

**CABINET**  
**7 NOVEMBER 2023**

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**ENVIRONMENTAL CRIMES - FIXED PENALTY NOTICES**

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**Responsible Cabinet Member -  
Councillor Amanda Riley, Stronger Communities Portfolio**

**Responsible Director -  
Dave Winstanley, Group Director of Services**

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**SUMMARY REPORT**

**Purpose of the Report**

1. To update Members on new limits on Fixed Penalty Notices for environmental crimes and to seek approval to set new limits for waste related offences in line with revised national limits.

**Summary**

2. Individuals or organisations who commit environmental crimes can be prosecuted through the Courts. However, the Clean Neighbourhoods and Environment Act 2005 introduced the use of Fixed Penalty Notices (FPNs) as a way of Council's dealing with certain environmental offences.
3. Fixed Penalty Notices are currently used by council officers to deter environmental crime and in July 2023, the Government laid out a statutory instrument, the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 increasing the upper limits for various Fixed Penalty Notices (FPNs) to provide the ability to further deter offenders.
4. The new upper penalty limits are applicable to fly tipping offences, littering, graffiti and Duty of Care offences. The Council currently have agreed limits for these offences, and it is proposed to increase these to the maximum allowed, with discounts for prompt payment on some of the offences. The legislative changes are designed to give Local Authorities increased penalties to further deter environmental crime. For certain offences the Council will retain the option to progress through the Courts system to ensure it is dealt with as a crime rather than a financial penalty.
5. **Appendix 1** outlines the offences, the current penalty and the proposed penalty that Cabinet are being asked to consider. It also outlines the approach to young people caught offending.

## Recommendations

6. It is recommended that Cabinet approve:
- (a) The level of penalty for Fixed Penalty Notices be set at the maximum level, as detailed in Appendix 1.
  - (b) An early payment discount is available for littering and graffiti offences, if paid within seven days.
  - (c) That no early payment discount is available for fly tipping and duty of care offences.

## Reasons

7. The recommendations are supported by the following reasons:
- (a) To allow the new levels of penalty within the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 to be implemented.
  - (b) To set the level of penalty and any discounted charges for FPNs.

**Dave Winstanley**  
**Group Director of Services**

## Background Papers

The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023  
The Environmental Protection Act 1990  
The Environmental Offences (Fixed Penalties) (England) Regulations 2017

Anna Willey: Extension 6756

S17 Crime and Disorder	Increasing the upper penalty limit for waste offences will further deter individuals who commit environmental offences.
Health and Well Being	Enforcement of waste offences contributes to maintaining a clean environment, which has a positive impact on health and wellbeing.
Carbon Impact and Climate Change	There is no impact on carbon as a result of this report.
Diversity	There is no impact on diversity.
Wards Affected	All wards affected.
Groups Affected	All groups affected. Specific consideration is given to young people at Appendix 1.
Budget and Policy Framework	There is no impact on the Council Budget and Policy Framework.
Key Decision	No
Urgent Decision	No
Council Plan	Will contribute to Safer Darlington.

Efficiency	There is no impact on the Council’s Efficiency agenda as a result of this report.
Impact on Looked After Children and Care Leavers	There is no impact on Looked After Children and Care Leavers as a result of this report.

## MAIN REPORT

### Information and Analysis

8. Individuals or organisations who commit environmental crimes can be prosecuted through the Courts. However, legislation allows the use of Fixed Penalty Notices (FPNs) as a way of dealing with these environmental offences in certain crimes. For a particular crime, if a FPN is issued and the individual or organisation pays that penalty, then they cannot be prosecuted. If they fail to pay the FPN then prosecution will follow.
9. In some situations, such as major fly tipping, the Council will choose to proceed through the Courts as opposed to using FPNs as a way of dealing with this type of offence as it ensures the matter is dealt with as a crime through the Courts and the offender may get a criminal record rather than being dealt with purely as a financial penalty.
10. FPNs do provide an effective and visible way of responding to environmental crimes. Generally, experience has shown that the public welcome the use of FPNs, provided that they are issued sensibly, are enforced even-handedly and are seen as a response to a genuine problem.
11. FPNs have been used for many years for environmental crimes relating to litter, dog fouling and fly tipping. The level of evidence required to prove an offence of fly tipping to issue a FPN or go through the court process is considerable given it could result in a criminal offence, therefore the case must be proven beyond all reasonable doubt. Statements are required from witnesses or an admission of guilt from the alleged offender or CCTV evidence to prove who was responsible for the actual depositing of the waste.
12. In July 2023, the level of penalties available to Local Authorities changed the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023. This new legislation sets new maximum penalty limits. Attached at Appendix 1 is the current list of penalty amounts and proposed new amounts, with proposed early payment discount rates. The approach to how young people are managed if they are caught offending is outlined in the Appendix.
13. In addition to setting the new penalty limits, there is the opportunity to set discounts for early payment within 7 days, which are already in place. The standard period for payment for FPNs is set in legislation at 14 days. Once an FPN has been issued, an authority cannot prosecute for the offence if the FPN is paid within this period. Therefore, the period during which a discount for early payment is offered must be less than 14 days. It is therefore proposed that the seven-day discount period remains in place.
14. The amount that discounted penalties cannot fall below is set out within the relevant pieces of legislation. For both fly tipping and duty of care offences, it is found within the Environmental Protection Act 1990 and the minimum discounted figure for both is £120.

For littering and graffiti the minimum discounted amounts are set out in the Environmental Offences (Fixed Penalties) (England) Regulations 2017 and the minimum discounted figure is set at £50. It is proposed that the following discounts are applied in Darlington. The amounts are:

- (a) For littering and graffiti, the rate of £500 would be discounted to £150 if paid within seven days.
  - (b) As is currently the case, there will be no discount for the offences of fly tipping and duty of care.
15. The setting of penalties at maximum levels is to try and deter environmental crime and financially penalise those caught. However, it should be noted that setting the maximum penalty amount may result in fewer penalties being paid, resulting in Court action and monies going to the Courts rather than the Local Authority. However, payment rates are currently low.
16. Setting the maximum amount for a fly tipping offence, with no discount opportunity, does mean there is no discretion in terms of the penalty. We will review on a case-by-case basis on whether we take a fixed penalty approach or a Court approach.
17. The income generated by FPNs can be used by the Council to reinvest in enforcement services or improve the local environment with regard to the type of offences the penalties are issued for. The number of Court cases and FPNs are detailed below:

<b>Court Cases</b>	<b>Prosecution</b>	<b>s110</b>	<b>Total</b>
2022/2023		7	7
2023/2024	5	12	17
<b>Total</b>	<b>5</b>	<b>19</b>	<b>24</b>

**A Section 110 File** is where under the Environmental Act the defendant has received a Section 108 Environmental Direction to attend Central House Annexe to assist with our investigations on a certain date and time, and they do not respond to alter the date, or attend.

<b>Fixed Penalty Notice Issued (FPN)</b>	<b>Duty of Care</b>	<b>Fly tip</b>	<b>Littering</b>	<b>Dog</b>	<b>Total</b>
2022/2023	1	2	7	1	11
2023/2024	2	4			6
<b>Total</b>	<b>3</b>	<b>6</b>	<b>7</b>	<b>1</b>	<b>17</b>

### Consultation

18. No formal consultation has taken place on increasing the limit of FPNs.
19. The Council takes a proactive approach to awareness and publicity of FPNs, in particular, where extending the range of crimes FPNs will be applied to.

### **Legal Implications**

20. This report has been considered by the Assistant Director for Law and Governance for legal implications in accordance with the Council's approved procedures. There are no issues which the Assistant Director for Law and Governance considers need to be brought to the specific attention of Members, other than those highlighted in the report.

### **Financial Implications**

21. Although the fines will increase, due to the numbers of FPN issued there will be limited impact on the budget