

Bath & North East Somerset Council

MEETING/ DECISION MAKER:	Cllr Bob Goodman, Cabinet Member for Development & Neighbourhoods	
MEETING/ DECISION DATE:	On or after 30th June 2018	EXECUTIVE FORWARD PLAN REFERENCE:
		E3076
TITLE:	Fixed Penalty Notices for Littering	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: None included		

1 THE ISSUE

- 1.1 From 1st April 2018, the Environmental Offences (Fixed Penalties) (England) Regulations 2017 provides for the amount of a fixed penalty notice (FPN) issued for Litter to be not less than £50 and not more than £150, with £100 being the default if no amount is specified.
- 1.2 From 1st April 2018, the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 allows FPNs to be issued to a person who is the keeper of a vehicle causing litter and provides for, the amount of a FPN issued for litter, to be not less than £50 and not more than £150, with £100 being the default if no amount is specified.
- 1.3 This report seeks approval to always set this Council's fixed penalty notice amounts for these offences at the maximum level with a discount for payment within 14 days.

2 RECOMMENDATION

The Cabinet Member is asked to;

- 2.1 Set the fixed penalty for the unlawful deposit of litter under the legislation specified in sections 4.1 to 4.3 of this report, to always be the maximum full penalty amount as specified in legislation. At the time of the report this is £150.
- 2.2 Set the fixed penalty for the unlawful deposit of litter under The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, to always be the maximum full penalty amount as specified in legislation. At the time of the report this is £150.

- 2.3 Offer a discount for early payment of a FPN under the above legislation. (n.b. at the time of the report this discount would be £50, making the level of fixed penalty £100 if payment is received within 14 days).
- 2.4 To delegate any future decisions on the discounted level to the relevant Group Manager in consultation with the Cabinet Member if the maximum penalty under law changes.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The authority has resource allocated to clear and investigate incidents of littering. No additional resource is required to continue with the current level of enforcement which is carried out by 2 Cleansing Enforcement Officers with help from other Environmental Services staff as required.
- 3.2 Receipts from FPNs are retained by the authority to which they are paid.
- 3.3 Any receipts from FPNs paid will contribute towards the costs to the Council of enforcing and clearing litter.
- 3.4 The Council will consider engaging with a private company to enhance the level of enforcement carried out within the district, but it is anticipated that this will be at no additional cost to the Council. A report on this will be considered by the Cabinet Member later in 2018.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

4.1 Fixed Penalty Notices for leaving litter

- 4.1.1 Section 87 of the Environmental Protection Act 1990 states that it is an offence to throw down, drop or otherwise deposit any litter in any place which is in the area of a principal litter authority and is open to the air.
- 4.1.2 Section 88 (1) of the Environmental Protection Act 1990 allows for FPNs to be issued for littering offences.
- 4.1.3 The Environmental Offences (Fixed Penalties) (England) Regulations 2017 and section 88(6A)(a) of the Environmental Protection Act 1990 provides that the amount of a fixed penalty payable in respect of an FPN issued for Litter shall be not less than £50 and not more than £150, with £100 being the default if no amount is specified. If the FPN is not paid within the specified period, then the person it was issued to will be liable to conviction for the original offence in the Magistrates' Court.

4.2 Fixed Penalty Notices for littering from vehicles

- 4.2.1 Regulation 4 of the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 states that a litter authority may give a penalty notice to a person who is the keeper of a vehicle if they have reason to believe that a littering offence has been committed in respect of the vehicle on the authority's land.
- 4.2.2 Regulation 6 provides that FPNs can be issued to a person who is the keeper of a vehicle causing litter to the amount specified under section 88(6A)(a) of the Environmental Protection Act (as referred to in 4.1.3 above).

4.2.3 If the FPN is not paid in full within the fixed penalty period the amount of fixed penalty increases by 100% with effect from the day after the last day of the fixed penalty period. Action may be taken against the person the FPN was issued to and the authority may recover any unpaid amount and any related costs as a civil debt or as if payable under a county court order, if the county court so orders.

5 THE REPORT

- 5.1 In common with all local authorities, our district suffers from littering incidents by individuals on foot and by individuals throwing litter from vehicles. Litter includes items such as cigarette butts, chewing gum and crisp packets, and can cause harm to the environment and can be hazardous to humans and wildlife.
- 5.2 This Council is determined to reduce littering by carrying out an awareness raising campaign to stress the harm caused by this anti-social behaviour, encouraging people to take personal responsibility for their waste, and also by making best use of the of legislation available to us to enforce against littering behaviour.
- 5.3 From 1st April 2018 the Government have revised the maximum fixed penalties that can be used in relation to a FPN issued for littering and also introduced new legislation to allow the a litter authority to issue an FPN to the registered keeper of a vehicle if the litter authority has reason to believe that a littering offence has been committed in respect of the vehicle on the authority's land.
- 5.4 Littering FPNs offer the opportunity for an individual to discharge any liability to conviction for the offence to which it relates, by payment of a fixed penalty. FPNs are ordinarily used to deal with an incident initially, as an appropriate and proportionate way of dealing with the offending behaviour.
- 5.5 When individuals choose not to discharge their liability through payment of an FPN, or where a case involves a persistent offender then it is likely that prosecution action will be taken however, each case will be considered on its own merits.
- 5.6 FPNs issued to registered keepers for littering from a vehicle, if not paid, do not have a prosecution option. The recourse is civil recovery of non-payment.
- 5.7 Where perpetrators of littering are identified, it is appropriate that they receive a penalty reflecting the damage to the environment, local community and cost to the Local Authority for clearing the litter and enforcing the offence. The penalty should also act as a deterrent against future offending. It is recommended therefore that the fixed penalty for littering and littering from vehicles reflects this and should always be set at the maximum full penalty as specified in legislation (currently £150) with a discount offered for early payment within 14 days.
- 5.8 The discount for early payment to currently be set at a £50 reduction (making the level of fixed penalty £100) but any future reductions to be agreed by the Group Manager in consultation with the Cabinet Member when maximum full penalty levels change by law.
- 5.9 In line with existing arrangements, the decision on whether or not to issue an FPN will be made by the investigating officer. The decision on whether or not to pursue a prosecution will be made by the investigating officer in consultation with their line manager and Legal Services.

6 RATIONALE

- 6.1 Fixed Penalty Notices are a valuable enforcement tool for dealing with the unauthorised deposit of litter and help to further the Council's commitment to take enforcement action against those who cause litter.

7 OTHER OPTIONS CONSIDERED

- 7.1 The legislation provides for the amount of fixed penalty to be between £50 and £150. Taking into account the antisocial nature of discarding litter rather than using a bin or taking it home for disposal, the cost of clearing up litter, the time involved in enforcing against those who drop litter it is considered that the level of fixed penalty should be set at the maximum of £150, with a discount for early payment.

8 CONSULTATION

- 8.1 The Council's Monitoring Officer, Section 151 Officer and Corporate Director have had the opportunity to input to this report.

9 RISK MANAGEMENT

- 9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

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Background papers	
Please contact the report author if you need to access this report in an alternative format	