years.
- 2.3.3 A Waste transfer note must be applied for, for each load of non-hazardous waste that is moved off a premise or alternatively a season ticket can be applied for.
- 2.3.4 The legislation sets out a maximum penalty of £300 for this offence.
- 2.3.5 It is recommended that the level for the FPN for Failure to produce a Waste Transfer Note should be £300 with no discounted penalty as this FPN allows officers to target those that have the potential to be repeat offenders.

### **2.4 Failure to Produce Waste Carrier Registration Documents**

- 2.4.1 A business must register with the Environment Agency for the activities of: transporting waste (a carrier); buying, selling or disposing of waste (a dealer); and arranging for someone else to buy, sell or dispose of waste (a broker). It is an offence to carry waste without the necessary authority for transportation.
- 2.4.2 A Fixed Penalty Notice can be issued under s.5B in relation to the offence under s.5 of the Control of Pollution (Amendment) Act 1989 where it is an offence to fail to produce

authority for transporting controlled waste. Section 5 of the Act gives powers to Police, the Environment Agency and waste collection authorities to stop, search and seize any vehicle believed to be used for the transportation of controlled waste without being registered. Only a constable in uniform has the power to stop a vehicle on a road. Local authority officers have the power to issue a fixed penalty notice for failing to produce authority for transporting controlled waste.

2.4.3 The legislation sets out a maximum fine for this offence of £300.

2.4.4 It is recommended that the level for the FPN for Failure to Produce Waste Carrier Registration Documents should be £300 with no discounted penalty as this FPN allows officers to target those that have the potential to be repeat offenders.

## **2.5 Fly tipping**

2.5.1 The Council currently issues FPN's for Fly Tipping under s33ZA of the Environmental Protection Act 1990. Section 33 (1)(a) of the Environmental Protection Act 1990 created the offence of depositing, knowingly causing or knowingly permitting the deposit of controlled waste or extractive waste on land without, or other than in accordance with, an environmental permit.

2.5.2 The former legislation stated that the minimum penalty was £150 and the maximum full penalty was £400.

2.5.3 The council currently uses a Fixed Penalty set at £200 with a reduction to £120 if paid within 10 days.

2.5.4 New legislation from 31<sup>st</sup> July 2023 enables the fine to be set at a maximum of £1000. It is recommended that the penalty be amended to reflect the impact of fly tipping on the district of South Holland and increase the amount to £400 which was the former maximum fine, with no reduction for early payment. This would allow for smaller offences to be dealt with via the Fixed Penalty Notice route whilst leaving the ability to prosecute more serious offences through the courts. It would also be in line with the Duty of Care penalty recommendation.

2.5.5 It is recommended that FPN levels are reviewed again in 2024 in light of the new legislation.

## **2.6 Litter**

2.6.1 The Council currently issue FPNs for litter under section 87 and 88 of the Environmental Protection Act 1990. Littering is classed as general litter, cigarettes, spitting, chewing gum, urinating, defecating and a single bag of household waste.

2.6.2 Under former legislation the fines for littering had a statutory maximum fee of £150 under the Environmental Offences (Fixed Penalties) (England) Regulations 2017.

2.6.3 The Council currently have the fine set at £50 if paid within 7 days and £75 if paid within 14 days.

2.6.4 New legislation which took effect on 31<sup>st</sup> July introduced a new upper limit for littering offences of £500.

2.6.5 It is recommended that the fee initially be amended to the former statutory maximum of £150, with a reduced fee of £100 if paid within 10 days.

## **2.7 Graffiti**

2.7.1 The Council can currently issue FPNs for graffiti under section 43 of the Anti-Social Behaviour act 2003 for offences committed under section 44.

2.7.2 The fine is currently set at £75 with no discount for early payment.

2.7.3 New legislation which took effect on 31<sup>st</sup> July 2023 enables the maximum upper limit to be set at £500, instead of £150 maximum under the former legislation.

2.7.4 It is recommended that the fine is set at £150 in line with the former maximum limit, and that it is reviewed again in 2024.

## **2.8 Fly Posting**

2.8.1 The Council can currently issue FPNs for fly-posting offences under section 43 of the Anti-Social Behaviour act 2003 for offences committed under section 44.

2.8.2 The fine is currently set at £75 with no discount for early payment.

2.8.3 New legislation which took effect on 31<sup>st</sup> July 2023 enables the maximum upper limit to be set at £500, instead of £150 maximum under the former legislation.

2.8.4 It is recommended that the fine is set at £150 in line with the former maximum limit, and that it is reviewed again in 2024.

## **2.9 Proportionality**

2.9.1 When issuing an FPN the principles of the Regulators Code will apply. Enforcement of environmental offences is proportionate, consistent, targeted, transparent and accountable. FPNs will not be given where prosecution through the courts is more appropriate, for example, when someone is a persistent offender with a record of not paying fixed penalties for environmental offences.

## **2.10 Delegated Authority**

2.10.1 It is recommended that delegated authority for these fines and offences is given to the Assistant Director Regulatory and the Assistant Director Wellbeing and Community Leadership.

2.10.2 It is recognised that delegations may be given to Council Officers and third-party Officers working under contract on behalf of the Council, such as Kingdom LA Support.

## **3.0 CONCLUSION**

3.1 Fixed Penalty Notices provide swift and proportionate action in response to some environmental crime.

3.2 The issuing of Fixed Penalty Notices along with their promotion can help to increase public confidence that community concerns are being addressed.

3.3 Any money received by the Council from the Fixed Penalty Notices will be reinvested into service provision as deemed appropriate.

#### **4.0 EXPECTED BENEFITS TO THE PARTNERSHIP**

4.1 Whilst it is recognised that each sovereign Council retains the ability to set fines and take legal action independently, the levels of fines have been harmonised where possible. This provides consistency and transparency to the public who may be travelling between each Council area. It also supports the enviro-crime enforcement contract by providing uniformity in fines and enforcement where it is feasible to do so.

#### **5.0 IMPLICATIONS**

##### **5.1 South and East Lincolnshire Councils Partnership**

5.1.1 None

##### **5.2 Corporate Priorities**

5.2.1 This report supports the priority of “Your Place: Work with our partners such as Lincolnshire Community Safety Partnership and Parish Councils to reduce and prevent crime and anti-social behaviour and protect the community and environment.”

##### **5.3 Staffing**

5.3.1 The Fixed Penalty Notices will be issued by existing staff or Officers appointed by the Council under delegated authority, e.g., through the enforcement contract with Kingdom LA Support.

##### **5.4 Constitution & Legal**

5.4.1 Legal services have been consulted.

##### **5.5 Data Protection**

5.5.1 No issues arising.

##### **5.6 Financial**

5.6.1 The increase in fines will generate additional income through the enforcement contract. It is noted that the fines are not currently being set at the new maximum levels introduced by the Government on 31<sup>st</sup> July 2023. A review will be carried out in 2024 to consider justification for further increases.

##### **5.7 Risk Management**

5.7.1 None

##### **5.8 Stakeholder/Consultation/Timescales**

5.8.1 Consultation has not been carried out as the local authority as empowered to increase fines by Statutory Instrument.

## **5.9 Reputation**

5.9.1 The reputation of the Council could be negatively impacted if it does not effectively enforce enviro-crime offences.

## **5.10 Contracts**

5.10.1 In 2023 the Council, along with Boston Borough Council and East Lindsey District Council, entered a contract with Kingdom LA Support, who carry out environmental crime enforcement activities including patrols and surveillance.

## **5.11 Crime and Disorder**

5.11.1 The issuing of Fixed Penalty Notices is an effective tool to tackle environmental crimes. The Council will continue to investigate and take enforcement action as appropriate.

## **5.12 Equality and Diversity/ Human Rights/ Safeguarding**

5.12.1 There are no new implications arising from this report.

## **5.13 Health and Well Being**

5.13.1 Tackling environmental crime helps to maintain a clean and safe environment which is proven to be important for people's health and well-being.

## **5.14 Climate Change and Environmental Implications**

5.14.1 The recommendations in this report strengthen the Council's position in tackling enviro-crime and promoting a clean and safe environment.

## **5.15 Links to 12 Missions in the Levelling Up White Paper**

5.15.1 Improving the Council's position in tackling environmental crime supports the "Pride in Place" mission by contributing to improving people's satisfaction with their town centre and engagement in local culture and community.

5.15.2 This report also supports the Mission relating to "Crime" which aims to reduce neighbourhood crime by 2030, focussing on the worst affected areas.

## **6.0 Acronyms**

6.1 FPN – Fixed Penalty Notice

## APPENDICES

None

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### Background Papers:-

Government Anti-Social Behaviour Action Plan 2023 [Anti-Social Behaviour Action Plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114222/anti-social-behaviour-action-plan-2023.pdf)

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### Chronological History of this Report

This report has not been previously considered by a Council Body.

REPORT APPROVAL	
Report author:	Donna Hall, Group Manager Public Protection
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