

**CABINET MEMBER FOR HIGHWAYS, STREET SCENE & FLOODING –
CLLR NICK HOLDER**

SERVICE AREA: Environmental Enforcement – Highways Operations.

OFFICER CONTACT: Peter White (Enforcement Manager)

REFERENCE: HSSF-03-24

LEGISLATIVE CHANGES TO ENVIRONMENTAL FIXED PENALTY NOTICE AMOUNTS

Purpose of Report

1. The purpose of this report is to update the Cabinet Member for Highways, Streetscene and Flooding on the changes resulting from a Statutory Instrument issued by the Government to increase the Fixed Penalty Notices (FPN) amount for fly-tipping, household waste duty of care and littering. This will enable the Cabinet Member to set the amount per FPN to contribute to effective enforcement activity in accordance with the Council's Business Plan.
2. To note the new Fixed Penalty amounts (Table 2 of the report) and approve the maximum new fixed penalty notice amounts to be applied (Option 1 – Options Table below).

Relevance to the Council's Business Plan

3. Changes to environmental FPN's links directly to the Council's Business Plan under Responsibility for the Environment. Specifically, it aims to implement and deliver new educational campaigns and pursue further prosecutions and formal actions against fly tipping and other environmental offences.

Main Considerations for the Council

4. The main consideration with regard to this matter is to agree and set the maximum available fixed penalty amounts which have been introduced by Government.

Background

5. Under the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023, Section 33ZA(9)(a) of the Environmental Protection Act 1990 is amended such that the fixed penalty for fly-tipping is now increased to not less than £150 and not more than £1,000. In Section 34ZA(8), the fixed penalty for household waste duty of care offences is increased to not less than £150 and no more than £600. For Regulation 5, the amount of a fixed penalty capable of being specified by the Council for the offences of littering is now increased to not less than £65 and not more than £500.
6. The Waste Enforcement (Fixed Penalty Receipts) (Amendment) (England and Wales) Regulations 2023 is due to come into force on 1 April 2024. These Regulations amend Part 2 of Environmental Protection Act 1990 and Part 9 of the Clean Neighbourhoods Act 2005. The amendments relate to the purpose which local authorities may use income received from fixed penalty notices for fly tipping, waste duty of care and littering offences.

7. A Waste Collection Authority, such as Wiltshire Council, may only use fixed penalty receipts for the purpose of the employment or engagement of its authorised officers, as defined in Sections 33ZA(12) or 34ZA(12), or any of the functions of those officers.
8. A Waste Collection Authority must supply the Secretary of State with such information relating to its use of its fixed penalty receipts as the Secretary of State may require.
9. Listed at **Table 1** below are the current FPN amounts, along with the newly introduced amounts linked to the Statutory Instrument.

Offence	Current FPN Amount (Paid within 14 Days)	Current Discount for Early Payment (Paid within 10 Days)	Maximum New FPN Amount	Discount for Early Payment
Fly-tipping	£400	NIL	£1,000	See paragraph below
Household Duty of Care	£400	£200	£600	See paragraph below
Littering	£150	£100	£500	See paragraph below

Table 1

10. Linked to the purpose of this report, the Council has an option of lowering each FPN amount from the maximum amount within a range specified in the legislation. However, the preferred service option is to set at the maximum available amount. **Table 2** below details the range of amounts in line with the Statutory Instrument:

Offence	Minimum New FPN Amount	Maximum New FPN Amount
Fly-tipping	£150	£1,000
Household Duty of Care	£150	£600
Littering	£65	£500

Table 2

11. It should be noted that the legislation outlined defines the fine level range that Councils can set. Councils cannot set fine levels outside the ranges specified (**Table 2**). The income receipts from the FPN' is now ringfenced and cannot be spent on anything other than enforcement.

Overview and Scrutiny Engagement

12. None – Legislative introduction as per the issued Statutory Instrument.

Safeguarding Implications

13. None.

Public Health Implications

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

Procurement Implications

15. None.

Equalities Impact of the Proposal

16. It is not felt that the adoption of the new guidance under the statutory instrument should have any negative impact in respect of protected characteristics and the public sector equality duty. The Council is sensitive to socio-economic factors, and inclusion impacts upon individuals. FPNs represent proportionate enforcement option against illegal activity. Individual economic activity can adversely be impacted by the issue of an FPN. An FPN can be declined and decided via alternate legal process.

Environmental and Climate Change Considerations

17. Fly-tipping is an environmental hazard, and material dumped may destroy habitats and be poisonous to humans and wildlife. Discarded food waste encourages the growth of rodent populations which are linked to the spread of disease. Measures to reduce fly-tipping will therefore have a positive ecological impact.

Risk Assessment

18. The risk in increasing the fine level is that offenders will not be prepared to pay the fine, or they will be unable to afford the fine. However, this risk is mitigated by the deterrent effect of promoting higher penalties of such environmental crime and aligns with the zero-tolerance approach by Wiltshire Council. This may also increase the number of cases being referred to Court for prosecution, but the service can manage the increase of prosecutions within current staffing levels.

Financial Implications

19. Increasing the fine levels is intended to discourage potential offenders and the income receipts support the costs of dealing with illegal waste disposal. Increasing FPN levels will act as a strong deterrent against those involved in environmental crime and provide a cheaper alternative to going directly to prosecution.
20. The issuing of FPN's is not intended to be an income generation exercise, the recovery of payments of FPN's levied is required by law to remain within the service area and for the benefit of the services provided.

Table 3 below details the recipients of environmental penalties as a result of formal action outcomes:

Penalty Type	Recipient	Remarks
Fines awarded when prosecuted in Court	Central Government.	Consolidated Fund
Costs awarded when prosecuted in Court	To the prosecuting authority e.g. Wiltshire Council.	The award of costs is at the discretion of the Court. Therefore, we may be awarded all costs or a percentage of costs.
Fixed Penalty Notices	To the prosecuting authority e.g. Wiltshire Council.	All receipts are retained by the Local Authority (see legislation paragraph above on how receipts can be spent)

Table 3

Legal Implications

21. The risk in increasing the fine level is that offenders will not be prepared to pay the fine, or they will be unable to afford the fine. This will increase the number of cases being referred to Court for prosecution and an increase in legal time. However, this may also see a reduction in prosecution cases as the increased use of a higher rate FPN for offences would be an alternative to a previously considered prosecutable offence.

Options Considered

22. **Table 4** below provides the options considered with the pros and cons:

Option	Proposal	Pros	Cons
1*	Increase FPN's fines to maximum level	<p>Sends a strong message and discourages potential offenders.</p> <p>Increased income from FPN's is re-invested into environmental enforcement service and clear-up of waste.</p> <p>Cases can be resolved quickly without the expense of going to court.</p> <p>The higher FPN amount is in-line with what other councils across the country are setting their FPN levels at i.e. maximum level.</p>	<p>Offenders may not be prepared to pay the fine, or they will be unable to afford the fine.</p> <p>This may increase the number of cases being referred to Court for prosecution and an increase in legal time.</p>

		Higher level of FPN will deter fly-tipping and should lead to lower numbers of fly tipping reports.	
2*	Keep FPN fines at current level	More FPN's would be paid at a lower amount, because its more affordable.	The levels of inflation have eroded the financial impact of the FPN's, which were set in 2016. Not in line with council intent of zero tolerance of fly tippers for environmental crime. Not considered as an effective deterrent in the current climate. Will encourage fly tipping in Wiltshire if our level of FPN is below that of other authorities.
3*	Increase FPN fines, but not to maximum level.	More FPN's would be paid at a lower amount, because it may more affordable.	Applying a penalty rate at a lower threshold than other authorities could be perceived by those engaging in waste crime that Wiltshire presents a lower financial risk for undertaking illicit activities.

* Cons* Consideration for discount for early payment is applicable.

Reason for Proposal

Table 4

23. To agree and set the maximum fixed penalty amounts available for fly-tipping, household waste duty of care and littering which have been amended in statute by the Government.

Proposal

24. That the new fixed penalty notice amounts (Table 3) are noted and also approve the maximum amounts available for the new fixed penalty notice amounts to be applied.

The following unpublished documents have been relied on in the preparation of this Report:

[The Environmental Offences \(Fixed Penalties\) \(Amendment\) \(England\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uk/2023/115)