

Report



Cabinet Member for Licensing and Regulation Cabinet Member for Streetscene

Part 1

Date: 8 October 2108

Subject **Review of Fixed Penalty Notice charges for waste offences**

Purpose To seek approval from the Cabinet Member for Licensing & Regulation and the Cabinet Member for Streetscene on the proposed charges for fixed penalty notices in relation to waste offences under relevant legislation enforced by officers employed by Newport City Council and to seek approval to continue not offering a discount for early payment.

Author Principal Environmental Health Officer
Waste Enforcement Manager

Ward City wide

Summary A review of fixed penalty notice charges which are used to assist with enforcement of waste offences has been undertaken. The review has been undertaken partly to reflect the introduction of new legislation and to ensure consistency across the Council. In order to provide a greater deterrent to potential offenders, an increase to the fixed penalty charge amount is recommended for a number of offences.

Proposal That the Cabinet Members approve the Fixed Penalty Notice charges and support the continued use of **fixed penalty notices for waste offences as an additional and alternative enforcement option. Also that the Cabinet Members approve the position of not offering discounts for early payment for these offences.**

Action by Head of Law & Regulation
Head of Streetscene & City Services

Timetable Immediate

This report was prepared after consultation with:

- Head of Finance – Chief Finance Officer
- Head of Law and Regulation – Monitoring Officer
- Head of People and Business Change

Signed

Background

Within Newport City Council waste offences fly tipping complaints are investigated by the Waste Management team within Streetscene (waste on public land and adopted highways) and by the Noise & Neighbourhood team within Law & Regulation (waste on private land). The teams work closely together to tackle the issues around fly tipping within the district. Both public and private land owners are picking up the cost to clear waste deposited in this manner. This type of behaviour also has a detrimental impact on communities; it makes them unsightly, attracts anti-social behaviour, attracts further flytipping, and depending on the nature of the waste could harbour and attract rodents.

Due to new legislation (The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017) that has been introduced it has been necessary to review our waste offence Fixed Penalty Notice charges with the intention to produce a fixed penalty booklet focusing on waste offences which will be used by both service areas.

The table below illustrates the current legislation and fixed penalty amounts, with our proposed fixed penalty amounts highlighted in blue.

Reference	Section & legislation	Description of offence	Current Fixed Penalty Charge	Proposed amount for fixed penalty charges (2018/2019)
1	S88 Environmental Protection Act 1990	Litter	£75.00	£100.00
2	S94 B Environmental Protection Act 1990 & Schedule 3A CN&EA 2005	Unauthorised distribution of literature	£75.00	£100.00
3	S43 Anti-Social Behaviour Act 2003	Graffiti and flyposting	£75.00/ £50 (difference between departments currently)	£100.00
4	S34(a) Environmental Protection Act 1990	Failure to furnish documentation (waste carriers licence)	£300.00	£300.00
5	S47ZA(2) Environmental Protection Act 1990	Offences in relation to waste receptacles	£100.00	£100.00
6	S5B(2) Control of Pollution (Amendment) Act 1989	Failure to produce authority waste transfer notes	£300.00	£300.00
7	S33 ZB Environmental Protection Act 1990	Unauthorised deposit of controlled waste	New Legislation (Oct 2017)	£400.00
8	S2A Refuse Disposal Amenity Act 1978	Abandoned Vehicle	£200.00	£200.00
9	S52 Anti-Social Behaviour, Crime & Policing Act 2014	Breach of CPN	£100.00	£100.00

Under the legislation there is an option to make a provision for a discount for early payment of a fixed penalty. To date within the legislation (stated above), the Council have not offered an early payment scheme, in order to send a strong a message to offenders. There is no proposal to change this stance.

Financial Summary

This proposal has no additional costs involved over the current cost of delivering this enforcement action. The new Fixed Penalty Notice for the unauthorised deposit of controlled waste will not increase the amount of work completed on this enforcement area; it will provide another enforcement tool that may be an effective deterrent to future offenders and may reduce the costs of enforcement to the Council compared with prosecution action which was the only enforcement action available previously. Fixed Penalty receipts are required by the legislation to be used to deliver further regulatory activity in this area.

Risks

You will need to complete the following Risk table

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
No payment due to increased level of Charge	L	L	By increasing the amount of fines the Council is sending a message of zero tolerance to these attitudes; no payment would involve judicial action and costs could be recovered at a later stage. There will always be a percentage of people who will not be able/will not pay no matter what and the benefits of increasing the fines are greater than the risk of no payment	Principal Environmental Health Officer/Waste Enforcement Manager
Fewer payments due to no discount for early payment being offered leading to resource intensive legal proceedings.	M	L	The Council will continue to use reminder letters to encourage offenders to pay the Fixed Penalty Notice charge to reduce the risk of higher numbers of cases requiring prosecution action.	Principal Environmental Health Officer/Waste Enforcement Manager

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

Protecting the environment and managing resources sustainably so that future generations may benefit from them is a key strategic driver for the Local Authority and this is expressed through the Council's Well-being Objectives and the Well-being Plan.

This measure is aimed to tackle serious issues impacting our communities; by reducing litter and flytipping the Council would be contributing to the main priority in the Corporate Plan 2017-2022 – Improving People's lives. Moreover, the proposal has clear links with working towards improved environment and community safety and cohesion.

Options Available and considered

A) Support the proposal of:

- a) Increasing the Fixed Penalty Notice charges (as highlighted in blue, in the table above) and the introduction of the new Fixed Penalty, as provided by the current legislation.
- b) Continuing not to offer a discount for early payment for offences under the legislation listed.

B) Not to support either of the options at A above.

Preferred Option and Why

The preferred option is Option A to implement the changes proposed:

- Littering, flytipping and flyposting are very serious offences that have a significant negative impact in our environment and our communities, and the Council dedicates significant resources to dealing with them
- It is believed that to tackle this issue, together with other actions such as community engagement, the Council needs to adopt a zero tolerance policy towards offenders
- By applying the maximum amounts included in the relevant legislation, and not offering an early payment discount the Council would be sending a clear message on the matter, whilst still enabling other activities such as engagement to continue as before.

Comments of Chief Financial Officer

The proposal to increase current and create a new fixed penalty notice will have no adverse impact on the budget as there would be no additional costs incurred because all work would be absorbed within existing teams. The current avenue for enforcing unauthorised deposit of controlled waste is through the prosecution route. If a method of being able to administer a fixed penalty notice is introduced in this area it will create another method of enforcement which should reduce the prosecution costs for this type of offence.

There is an inherent risk in any type of increase to penalties that payments will reduce but this could be balanced with the prospect of a more effective deterrent to offences in the first instant.

Comments of Monitoring Officer

The proposed action is in accordance with the Council's statutory powers to set fixed penalty charges for various environmental offences. For certain offences, the amount is prescribed by the legislation and the Council only has discretion as to whether or not to allow a discount for early payment. However, with other types of environmental offences, the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008 enables Local Authorities to set the amount of a fixed penalty notice within a specified range. If the Council does not set the amount of the FPN itself then, under the Regulations, a standard default amount (of either £75 or £100) applies. In the case of FPN's for graffiti and fly-posting under the Anti-Social Behaviour Act, there is currently a discrepancy between the amounts charged by City Services and Public Protection. Therefore, this needs to be regularised and standardised to ensure consistency. In addition, the Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017 introduced a new offence of unauthorised depositing of controlled waste contrary to Section S33 ZB of the Environmental Protection Act 1990 and, if the Council does not set a penalty limit of between £150 and £400, then a default penalty of £200 will apply. The proposed FPN's charges set out in the table are within the prescribed limits and are commensurate with the nature of the offences. The Council does not currently offer any discount for early payment and it is proposed that this practice should continue in order to defer offences.

Comments of Head of People and Business Change

The proposal to change fixed penalty notice charges for waste offences due to new legislation has no direct staffing implications. The Council has a duty to apply the five sustainability principles of the Well-

being of Future Generations Act to all planning and decision making and if the Cabinet Member accepts the proposal in the report this will be in keeping with the Act and the sustainable development principles.

Local issues

N/A

Comments of Non-Executive Members

Councillor D Fouweather

Although I broadly accept that we need to make a stand against people who litter there is little point in increasing fines when the council is simply not issuing them. I brought this matter to the cabinet members' attention with regards dog fouling where the performance of the wardens in issuing tickets has been embarrassingly poor.

Response from Head of Law and Regulation

The Community Safety Warden Team has issued over 1200 FPN's for littering offences over the past two years and approximately £50,000 of fines are recovered each year. Therefore, it is simply incorrect that the Council is not issuing these fines or that performance has been "embarrassingly poor". Councillor Fouweather has raised the issue about the low number of FPN's for dog fouling, by comparison, and this has been explained fully at Performance Scrutiny Committee. Wardens have to witness offences being committed in order to issue "on-the-spot" fines and this is very rare with dog fouling offences. In these cases, the Council relies on complaints and evidence from the public and offenders are prosecuted through the courts. However, this report only deals with the level of fixed penalty charges for littering and other waste offences, not dog fouling. The fines are being increased within the allowable ranges, and no discount is being recommended for early repayment, in order to maximise their deterrent effect. The ultimate aim is to reduce the amount of littering and waste offences, not to issue increasing numbers of Fixed Penalty Notices.

Scrutiny Committees

N/A

Equalities Impact Assessment and the Equalities Act 2010

This proposal could potentially have both positive and negative impacts on the protected characteristic of 'Race', as there is correlation between areas of low income within the city and higher proportions of ethnic minority groups. However these areas are also more likely to be 'fly tipping hot spots' and therefore more likely to see the benefits in any reduction in littering and fly tipping. Therefore the proposal has a deterrent effect which will help tackle these issues, and long term will have a positive impact on hotspot areas, which have also been identified as linked to these target groups.

Full Fairness & Equalities Impact Assessment included as Appendix A

Children and Families (Wales) Measure

The proposals set out in this report are not relevant to the aims of the Children and Families (Wales) Measure.

Wellbeing of Future Generations (Wales) Act 2015

- Long term: flytipping, littering and flyposting are behavioural issues; any long term strategy needs education and engagement programs in place; however part of the behavioural change will necessarily come from enforcement action –this will motivate change in some sectors of the population and will serve as example so engagement activities are more effective.

- **Prevention:** The issue of Fixed Penalty Notices has proven to have a very strong deterrent effect in the past, thus preventing other people from doing the same, with an overall reduction in the number of offences
- **Integration:** Enforcement activities are part of wider communications, engagement and educational programmes to avoid flytipping, littering and antisocial behaviour also adds to this. They also contribute to make our city a more attractive place to live, work and invest and to act on deprived communities where local environment quality is poorest (littering and flytipping spots). There is an overall contribution to some of the WFG goals: healthier, more equal and globally responsible Wales.
- **Collaboration:** the proposal has been prepared by the 2 departments with powers to enforce the legislation
- **Involvement:** wider engagement activities are delivered in partnership with other organisations/community groups

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Consultation

N/A

Background Papers

Relevant legislation cited in the table above

Dated: 8 October 2108

Appendix

A: Fairness and Equalities Impact Assessment



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