

EXECUTIVE - 22 MARCH 2018

## **FIXED PENALTY NOTICE (FPN) POLICY FOR LITTERING FROM VEHICLE OFFENCES**

### **Executive Summary**

The purpose of this report is to seek officer delegation in respect of section 88A of the Environmental Protection Act 1990 (EPA) and to agree the level of penalty to be fixed respectively to enable authorised officers to issue Fixed Penalty Notices (FPNs) for the offence of littering from vehicles.

The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 introduces the new fixed penalties for littering from vehicles from powers conferred by inserting section 88A of the Environmental Protection Act 1990 which comes into force on 1 April 2018.

The new power is conferred on litter authorities in England (outside London) to require the registered keeper of a vehicle to pay a fixed penalty notice if there is reason to believe that a littering offence has been committed from the vehicle.

In considering this matter it is also proposed to increase the local fine level for littering (not from vehicles) from £75 to £100 as permitted under the new regulations.

Littering authority is defined in the legislation and includes a district council in England, a county council in England for an area for which there is no district council.

### **Reasons for Decision**

The introduction of a fixed penalty notice scheme for littering from vehicles offences is considered a necessary and proportionate response to the current environmental issues facing the Council.

### **Recommendations**

The Executive is requested to:

#### **RECOMMEND to Council That**

- i) **the Council issue fixed penalty notices for the offence of littering from vehicles under section 88A of the Environmental Protection Act 1990 from 6 April 2018;**
- ii) **the level of fixed penalty notices shall be set at £100 per fixed penalty notice, such penalty to be reduced to £50 if paid within 14 days as provided for under section 6 of the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018;**
- iii) **authority be delegated to the Assistant Director (Place) to authorise any persons to issue fixed penalty notices from 6 April 2018 for littering from vehicles under section 88A of the Environmental Protection Act 1990; and**
- iv) **from 6 April 2018 the level of fixed penalty notices shall be set at £100 per penalty notice where it is considered that a person has committed an offence under section 88 of the Environmental Protection Act 1990.**

**This item will need to be dealt with by way of a recommendation to the Council.**

## **Fixed Penalty Notice (FPN) Policy for Littering from Vehicle Offences**

### **Background Papers:**

Sustainability Impact Assessment  
Equalities Impact Assessment

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### **Date Published:**

16 March 2018

## **Fixed Penalty Notice (FPN) Policy for Littering from Vehicle Offences**

### **1.0 Introduction**

- 1.1 On 1st April 2018, the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 comes into force and amends section 88 of the Environmental Protection Act 1990 by inserting a new section 88A granting powers to litter authorities to issue fixed penalty notices (FPNs) for littering from vehicles.
- 1.2 These Regulations introduce powers to issue a fixed penalty notice 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.
- 1.3 Woking Borough Council as local authority 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.
- 1.4 A fixed penalty notice must not be given—
  - a. after the end of the period of 35 days beginning with the day on which the littering offence in question occurred,
  - b. if a notice under section 88(1) of the EPA 1990 (which relates to fixed penalty notices for leaving litter) has been given to a person in respect of the same offence (whether or not the person is the vehicle's keeper), or
  - c. if a prosecution has been brought against a person under section 87 of the EPA 1990 (offence of littering) in respect of the same offence (whether or not the person is the vehicle's keeper and whether or not the prosecution has concluded or was successful).

### **2.0 Background / Legislative context**

- 2.1 Section 24 of the London Local Authorities Act 2007 (amended in 2012) confers powers to councils in London to issue a penalty charge notice on the owner of a vehicle from which litter is thrown. A penalty charge notice is a civil fine which unlike a criminal penalty, does not carry the risk of a criminal prosecution. However, these powers are not currently available in respect of the rest of England.
- 2.2 Section 88A of the Environmental Protection Act 1990 empowers the Secretary of State to confer similar powers on authorities in England. The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 is the first exercise of that power.
- 2.3 The amount of a fixed penalty notice is the amount specified by the litter authority under section 88(6A)(a) of the EPA 1990 (which relates to fixed penalty notices for leaving litter), but if no amount is specified by the litter authority under that provision, the amount of the fixed penalty is £100.
- 2.4 At present, the Council has the ability to issue FPNs for a variety of environmental offences as an alternative to prosecution including littering, dog fouling, smoke free offences and unlicensed waste carriers. The current level of FPN for the offence of leaving litter is £75.00. They are also offered an early-payment incentive reducing the penalty to £50 if paid within 10 days. It is proposed that on 1<sup>st</sup> April 2018, the amount of the penalty under section 88 of the EPA for the offence of littering shall be increased in line with regulations to the sum of £100.

## **Fixed Penalty Notice (FPN) Policy for Littering from Vehicle Offences**

- 2.5 These FPNs are issued by authorised officers of the Council including the Environmental Health and Neighbourhood teams and also Environmental Enforcement Officers contracted through Kingdom. The same authorised officers will be responsible for issuing Fixed Penalty Notices for littering from vehicles.
- 2.6 Littering is a criminal offence, and therefore enforcement action (issue of a fine or prosecution) should only be taken when the council has evidence against the offender to the criminal standard of proof (i.e. beyond reasonable doubt). When littering offences take place from a vehicle, it can be difficult for councils to identify the offender with sufficient certainty to take enforcement action.
- 2.7 Section 24 of the London Local Authorities Act 2007 (amended in 2012) gives powers to London councils to issue Penalty Charge Notices to the owner of a vehicle when an enforcement officer is able to show, to the civil standard of proof (i.e. balance of probabilities) that litter was thrown from that vehicle. A penalty charge notice is a civil fine which unlike a criminal penalty, does not carry the risk of a criminal prosecution, and therefore does not require the offence to be proven to a criminal standard of proof.
- 2.8 The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 confers powers on litter authorities (defined in Regulation) to issue civil penalty notices to the keeper of a vehicle when the council has reason to believe, to the civil standard of proof, that litter was thrown from that vehicle on the authority's land. To avoid a double jeopardy effect, this Act also provides that a council may not issue a civil penalty notice against the keeper if a fixed penalty notice (in lieu of prosecution) is or has been issued in respect of the same littering offence.
- 2.9 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.
- 2.10 This instrument provides for penalties to be payable within 28 days. Councils may choose to offer an early-payment incentive, which reduces the civil penalty to an amount not less than £50 if paid within 14 days. If the penalty remains unpaid after 28 days (clock paused during any appeal proceedings), the act provides for the penalty to be increased by 100% (i.e. doubled).
- 2.11 A person who receives a fixed penalty notice may make written representations under Regulation 14 of the Act to the litter authority if one or more of grounds A to L set out below apply :-

Ground A – the littering offence did not occur.

Ground B – the person was not the keeper of the vehicle at the time of the littering offence because they became the keeper of the vehicle after the littering offence occurred. Such representation must include the name and address of the other person from whom the vehicle was acquired.

Ground C – the person was not the keeper of the vehicle at the time of the littering offence because the person had disposed of the vehicle to another person before the littering offence occurred. Such a representation must include the name and address to whom the vehicle had been disposed of, or a statement that the name and address of that person is not known.

## **Fixed Penalty Notice (FPN) Policy for Littering from Vehicle Offences**

Ground D – the person was not the keeper of the vehicle at the time of the littering offence because the vehicle was a stolen vehicle when the littering offence occurred. Such a representation must include the crime reference number, insurance claim number or other evidence of the vehicle's theft.

Ground E – the person was engaged in the hiring of vehicles in the course of a business at the time of the littering offence, and was not the keeper of the vehicle at that time by virtue of the hire agreement. Such representation must include a statement signed by or on behalf of the person to the effect that at the time of the littering offence the vehicle was hired to a named person under a vehicle hire agreement and provide a copy of the vehicle hire agreement.

Ground F – the person was not the keeper of the vehicle at the time of the littering offence for a reason not mentioned in Grounds B to E.

Ground G – the litter authority was not authorised to give the person a penalty notice.

Ground H – the person is not liable to pay the fixed penalty by virtue of Regulation 12 (public service vehicles and licensed taxis).

Ground I – the liability to pay the fixed penalty has been discharged in the circumstances set out in Regulation 13 (penalty already given to a person in respect of the same offence).

Ground J – the fixed penalty exceeds the amount payable under the Regulations.

Ground K – the litter authority has failed to observe any requirement imposed on it by the regulations in relation to the imposition or recovery of the fixed penalty.

Ground L – there are compelling reasons why, in the particular circumstances of the case, the penalty notice should be cancelled (whether or not any of grounds A to K apply).

### **2.12 If the Council receives representations it must:-**

- (a) consider them and any supporting evidence which the person making the presentation provides and
- (b) decide whether or not it accepts that one or more of the Regulation 14 grounds applies.

### **2.13 If the Council accepts that one or more of the grounds in Regulation 14 applies it must cancel the fixed penalty notice and inform the person who made the representation of the cancellation in writing.**

### **2.14 If the Council does not accept that one or more of the grounds in Regulation 14 applies it must give a notice of rejection to the person who made the representation within the period of 56 days beginning with the day on which the representations are received. The notice of rejection must state (a) the council's decision and reasons for it (b) that the person has a right of appeal to an adjudicator within the period of 28 days beginning with the day on which the notice of rejection is given (c) the form and manner in which an appeal may be made and (d) that an adjudicator has the power to award costs against a person appealing against the decision set out in the notice of rejection.**

## **Fixed Penalty Notice (FPN) Policy for Littering from Vehicle Offences**

- 2.15 If the Council fails to give a notice of rejection within the period of 56 days it is deemed to have (a) decided that one or more of the ground in regulation 14 applies, and (b) cancelled the penalty notice.
- 2.16 The fixed penalty notice for littering from vehicles will be set at £100 which is the default amount in the act with the local littering fine level raised accordingly. The reduction to £50 retained if paid within 10 days.
- 2.17 The default in the Act is £100 and the lesser amount must not be less than £50. If the penalty remains unpaid after 28 days (the clock is paused during appeal proceedings) the penalty is increased by 100% (doubled).
- 2.18 If the fixed penalty notice has not been paid in full within the payment period the Council may recover any unpaid amount (including the increased amount) any related costs awarded by an adjudicator as a civil debt or as if payable under a county court order.

### **3.0 Publicity and Associated Enforcement**

- 3.1 It is proposed to run a communications campaign to highlight the anti social aspects of littering and to announce the new powers. Part of such a communications plan will undoubtedly be the publicising of successful enforcement actions in due course.
- 3.2 Officers will seek to concentrate upon littering hotspots in order to optimise the affect of the new powers upon the local environment.

### **4.0 Options**

- 4.1 The Executive may accept, reject or amend the proposal.

### **5.0 Proposal**

- 5.1 It is proposed that Council:
- Authorises the issue of fixed penalty notices for the offence of littering from vehicles under Section 88A of the Environmental Protection Act 1990 from 6 April 2018;
  - Sets a fixed penalty amount of £100 for littering from vehicles, payable within 28 days and reduced to £50 if paid within 14 days; as provided for under section 6 of the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 (or such level as may be provided for in any subsequent legislation;
  - Delegates to the Assistant Director (Place) authority to authorise any persons to issue fixed penalty notices from 6 April 2018 for littering from vehicles under Section 88A of the Environmental Protection Act 1990; and
  - from 6 April 2018 sets the level of fixed penalty notices at £100 per penalty notice where it is considered that a person has committed an offence under section 88 of the Environmental Protection Act 1990.

## **Fixed Penalty Notice (FPN) Policy for Littering from Vehicle Offences**

### **6.0 Implications**

#### Financial

- 6.1 In accordance with the Regulations, FPN receipts will be used for the purpose of exercising functions to improve street cleanliness and enforcement of offences; it is not being regarded as an 'income generator'.
- 6.2 Income from fixed penalties for littering from vehicles can be retained by councils (in line with current practice for income from fixed penalties for littering and other related offences), and can be spent on functions under Part 4 of the Environmental Protection Act 1990, or functions relating to graffiti and fly-posting under section 43 of the Anti-social Behaviour Act 2003.

#### Human Resource/Training and Development

- 6.3 The implementation of one additional fixed penalty option will have no significant impact on current departmental resources.

#### Community Safety

- 6.4 There are no adverse community safety implications.

#### Risk Management

- 6.5 All Authorised Officers are fully trained and competent in serving fixed penalty notices. Any new staff will be assessed to ensure that relevant training is provided in relation to fly tipping enforcement and the serving of penalty notices.

#### Sustainability

- 6.6 Implementation of the proposal will aim to reduce littering through enforcement and education and this will improve the aesthetics of the Borough whilst promoting health and wellbeing.

#### Equalities

- 6.7 The proposals set out in the report have been the subject of an Equality Impact Assessment and no adverse implications have been identified.

### **7.0 Consultations**

- 7.1 The Portfolio Holder for Environment has been consulted in the drafting of this report.

### **8.0 Conclusions**

- 8.1 The introduction of a fixed penalty notice scheme for littering from vehicles is considered a necessary and proportionate response to the current environmental issues facing the Council and will equally save the time and expense of deploying resources to clean up street litter as a result of littering from vehicles where an individual cannot be identified in a particular vehicle.
- 8.2 The recommended level of fine at £100 with a reduction to £50 if paid within 14 days would provide a targeted response to existing problems of littering within the Borough, in accordance with the new Legislative Framework.

REPORT ENDS

EXE18-017

## **Fixed Penalty Notice (FPN) Policy for Littering from Vehicle Offences**

### **APPENDICES**



### Equality Impact Assessment

The purpose of this assessment is to improve the work of the Council by making sure that it does not discriminate against any individual or group and that, where possible, it promotes equality. The Council has a legal duty to comply with equalities legislation and this template enables you to consider the impact (positive or negative) a strategy, policy, project or service may have upon the protected groups.

		Positive impact?			Negative impact?	No specific impact	What will the impact be? If the impact is negative how can it be mitigated? (action) <b>THIS SECTION NEEDS TO BE COMPLETED AS EVIDENCE OF WHAT THE POSITIVE IMPACT IS OR WHAT ACTIONS ARE BEING TAKEN TO MITIGATE ANY NEGATIVE IMPACTS</b>
		Eliminate discrimination	Advance equality	Good relations			
<b>Gender</b>	Men					X	
	Women					X	
<b>Gender Reassignment</b>						X	
<b>Race</b>	White					X	
	Mixed/Multiple ethnic groups					X	
	Asian/Asian British					X	
	Black/African/Caribbean/Black British					X	
	Gypsies / travellers					X	
	Other ethnic group					X	
<b>Disability</b>	Physical					X	Vulnerable person's definition to be considered.
	Sensory					X	
	Learning Difficulties					X	
	Mental Health					X	

<b>Sexual Orientation</b>	Lesbian, gay men, bisexual					X	
<b>Age</b>	Older people (50+)					X	
	Younger people (16 - 25)					X	
<b>Religion or Belief</b>	Faith Groups					X	
<b>Pregnancy &amp; maternity</b>						X	
<b>Marriage &amp; Civil Partnership</b>						X	
<b>Socio-economic Background</b>						X	
<b>Carers</b>						X	

The purpose of the Equality Impact Assessment is to improve the work of the Council by making sure it does not discriminate against any individual or group and that, where possible, it promotes equality. The assessment is quick and straightforward to undertake but it is an important step to make sure that individuals and teams think carefully about the likely impact of their work on people in Woking and take action to improve strategies, policies, services and projects, where appropriate. Further details and guidance on completing the form are [available](#).

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## Sustainability Impact Assessment

Officers preparing a committee report are required to complete a Sustainability Impact Assessment. Sustainability is one of the Council's 'cross-cutting themes' and the Council has made a corporate commitment to address the social, economic and environmental effects of activities across Business Units. The purpose of this Impact Assessment is to record any positive or negative impacts this decision, project or programme is likely to have on each of the Council's Sustainability Themes. For assistance with completing the Impact Assessment, please refer to the instructions below. Further details and guidance on completing the form are [available](#).

Theme (Potential impacts of the project)	Positive Impact	Negative Impact	No specific impact	What will the impact be? If the impact is negative, how can it be mitigated? (action)
Use of energy, water, minerals and materials			X	
Waste generation / sustainable waste management	X			Use of proper facilities
Pollution to air, land and water	X			Use of proper facilities / less pollution
Factors that contribute to Climate Change			X	
Protection of and access to the natural environment	X			Clean and safe environment
Travel choices that do not rely on the car			X	
A strong, diverse and sustainable local economy	X			Improved aesthetics
Meet local needs locally			X	
Opportunities for education and information	X			Enforcement and education
Provision of appropriate and sustainable housing			X	
Personal safety and reduced fear of crime	X			Clean and safe environment
Equality in health and good health			X	
Access to cultural and leisure facilities			X	
Social inclusion / engage and consult communities			X	
Equal opportunities for the whole community			X	
Contribute to Woking's pride of place	X			Clean and safe environment