

Title:	The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020	Date:	13 May 2020
Decision Maker:	Cllr John Lodge, Leader of the Council		
Report Author:	Marcus Watts, Environmental Health Manager - Protection Tel: 01799 510595	Key decision:	No

Summary

1. Fixed Penalty Notices are an enforcement sanction often used as a sanction or as an alternative to more formal legal proceedings. The Council already issues fixed penalties for a variety of offences and over time new fixed penalties and charges are introduced that can assist officers in their day to day duties. The most recent introduction originates from The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. The Regulations provide the power for an 'authorised person' to issue a fixed penalty notice to anyone over the age of 18 who they reasonably believe has committed an offence under the Regulations.
2. This report seeks approval for use of the above mentioned penalty notices and will assist the Council taking prompt action against businesses that refuse to comply with the Regulations.

Recommendations

3. That the Leader:
 - Delegates the exercise of all functions under The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 to the Assistant Director Housing Health and Communities with immediate effect
 - Approves the setting of the amount of fixed penalty notices for offences under the Regulations at £100.00 for the first offence, discounted to £50 if paid within 14 days. £200.00 for a second offence, £400.00 for a third offence, 800.00 for fourth offence, £1600.00 for a fifth offence and £3200.00 for a sixth offence.
 - Includes in this delegation the exercise of all functions under regulations amending, supplementing or replacing the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and authorises the Assistant Director Housing Health and Communities to set the amount of fixed penalty notices at the levels described above in respect of new or amended offences.

Financial Implications

4. The service is not seeking additional resource and there will be no financial implications on the service.

Background Papers

5. The following papers were referred to by the author in the preparation of this report and are available at the web address stated below:
 - The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020
<http://www.legislation.gov.uk/uksi/2020/350/made>
 - The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 2) Regulations 2020
http://www.legislation.gov.uk/uksi/2020/500/pdfs/uksi_20200500_en.pdf

Impact

6.

Communication/Consultation	Legal service, police
Community Safety	There are no direct community safety implications associated with the introduction of the proposed FPN
Equalities	There are no Equalities Act implications
Health and Safety	No impact on employee health and safety. Officers authorised to issue penalty notices will be advised of the risk assessments to protect their own health and safety
Human Rights/Legal Implications	All intervention work will be carried out in accordance with existing legislative framework
Sustainability	The threat of issuing an FPN will apply pressure to ensure that the business closes, thus reducing the risk of infections.
Ward-specific impacts	No specific impact
Workforce/Workplace	Environmental Health Service – from existing resources

Situation

7. On 26 March 2020 the government adopted measures to prevent the spread of coronavirus (COVID-19) by introducing the Health Protection (Coronavirus,

Restrictions) (England) Regulations 2020 (“the Regulations”). The Regulations are set to last for six months from 26 March.

8. On 13th May 2020 an amendment to the above Regulations came into force. This amendment made several changes to the Regulations including amendments to Regulation 10 relating to fixed penalty notices.
9. The Regulations provide clarity around the closure of businesses as well as providing an updated list of businesses to be closed. The Regulations require listed businesses to close premises and/or cease selling food or drink for consumption on the premise. The Regulations provide a list of exempt businesses which can remain open and also allow business to continue trading where it is possible for business to be conducted online, over the phone or by post.
10. The Regulations also place restrictions on gatherings of more than two people and restrictions on movement of individuals and provides 13 circumstances where individuals are able to leave the place where they live.
11. Any person who without reasonable excuse fails to comply with the regulations commits an offence. A relevant person may take such action as is necessary to enforce the requirements imposed by regulation. The Regulations define a ‘relevant person’ as a constable, a police community support officer, a person designated by a local authority and a person designated by the Secretary of State.
12. Any person designated by a local authority is only permitted to enforce regulation 4 and regulation 5 relating to the closure of businesses. The Regulations give a ‘relevant person’ the power to serve a prohibition notice on any person who they have reasonable belief is contravening a requirement of the regulations and that it is necessary and proportionate to give the notice to prevent that person from continuing to contravene.
13. In addition to prohibition notices the Regulations also provide the power for an ‘authorised person’ to issue a fixed penalty notice to anyone over the age of 18 who they reasonably believe has committed an offence under the Regulations. A fixed penalty notice gives the individual the opportunity to discharge liability for a conviction for an offence under the regulations if paid within 28 days of the penalty being issued
14. The regulations define an ‘authorised person’ as a constable, a police community support officer, a person designated by the Secretary of State or a person designated by a local authority. Again a person designated by a local authority can only issue a fixed penalty notice in relation to closure of businesses. A fixed penalty notice can only be issued within the local authority area

15. The Regulations set the fixed penalty amount at £100.00 and where the fixed penalty is paid within 14 days the lower amount of £50.00. A person who has already received a fixed penalty but the further contravenes the Regulations can be issued with a second fixed penalty. The Regulations set the amount of the second fixed penalty at £200.00. Further fixed penalty notices can be issued to people who continue to contravene the Regulations each time a fixed penalty is issued the amount payable is double the last amount to a maximum of £3200.00. There are no early payment discount available for repeat offenders and the full fixed penalty amount is payable.
16. If a fixed penalty is unpaid after 28 days or under the circumstances the issuing of a fixed penalty is not appropriate the Council have the ability to prosecute individuals. All offences under the Regulations are punishable on summary conviction to an unlimited fine.
17. It is proposed that the contents of the report and the new powers given to local authorities are noted. In order to ensure appropriate operational measures can be put in place to manage enforcement, authority is delegated to the Assistant Director Housing Health and Communities all functions contained within the Regulations with immediate effect. This will enable the Assistant Director to delegate certain operational tasks and put in place appropriate enforcement arrangements to manage enforcement powers under the Regulation
18. It is proposed that the fixed penalty amount for offences under the Regulations is set at £100.00 for a first offence discounted to £50.00 if paid within 14 days. £200.00 for a second offence, £400.00 for a third offence, £800.00 for fourth offence, 1600 for a fifth offence and £3200.00 for a sixth offence.

Risk Analysis

19.

Risk	Likelihood	Impact	Mitigating actions
There is a reputational risk should the Council choose not to issue Fixed Penalties as a quick way to discharge its regulatory functions. The alternative would be to prosecute. This would be	1. In general, the penalty notices charges are low. Officers will not issue a FPN unless there is sufficient evidence to prove the offence has been	1. No negative impacts of the service	Training for officers prior to authorisation Case review prior to service

resource intensive and questions and the Council may also be criticised for taking up court time unnecessarily	committed		
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1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix 1. Existing and proposed FPN charges levied.

Description of offence	Act	Existing penalty if paid within 10 days	Existing full amount of penalty	Proposed penalty if paid within 10 days	Proposed full amount of penalty
Depositing litter	Section 87 Environmental Protection Act 1990	£50	£75	£100	£150
Fly tipping	Section 33ZA Environmental Protection Act 1990	0	£200	£300	£400
Failure to produce authority to transport waste (waste transfer notes)	Section 5 Control of Pollution (Amendment) Act 1989	£180	£300	£180*	£300*
Failure to produce waste documents	Section 34(5) and (6) Environmental Protection Act 1990	£180	£300	£180*	£300*
Failure to comply with a waste receptacles notice - Domestic	Section 46 Environmental Protection Act 1990	£60	£100	£60	£80
Failure to comply with a waste receptacles notice - Commercial	Section 47 Environmental Protection Act 1990	£60	£100	£80	£110
Abandoning a vehicle	Section 2 Refuse Disposal (Amenity) Act 1978	£120	£200	£120	£200
Graffiti	Section 1(1) Criminal Damage Act 1971	£50	£75	£100	£150
Fly posting	Section 224(3) Town and Country Planning Act 1990	£50	£75	£100	£150
Nuisance parking - repairing vehicles on the road	Section 4(1) Clean Neighbourhoods and Environment Act 2005	£60	£100	£60*	£100*

Nuisance parking - vehicles for sale on the road	Section 3(1) Clean Neighbourhoods and Environment Act 2005	£60	£100	£60*	£100*
Failure to display no smoking sign in a smoke free premise or vehicle (occupier or manager)	Section 6(5) Health Act 2006	£150	£200	£150	£200
Person who smokes in a smoke free place or vehicle (any person smoking)	Section 7(2) Health Act 2006 and Smoke Free (Exemptions and Vehicles) Regulations 2007 / 65 Part II Vehicles Part II	£30	£50	£30*	£50*

*Denotes no change to existing penalty charge arising from Environmental Offences (Fixed Penalties) (England) Regulation 2017

** Minor amendment proposed in accordance with The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012