

REPORT TO: Environment & Urban Renewal Policy and Performance Board

DATE: 27th June 2018

REPORTING OFFICER: Strategic Director – Enterprise, Community and Resources

PORTFOLIO: Environmental Services, Physical Environment

SUBJECT: Fixed Penalty Notices

WARD(S): Borough-wide

1. PURPOSE OF REPORT

1.1 To provide Members with details, and make proposals in respect of new Regulations relating to Fixed Penalty Notices for a range of environmental offences.

2. RECOMMENDED: That:

- 1) Members receive and comment upon the report;**
- 2) Members endorse the proposed Fixed Penalty Notice amounts and discounts for early payment as set out in the report; and,**
- 3) A report be presented to the Executive Board recommending that;**
 - a. The Fixed Penalty Notice amount for offences relating to littering, graffiti, fly-posting and distribution of printed matter be retained at the default amount of £100;**
 - b. The Fixed Penalty Notice amount discounted for early payment be retained at the current amount of £75; and,**
 - c. The time period for early payment discount is approved as being within ten days.**

3. BACKGROUND

3.1 Members are advised of two new Regulations that came into force on 1st April 2018. These Regulations provide local authorities with the ability to increase the Fixed Penalty Notice (FPN) amounts for a range of environmental offences and also give local authorities increased powers to tackle littering from a vehicle.

The Environmental Offences (Fixed Penalties) (England) Regulations 2017

- 3.2 The Environmental Offences (Fixed Penalties) (England) Regulations 2017 increase amounts payable for FPNs in respect of certain offences relating to the environment. They replace a number of regulations contained within the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007.
- 3.3 The change in legislation means that local authorities can set the amount payable for some fixed penalty notices for the period 1st April 2018 to 31st March 2019 to a maximum of £150 and a minimum of £50. From 1st April 2019 onwards, the maximum, amount stays at £150, however, the minimum amount increases to £65.
- 3.4 Members are advised that the new legislation sets a default level of £100 for offences relating to littering, graffiti, fly-posting and the distribution of printed matter. This means that should the Council not specify its FPN levels for these offences, the default penalty of £100 is automatically applied.
- 3.5 Proposals in respect of Halton's FPN amounts are contained in paragraph 4.2 of this report.

The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

- 3.6 These Regulations enable Councils (outside of London) to issue a 'civil penalty notice' to a person who is the keeper of a vehicle from which litter is thrown. This removes the need to identify precisely who threw the litter before you can take enforcement action however, in the first instance, Officers will always look to exhaust all lines of enquiry to positively identify the actual person responsible. Having the ability to issue a civil penalty to the keeper of a vehicle does provide a new tool for the Council to use to encourage the keeper of a vehicle to provide details of the individual responsible for littering if it was not them. A civil penalty is a civil fine which, unlike a Fixed Penalty Notice, does not carry the risk of a criminal prosecution.
- 3.7 Where a civil penalty is issued to the keeper of a vehicle but, before it is paid, evidence is established to either begin prosecution proceedings against another individual or issue a fixed penalty notice in lieu of prosecution in respect of the same offence, the vehicle keeper's liability to pay the civil penalty notice will be discharged.
- 3.8 If the penalty is not paid within the penalty payment period of 28 days, as defined in the regulations, it will double. The Council would then need to begin recovery proceedings for unpaid amounts as a civil debt or via county court order.

- 3.9 In order to encourage prompt payment, the Regulations also make provision for an early-payment discount to be offered if the penalty is paid within 14 days. Payment of this 'lesser amount' within 14 days discharges the person's liability to pay the full penalty amount. The 'lesser amount' must not be less than £50.
- 3.10 Before the Council can use these new powers it needs to set the civil penalty level. The amount of a penalty for littering from a vehicle will be the same as the amount specified by the authority for Fixed Penalty Notices for littering and this is covered in the following section of the report.

4. SUPPORTING INFORMATION

- 4.1 In setting FPN levels and discounted amounts for early payment, consideration must be given to the deterrent effect of different levels and also people's readiness to pay, together with the likely fines that would be imposed in the Magistrates' Court for non-payment. Fixed penalties that are too high for local conditions will be counter-productive, as they will lead to substantial non-payment rates, as will penalties that are higher than the likely fine in the event of non-payment.
- 4.2 The Council's current FPN level for the offences referred to in paragraph 3.4 is £80; which is the highest amount allowable under previous legislation. The new Regulations allow the Council to set this level at £150. However, it is being recommended that the Council continues with the default level of £100 set by the new legislation. It is considered that this level of increase on current rates is sufficient to send a strong deterrent message that environmental crime is wholly unacceptable and will not be tolerated in Halton. It will also allow the Council scope to review and increase the amount in future should even stronger deterrent messages be deemed necessary.
- 4.3 Legislation sets a standard FPN payment period of fourteen days. The Council has the discretion to offer a discount for early payment of an FPN. The Council has previously approved the time period for early payment discount as being within ten days. The amount payable for early payment of an FPN in Halton is £75. This is above the current legislation default level of £50. It is proposed that the Council continues with the £75 amount. It is considered that the increase in the FPN amount to £100 and the creation of a larger differential incentive for early payment could increase payment rates.
- 4.4 Members are asked to consider and endorse the proposed FPN and early payment amounts set out in paragraphs 4.2 and 4.3, and that, the discount period should continue as being 10 days from the point of an FPN being issued. Subject to Members endorsement of these proposals a report will be presented to Executive Board making recommendations on the same.

- 4.5 In considering the FPN amount that should be set for littering offences, Members' attention is drawn to the current FPN levels for dog fouling offences; which is £100 and which is the maximum amount allowable under legislation. Therefore, maintaining FPN levels for a range of environmental offences at the default level of £100 will ensure that a consistent level of penalty charge is applied to both littering and dog fouling offences.

5.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 5.1 As stated in the report, increasing the FPN amount could increase payment rates by creating a larger differential incentive for early payment. This could help avoid the considerable resource implications and costs involved in prosecuting individuals who fail to pay FPNs issued for environmental offences.

6.0 POLICY IMPLICATIONS

- 6.1 Adopting the new provisions can be accommodated within existing Policy

7.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

7.1 Children and Young People in Halton

No direct impact.

7.2 Employment, Learning and Skills in Halton

No direct impact.

7.3 A Healthy Halton

By enhancing its ability to deter incidents of environmental crime through increased FPN amounts, and by making use of new powers to tackle those responsible, the Council will be making a positive contribution towards improving the local environment and the appearance of the borough, which shall in turn have an overall beneficial effect on health and wellbeing.

7.4 A Safer Halton

Effective use of its regulatory powers will demonstrate that the Council is committed to dealing with environmental crime. The Council's efforts to improve environmental standards and reduce environmental crime will have a positive impact upon the Safer Halton Priority, and contribute towards the 'Cleaner, Greener, Safer' agenda.

7.5 Halton's Urban Renewal

No direct impact, but overall environmental benefits should make the borough a more attractive location for investment.

8.0 RISK ANALYSIS

- 8.1 Failure to make full use of legislative powers available to deal with environmental crime to help improve the local environment may lead to criticism of the Council, thereby damaging its reputation

9.0 EQUALITY AND DIVERSITY ISSUES

- 9.1 The Council aims to be consistent and even-handed in all regards. Taking enforcement action to deal with environmental crime is not intended to have either a positive or negative impact upon equality and diversity or apply differently to any particular group.

10.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

- 10.1 There are no background papers within the meaning of the Act.