

<b>Committee:</b>	Cabinet	<b>Date:</b>	Thursday, 6 September 2018
<b>Title:</b>	Fixed Penalty Notices for Environmental Offences		
<b>Portfolio Holder:</b>	Cllr Susan Barker, Portfolio Holder for Environmental Services		
<b>Report Author:</b>	Marcus Watts, Environmental Health Manager - Protection mwatts@uttlesford.gov.uk Tel: 01799 510595	<b>Key decision:</b>	No

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## 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; however, there are others that can assist officers in their day to day duties. These additional penalty notices include offences relating to littering from vehicles, vehicle idling, smoking in a vehicle carrying someone under 18 and offences linked to anti- social behaviour.
2. This report seeks approval for use of the above mentioned penalty notices for the purposes of discharging wider statutory enforcement functions of the Council.

## Recommendations

3. That Cabinet:
  - agree to the use of the penalty charge notices as identified within the report with immediate effect
  - agree new penalty charge sums as outlined within Appendix 1.
  - authorise the Assistant Director Housing Health and Communities to issue fixed and civil penalty notices with immediate effect
  - delegate the authority to add new fixed and civil penalty charges as may be prescribed in legislation to the Portfolio Holder for Environmental Services

## Financial Implications

4. The Council is required to use income from FPNs as set out in legislation. For Environmental Offences, the penalty income must be spent on similar qualifying functions of the authority, such as litter, graffiti and fly-posting enforcement.
5. The service is not seeking additional resource at this time.

## Background Papers

6. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report:
  - Environment Protection Act 1990, Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018
  - The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002
  - Health Act 2006 S.8(4) (As amended by the Children & families Act 2014 s 95)
  - Anti-social Behaviour, Crime and Policing Act 2014
  - Environmental Offences (Fixed Penalties) (England) Regulation 2017

## Impact

7.

Communication/Consultation	Legal service, Essex Police
Community Safety	There are no direct community safety implications associated with the widening the scope of penalty notice enforcement
Equalities	Equality Impact Assessment has been carried out. There are no Equalities Act implications
Health and Safety	No impact on employee health and safety. Officers authorised to issue penalty notices will receive appropriate training to ensure their own health and safety
Human Rights/Legal Implications	All intervention work will be carried out in accordance with the existing legislative framework

Sustainability	Positive environmental effects are anticipated from the use of additional fixed penalties.
Ward-specific impacts	Will potentially vary from ward to ward depending on the local incidence of problems
Workforce/Workplace	Environmental Health Service – from existing resources

## Situation

8. Fixed penalties are an enforcement sanction often used as an alternative to prosecution. The decision to issue a fixed penalty notice is made in consideration of the Corporate Enforcement Policy (2017) and Environmental Health Services Enforcement Policy & Operational Procedures for Offences subject to Fixed Penalty Notices (2017). Both policies were approved by Cabinet on 18<sup>th</sup> October 2017.
9. Enforcement functions for enviro-crime offences; namely littering, fly-tipping, abandoned and untaxed vehicles, nuisance parking, unauthorised waste carriers were transferred to the Environmental Health Service following the retirement of the Assistant Chief Executive in 2016. 1 x FTE (Enforcement Officer) post leads on this work with the support from colleagues within the Environmental Health Service.
10. The Environmental Offences (Fixed Penalties) (England) Regulation 2017 came into force on 1st April 2018. This allows local authorities to amend existing charges and apply a range of £50 - £150 for littering, free distribution of printed matter, graffiti, flyposting offences.
11. Following a review of these Regulations, revised full and early payment FPN charges have been proposed and are set out alongside the existing charges within Appendix 1. It is proposed that the existing charges are revised to £150 with an early repayment charge of £100.
12. Further changes are also proposed for the fixed penalty for fly tipping offences. The amendment increases the fixed penalty from £200 to £400 in keeping with The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016. An early repayment charge of £300 is also proposed if paid within 10 days following service of the Notice.
13. Minor amendments have also been made under the fixed penalties listed under s.46 & s.47 of the Environmental Protection Act, in keeping with changes arising from The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012. S.47 is amended

in accordance with the Environmental Offences (Fixed Penalties) (England) Regulation 2017 came into force on 1st April 2018.

14. In addition to the existing list of penalty notices there are a number of other penalty notices available to discharge the enforcement functions of the Council. These are outlined with the proposed penalty amounts below.

#### **Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018**

15. On 1st April 2018, the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 came into force, amending section 88 of the Environmental Protection Act 1990 by the insertion of a new section (88A) granting powers to litter authorities to issue FPNs for littering from vehicles.
16. These Regulations allow the Notice to be issued to the owner of a vehicle when an enforcement officer of the litter authority is able to show that litter was thrown from that vehicle onto the authority's land. This removes the need to identify precisely who threw the litter before taking enforcement action – A problem that previously prohibited enforcement action.
17. Uttlesford District Council has a duty to keep land in its authority including the highway and roads clean, so far as practicable, under section 89(1) of the EPA 1990.
18. It is noted that the Penalty Notice under these regulations is a civil fine, which unlike a criminal penalty, does not carry the risk of a criminal prosecution. The civil penalty charge can be levied between £50 - £150, with a default level set at £100. It is proposed that the Council impose the full amount of penalty of £150 with a charge of £100 levied if paid within 14 days following service.
19. It should be noted that public service vehicles, hackney carriages and private hire vehicles are exempt from liability for a civil penalty notice if the offence is committed by a passenger. The Regulations also provide for businesses engaged in the hiring of vehicles to appeal a civil penalty notice in connection with one of their vehicles by providing evidence that the vehicle was not being kept by the business at the time of the offence by virtue of the relevant vehicle hire agreement.
20. A person who receives a fixed penalty notice may make written representations (appeal) under Regulation 14 of the Act to the litter authority if one or more of grounds as set out within the legislation apply.

#### **The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002**

21. Stationary idling is an offence under Regulation 98 of the Road Vehicles (Construction and Use) Regulations 1986. This generally enforces rule 123 of the Highway Code, which states: "You must not leave a vehicle's engine running unnecessarily while that vehicle is stationary on a public road".
22. Regulation 6(3), allows the council to authorise 'any officer of the authority, or any other person, in accordance with regulation 12 to stop the commission of stationary idling offences and to issue a FPN in respect of such offences committed in its area'. Under Regulation 12 any authorised person may, having shown their authorisation, require the engine of a vehicle to be stopped. If the request is ignored, Officers can issue a fixed penalty notice of £20 as specified by the regulations.
23. It should be noted that Regulation 6(3), refers to authorising other persons that can include Parking Enforcement Officers and if so desired, Police Community Support Officers (PCSOs).
24. The FPN is only to be applied to drivers who refuse to switch off their engines. This includes buses and taxis idling on stands and cars outside schools or railway stations. It should be noted that drivers will not be penalised in cases where common sense dictates that the engine needs to be running, e.g
- Where a vehicle is stationary at traffic lights or in a traffic jam
  - Where a vehicle is broken down and the engine is being run to find a defect
  - Where an engine is needed to refrigerate fresh goods or run a compactor on a refuse vehicle
  - Any other situations that may be considered acceptable (e.g. defrosting a windscreen or cooling down on a hot day for a few minutes)
25. It is considered that this power will be widely publicised prior to use and used to promote improvements in air quality within Air Quality Management Areas.

**The Health Act 2006 S.8(4) (As amended by the Children & families Act 2014 s 95)**

26. It is against the law to smoke in a designated smoke free area place or vehicle. It is also an offence to fail to displace a no smoking sign in a smoke free premise or vehicle (ie any and all vehicles used for work purposes). Under the above amendment, it is now illegal to smoke in cars and other vehicles with someone under 18 present in the vehicle.
27. The law applies to any private vehicle enclosed by a roof, even if the window is open, the air conditioning is on or the smoker is sitting in the open doorway of the vehicle.

28. It is also against the law for a driver not to stop someone smoking in these circumstances. The fine for both offences is £50, reduced to £30 if paid within 15 days of being issued.

**Anti-social Behaviour, Crime and Policing Act 2014 (ASBC&P Act) .S.48 - Offence to comply with Community Protection Notice & S.68 - Offence of failure to comply with a Public Space Protection Order.**

29. Under the ASBC&P Act 2014 Council officers are able to issue Community Protection Notices on individuals aged 16 or over, business or organisations to address anti-social behaviour which adversely affects quality of life. This power is wide ranging and can be used to tackle anti-social behaviour from irresponsible dog ownership, noise, accumulations of rubbish, litter and graffiti.

30. The Community Protection Notice (CPN) can be issued if Officers are satisfied, on reasonable grounds, that the conduct of an individual, business or organisation-

- is having a detrimental effect on the quality of life of those in the locality;
- is persistent or continuing in nature; and
- is unreasonable.

31. Failure to comply with the CPN is an offence. Under these circumstances, the Council may issue a fixed penalty notice, prosecute and/or, take remedial action. Where a fixed penalty is issued under S.52 of the Act the penalty must not be more than £100 and similar to the above a lower penalty can be applied if settled early. It is proposed that a lesser penalty of £75 be applied under these circumstances.

32. Public Space Protection Orders (PSPO) are designed to stop individuals or groups committing anti-social behaviour in a public place. The Council has not sought to apply for a PSPO, however, on 20<sup>th</sup> October 2017 the Council's Dog Control Orders made previously under the Clean Neighbourhoods and Environment Act 2005 automatically converted to PSPOs under the requirements of the ASBC&P Act. These PSPOs will remain in effect for three years and the Environmental Health Service will look to consult on new orders in 2019.

33. As with the CPN, failure to comply with a PSPO is an offence. Fixed penalty notices are also an available enforcement sanction under s.68 of the Act. Where applied the penalty must not be more than £100. A lesser penalty of £75 will also be applied consistent with the CPN procedure.

**Risk Analysis**

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Risk	Likelihood	Impact	Mitigating actions
<p>2.</p> <p>There is a risk that there will be more appeals as FPNs are used more frequently</p>	<p>1. Low. 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 committed</p>	<p>1. No negative impacts of the service</p>	<p>Training for officers prior to authorisation</p> <p>Case review prior to service</p>

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.