

Report title	Fixed Penalty Notice levels for fly tipping, household waste duty of care & littering offences
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Department	Environmental Services
Exempt?	No
Exemption type	Not applicable
Reasons for exemption	Not applicable

Purpose of report:

To resolve

Synopsis of report:

Approval is sought to revise the Fixed Penalty Notice (FPN) amounts for fly-tipping and waste offences following legislative changes to the Fixed Penalty Notice maxima amounts.

Recommendation(s):

1. That Members revise the FPN levels set by the council as below:
 - FPN level under section 33ZA(9)(a) of the Environmental Protection Act 1990 shall be £500 (lower level) and £1,000 (higher level) on a case-by-case basis.
 - FPN level under section 34ZA (8) of the Environmental Protection Act 1990 shall be £300 (lower level), and £600 (higher level) on a case-by-case basis.
 - FPN level under regulation 5 of the Environmental Offences (Fixed Penalties) (England) Regulations 2017 shall be £180.
 - The FPN levels above shall be discounted by 50% for early payment within existing periods specified for such payments.
2. Members endorse a lead-in period of four weeks before application of revised FPN amounts be provided from the date of decision by the Committee to allow communication of the revised amounts to members of the public.

1. Context and background of report

1.1 To inform members of recent legislation permitting increases to Fixed Penalty Notice levels:

- In respect of part II of the Environmental Protection Act 1990 (the Act) under sections 33ZA(9)(a) up to £1000 (from £400) for fly tipping offences and 34ZA (8) up to £600 (from £400) for household waste duty of care offences
- Regulation 5 of the Environmental Offences (Fixed Penalties) (England) Regulations 2017 of up to £500 (from £150) to deal with littering offences under section 87 of the Act

which came into force under The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 which came in effect on the 31st July 2023.

- 1.2 Further this report seeks authority to revise the current fixed penalty for offences related to littering, fly-tipping, and household waste duty of care to new levels outlined in Table 1; and to give a discount of 50% for early payment. This is a change from the broad approach previously applied of offering a 20% discount for early payment.

2. Report and options considered and recommended

- 2.1 This Summer legislation came into effect increasing the maximum level of FPNs for certain waste offences. The government set out in its Anti-Social Behaviour Action Plan that this is to help councils take proportionate and effective enforcement action against people who intentionally or carelessly damage their local environment, to change behaviour and deter others from offending.
- 2.2 The levels were last set between 4 to 7 years ago as and when legislation was amended. Waste offences remain a significant issue with 780 fly-tips reported in 2022/23.
- 2.3 Revenue from fines is required to be reinvested locally in clean up and enforcement. The government also started publishing league tables on fly-tipping to show which local authorities are using these powers. This has attracted press articles comparing Surrey Local Authority's record: [The Surrey councils named and shamed in fly-tipping league table - Surrey Live \(getsurrey.co.uk\)](https://www.getsurrey.co.uk/news/surrey-councils-named-and-shamed-in-fly-tipping-league-table)
- 2.4. The power to issue a FPN for fly tipping offences is discretionary, offering the alleged offender the opportunity of discharging any liability to conviction for the offence to which it relates. The Council may still decide to instigate a prosecution in cases where it is appropriate to do so rather than follow the FPN provisions.
- 2.5 In determining the appropriate levels of a fixed penalty for littering, the Council needs to take into account the deterrent effect of different levels, peoples' readiness to pay and the levels of fines for littering currently imposed in the Magistrates' Courts. Fixed penalties that are set too high for local conditions, or are likely to be higher than the Court imposed fine in the event of non-payment, will lead to substantial non-payment rates and so, are counter-productive.
- 2.6 Whilst increasing the level of FPN's will act as a deterrent and will help equip the Council with tougher penalties, we need to consider the impact that the increases (to the maximum allowable) may have. For this reason, given the quantum of increase, it is proposed to increase the discount to 50% to maximise the deterrent effect whilst having regard to existing levels and ability to pay. Neighbouring councils, for example Spelthorne, currently have set their fly tipping FPN to a single

level (£400) and may consider increasing this but do not offer any discount for early payment.

- 2.7 The increase may result in more FPN's remaining unpaid due to the offenders simply not having the resources to pay the fine. Currently, if FPN's remain unpaid, the council can and will pursue the offence through the Courts, however this process is more onerous and resource intensive.

2.8 **Fly-tipping**

- 2.9 Section 33 of the Act deals with unauthorised deposits of controlled waste on land (fly tipping) and the Council last set FPN levels in 2016.

- 2.10 The revised maxima of penalty charge that can be specified by the Council is now £1,000. As set out earlier in this report the number of incidents remains significant and a strong deterrent is seen as an important messaging on the seriousness of the offence and the impact on residents' quality of life.

- 2.11 The average costs to the Council of dealing with even small incidents of fly tipping (costs of collection and administration) are in excess of £200 and can be significantly larger in bigger cases. Officers would recommend that the Council specify charges set out in Table 1.

2.12 **Household duty of care offences**

- 2.13 Section 34 of the Environmental Protection Act 1990 imposes a 'duty of care' on householders with respect to waste. A person who contravenes any of these provisions commits an offence.

- 2.14 This type of offence is directed to households whose waste ends up fly-tipped and the householder has not made checks about who is taking their waste. Householders should check as to where the person or entity collecting their waste, are taking the said waste and whether they are registered waste carriers with a valid licence. Householders making the proper checks help stop waste going to those who fly tip and are able to provide essential evidence if the waste is fly-tipped. Since the introduction of FPNs for this offence there have been County wide campaigns on the householder duty of care, and we are working with the communications team to publicise householder requirements including through production of an RBC video animation on the waste duty of care.

2.15 **Littering**

- 2.16 Section 87 of the Act provides for an offence where a person throws down, drops or otherwise deposits any litter and leaves it. With some exemptions this applies to most places in the borough in the open air. In 2019 The Government published the *Code of practice on litter and refuse - part 1A: enforcement guidance (updated 2022)*.

- 2.17 The littering fine levels were last revised in 2018 following legislative changes. It is proposed to increase the maximum to £180, reduced to £90 for early payment within 14 days.

2.18 **Communications**

- 2.19 Members are requested to endorse the 4 week-lead in approach to allow for publicising the revised FPN amounts. In addition to the householder waste duty of

care campaign mentioned above, we have discussed an outline plan for publicising the increases with the Communications team within this period.

Table 1 – Proposed & Existing FPN levels.

Offence & Maximum FPN level that could be set	Proposed FPN Levels		Existing FPN levels		Period for discounted payment
	Maximum	Discounted	Maximum	Discounted	
<p>Fly-tipping (£1000 maxima)</p> <p><u>Upper level</u> (Small van load or less, bigger than car boot load. could be broken down and squeezed into an Astra size van. About 4 cubic metres)</p> <p><u>Lower level</u> (Approximately up to 1 cubic metre. Could be broken down and squeezed into a large boot of a car)</p>	£1000	£500	£400	£320	10 Days
<p>Household waste duty of care (£600 maxima)</p> <p><u>Upper level</u> (Approximately in excess of 1 cubic metre. More than could be broken down & squeezed into large boot of a car)</p> <p><u>Lower level</u> (Approximately up to 1 cubic metre maximum. The rubbish could be broken down and squeezed into a large boot of a car)</p>	£600	£300	£400	£300	10 days
<p>Littering (£500 maxima)</p>	£180	£90	£100	£80	14 Days

3. Policy Framework implications

- 3.1 An FPN is one enforcement tool used within the RBC, [Environmental Services Enforcement Policy](#). Effective enforcement of the policy helps make RBC a cleaner, greener and safer environment in which to live, work and play. The Enforcement Policy is used to help to ensure that resources are focused on priority areas and

problems and that an appropriate balance is struck between the use of FPNs and other existing enforcement tools.

- 3.2 The Council is committed to ensuring that the law is enforced in a proportionate, transparent, accountable and consistent manner. The Policy also endeavours to focus where possible on prevention rather than cure, to educate and assist persons to meet their legal obligations without unnecessary expense and to take firm and proportionate enforcement action against those who fail to follow advice provided or where they flaunt the law or act irresponsibly. Where the option of dealing with the matter allows for a FPN, due consideration to the use of this option will be given.
- 3.3 FPNs are not appropriate for repeat offenders or those responsible for large-scale environmental offences, the offences involving hazardous waste (such as asbestos), for those who are non-compliant or those who do not wish to accept liability and be issued an FPN. These types of offences will continue to be enforced by prosecution in line with the [Environmental Services Enforcement Policy](#). The council is also under no obligation to offer an individual or business a FPN and retains the right to prosecute for all offences regardless of the type or size.
- 3.4 In determining the appropriate level of FPN the quantities of waste cited in Table 1 will be used as a guide, though in accordance with our enforcement policy other aggravating or mitigating factors may also be taken into account. The quantities of waste derive from existing reporting requirements contained in the Waste Data Flow (a web-based system for municipal waste data reporting by UK local authorities to government) which council officers are already familiar with.

4. **Resource implications/Value for Money**

- 4.1 There is a risk that raising the FPN level disincentivises offenders to discharge their liability for prosecution and, consequently, more cases are referred for prosecution at a greater cost in officer time and litigation expenses. Some of these expenses may be recoverable from an offender on successful conviction.

5. **Legal implications**

- 5.1 The Environmental Protection Act 1990 (EPA90) is the primary legislation dealing with waste on land (fly-tipping and littering) and the Anti-Social Behaviour Act 2003 for dealing with anti-social behaviour, including graffiti and fly-posting, both providing prosecutions for breaches of the legislation. Fixed Penalty Notices were however introduced in specific cases as an alternative to prosecution, dealing with situations where liability was accepted from the perpetrator thus saving Local Authorities time and money prosecuting.
- 5.2 The Environmental Offences (Fixed Penalties) (Amendment)(England) Regulations 2023 (the 2023 Regulations) came in force in England on 31st July 2023, amending both Regulation 5 of the Environmental Offences (Fixed Penalties)(England) Regulations 2017 (by creating subsections (1) and (2)) and sections 33ZA(9)(a) and 34ZA(8) of the EPA90, ultimately amending the levels of some FPN as follows:
 - the range of FPN under Regulation 5(1) is increased from £65-£150 to £65-£500,
 - the range of FPN under Regulation 5(2) remains £65-£150 – not the subject of this report
 - the maximum FPN under section 33ZA(9)(a) is increased from £400 to £1,000, and
 - the maximum FPN under 34ZA (8) is increased from £400 to £600.

It is for the Local Authority to decide whether it wants the levels of its FPNs to be increased or to stay at the levels already set.

5.3 Regulation 5(1) deals with FPN under:

- section 88(6A) (a) of the EPA90 in relation to **littering**, giving the Council the opportunity to issue FPNs rather than prosecute; s88(6A) (b) fixes the amount of FPNs to £100 when Local Authorities do not set it and s88(7) allows the Council to set a lower fee for early payment.

- section 43A(1)(a) of the Anti-Social Behaviour Act 2003 (ASBA03) provides FPN for offences defined at s44 of the ASBA03, including graffiti, painting on highways structures and displaying advertisements in contravention of regulation, not considered in this report;

5.4 Regulation 5(2) deals with FPN under paragraph 7(4)(a) of Schedule 3A of the Environmental Protection Act 1990, in relation to unauthorised free distribution of printed matter on designated land. The level of FPNs here have not changed and these are not the subject of this report.

5.5 Section 33ZA(9)(a) of the EPA90 deals with FPNs in relation to contravention of s33(1)(a) of the EPA90, providing FPNs as alternative to prosecution for a specific type of **fly-tipping** on land; as mentioned earlier, the maximum amount of these FPNs can now be increased from £400 to £1,000. Section 33ZA(9)(b) sets the amount of the FPN at £200 when Local Authorities have not set it, with no option for early payment. Section 33ZA (10) provides for a reduced amount for early payment if the Local Authority wishes to adopt it, although this reduced amount cannot be below £120, hence the suggested early payment amount.

5.6 Section 34ZA (8) of the EPA90 deals with FPN as alternative to prosecution for offences under s34(6), relating to s34(2A), i.e., the **duty of care** linked to the transfer of waste from a residential property, as mentioned earlier in this report. Again, s34ZA(7)(b) sets the FPN at £200 if the Local authority has not set its amount and section 34ZA (9) provides for a reduced amount for early payment, which can however not be below £120.

5.7 The legislation does not mention whether only one category of FPNs can be adopted or if the Council could apply various amounts for different quantities or types of waste, leaving the Council free to choose its own set-up.

5.8 It is of note that non-payment of a FPN leads to a prosecution rather than recovery as a civil debt, so the issuing of FPNs may not cancel the need for a prosecution. However, if a FPN has been issued and not paid, when mentioned to the Court, the fine imposed by the Court will generally be greater than the FPN itself and court costs will be imposed.

5.9 It is good practice for the revenue of such FPN to support the enforcement action of the departments who have issued and collected them.

6. **Equality implications**

- 6.1 The Council has a duty under the Equality Act 2010. Section 149 of the Act provides that we must have due regard to the need to;
- a) eliminate discrimination, harassment, victimisation and other conduct prohibited by the Act
 - b) advance equality of opportunity
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share protected characteristics.
- 6.2 The increase in the level of fines would have a negative impact on people with a low income or who receive state benefits, which may affect people who receive pensions credit (protected characteristic of age) and other types of benefits, such as disability living allowance (protected characteristic of disability). The increase in discount may provide some mitigation of the impact but that will work only where that person is able to pay the fine within the 10 days or 14 days (for littering).
- 6.3 Officers will continue to monitor the impact the increased fees have on people's ability to pay and where possible, gather information on the specific impact(s) on anyone with a protected characteristic.

7. Environmental/Sustainability/Biodiversity implications

- 7.1 There are no adverse implications identified. The delivery of a number of these regulatory services enhance, protect or seek redress for harm to the environment.

8. Timetable for Implementation

Action	Date	Owner
Finalise & action communications plan	1 week from decision	DB with Comms

9. Background papers:

[Environmental Services Enforcement Policy](#)

[Code of practice on litter and refuse - part 1A: enforcement guidance](#)

Get Surrey news article: [The Surrey councils named and shamed in fly-tipping league table -Surrey Live \(getsurrey.co.uk\)](#)

[Local authority fly-tipping enforcement league tables for England, 2021/22](#)