

Bath & North East Somerset Council

DECISION MAKER:	Cllr Tim Ball, Cabinet Member for Neighbourhood Services	
DECISION DATE:	On or after 27th July 2024	EXECUTIVE FORWARD PLAN REFERENCE:
		E3530
TITLE:	Fixed Penalty Notices for Environmental and Anti-Social Behaviour Offences	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix A: Environmental Offences and Anti-social Behaviour offences Fixed Penalty Levels		

1 THE ISSUE

- 1.1 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 came into force on the 31st July 2023. These regulations have empowered local authorities to increase the penalties issued under Fixed Penalty Notices (FPN) for the unauthorised or harmful deposit, treatment or disposal of waste, duty of care for household waste and in relation to anti-social behaviour offences.
- 1.2 This legislative change has prompted a review of the level of FPN penalty for all environmental crime offences and for anti-social behaviour offences enforced by BANES, with the aim of the penalty amounts acting as a deterrent to offending.

2 RECOMMENDATION

The Cabinet Member for Neighbourhood Services is asked to approve the following to be implemented from 1st August 2024.

- 2.1 To set the Fixed Penalty charges at the level specified in the table below:

Offence	Fixed Penalty Charge
Dropping litter in the street or any place open to the air to which the public have access, or littering from a vehicle	£200 (£150 if paid within 14 days)
Not putting out domestic waste or recycling properly	£60

Not putting commercial or industrial waste out properly – EPA section 47	£110
Giving household waste to an unlicensed company for disposal	£300
Failure to produce a waste transfer note for commercial waste	£500
Fly tipping – bag/sack of domestic/commercial waste left next to a litter bin	£200
Flytipping – Individual flytipping own household waste	£400
Flytipping – All other incidents not covered above	£600
Allowing your dog to foul a street or public space	£200
Graffiti	£500
Flyposting	£500
Unauthorised distribution of literature on designated land	£200
Failure to comply with a Community Protection Notice issued for an environmental related offence.	£100

2.2 That the implementation of all future changes to Fixed Penalty charges are delegated to and implemented by the Director of Place Management, or any successor or equivalent role to that post, in consultation with the relevant Cabinet Member.

3 THE REPORT

3.1 FPNs provide an alternative to other enforcement options and prosecution. It allows an individual to discharge their liability for the relevant offence by payment of a financial penalty. There is no obligation for the Council to offer an offender the option to discharge liability through a FPN. However, for some cases and offences, it can be more appropriate and proportionate than proceeding with a prosecution through the courts. A FPN is offered as an alternative method of disposal under various pieces of legislation and the penalty range or level is set out in legislation and can vary.

3.2 FPNs are currently used by council officers as an alternative to prosecution or other enforcement options and they help to deter environmental crime. In July 2023 the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 came into force increasing the upper limits of the penalty for some offences.

3.3 The new upper penalty limits are designed to give Local Authorities increased penalties to further deter environmental crime. For certain offending behaviour the Council may decide that prosecution is a more appropriate and proportionate way of dealing with the matter rather than by issuing an FPN.

3.4 The Council also issues FPNs for other offences under section 46 of the Environmental Protection Act 1990 and Section 52 of the Anti-social Behaviour

Crime & Policing Act 2014. The levels of these have also been reviewed against the penalty range and maximum level that the Council is able to set these at.

- 3.5 Where a range has been given within the legislation, careful consideration has been given to the proposed level of penalty charged for each offence. The levels proposed are to ensure a consistent approach across various offences of a similar seriousness and are set at an appropriate level to promote responsible citizenship.
- 3.6 Currently there are no proposed changes to the relevant sentencing guidelines issued to courts and therefore consideration has been given to the guidelines and fine levels currently issued by the courts. If an FPN level is higher than the average court fine issued, there is a possibility that some defendants will no longer see the payment of the FPN as the more attractive option and may favour attending court, hoping for the case to either be quashed or a lower fine imposed.
- 3.7 Appendix A outlines the offences, the current penalty, and the proposed new penalty levels.

4 STATUTORY CONSIDERATIONS

Legislation amended by 2023 Regulations

4.1 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 (the 2023 Regulations) have made changes to the penalty amounts for FPNs in some parts of the Environmental Offences (Fixed Penalties) (England) Regulations 2017 (the 2017 Regulations) and the Environmental Protection Act 1990 (EPA 1990). The changes can be summarised as follows:

- a) Section 34ZA(8) EPA 1990 has been amended so that the maximum penalty that can be imposed has increased from £400 to £600 (this relates to duty of care etc. in respect to household waste).
- b) Section 33ZA(9)(a) EPA 1990 has been amended so that the maximum penalty that can be imposed has increased from £400 to £1,000 (this relates to the offence of unauthorised or harmful deposit, treatment, or disposal of waste i.e., fly-tipping, or illegal dumping).
- c) Regulation 5 of the 2017 Regulations has been amended so that the maximum penalty that can be imposed for an FPN under section 88(6A) EPA 1990 (for an offence of leaving litter) and section 43A(1)(a) Anti-social Behaviour Act 2003 (for graffiti and fly-posting offences) is £500, and the minimum penalty is £65.
- d) Paragraph 7(4)(a) of Schedule 3A to the EPA 1990 has been amended so that the maximum penalty that can be imposed for an FPN is £150 and the minimum penalty is £65. Under Schedule 3A, a local authority can designate areas by Order, where it is an offence to distribute free printed materials, such as leaflets or flyers. It is an offence to distribute such leaflets or flyers, or to ask another person to do so, without the consent of the authority, on any land that the authority has designated under this Schedule. Authorised officers have the power to seize any materials that are being distributed in contravention of the Order and can issue an FPN.

Legislation that has not been amended by the 2023 Regulations but is relevant to this report.

4.2 If the occupier of a premises presenting household waste does not place the waste for collection in receptacles of a type and number specified in a notice served on them then under section 46B of the EPA 1990: (1) The amount of the monetary penalty that a person may be required to pay to a waste collection authority under section 46A is:

- a) the amount specified by the waste collection authority in relation to the authority's area, or
- b) if no amount is so specified, £60.

4.3 Regulation 3 of the 2017 Regulations provides the following:

- a) For an FPN issued under section 47ZB(2)(a) of the EPA 1990 in respect of an offence under section 47 (not putting commercial or industrial waste out property) the minimum penalty is not less than £75 and the maximum penalty is not more than £110.

4.4 The Litter (Animal Droppings) Order 1991 specifies that the provisions of Part IV of the EPA 1990 (litter) which apply to refuse shall apply to dog faeces. Where an authorised officer of a local authority finds a person who he has reason to believe has committed an offence then they may issue the FPN. Subsections (2) to (8) of section 88 of the EPA 1990 shall apply for the purposes of issuing an FPN:

- a) Regulation 5 of the 2017 Regulations has been amended so that the maximum penalty that can be imposed for an FPN under section 88(6A) EPA 1990 (for an offence of leaving litter) is £500, and the minimum penalty is £65

4.5 The Littering from Vehicles Outside London (Keepers Civil Penalties) Regulations 2018 specifies that a litter authority may give a penalty notice to a person who is the keeper of a vehicle when it has reason to believe that a littering offence has been committed in respect of the vehicle. Regulation 6(1) specifies that the amount of a fixed penalty is the amount specified by the litter authority under section 88(6A) (a) of the EPA 1990. The 2023 Regulations specify that:

- a) Under s88(6A) (a) of the EPA 1990 the minimum fine is not less than £65 and maximum £500.

4.6 The Anti-social Behaviour Crime & Policing Act 2014 section 52(1) specifies that an Authorised Person may issue an FPN to anyone who it has reason to believe has committed an offence of failing to comply with a community protection notice. Section 52(7) specifies that the fixed penalty amount specified must not be more than £100.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 5.1 The Council already has resources allocated to investigate and where needed clear-up these environmental offences and does not anticipate these increasing as a result of increasing FPN levels.
- 5.2 Any receipts from FPNs paid will contribute towards the costs to the Council of clearing up and enforcing against these environmental and anti-social behaviour offences.
- 5.3 Effective use of FPNs can act as a deterrent to any future offences, mitigating future clear-up costs. It should be noted that by acting as a deterrent no additional income should be expected from the increased FPN levels.

6 RISK MANAGEMENT

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

7 EQUALITIES

- 7.1 An Equalities Impact Assessment has been produced, no significant adverse impacts have been identified and FPNs are only issued to those carrying out environmental and anti-social behaviour offences.

8 CLIMATE CHANGE

- 8.1 The level of penalty will not have a direct impact on climate change but will act as a deterrent against carrying out environmental and anti-social behaviour offences and the impact of they can have on the wider environment and community.

9 OTHER OPTIONS CONSIDERED

- 9.1 Other options considered but discounted are summarised in the table below.

Option	Reason not taken forward
Increase the level of Fixed Penalty Notices to the maximum amount for all areas	Offenders may not be able to afford the level of penalty or opt to risk a lower level of fine if prosecuted in court. The resources required in waste enforcement and legal services to prepare and take prosecutions may increase.
Keep the existing level of Fixed Penalty Notices	Environmental offences are still occurring so the current levels for Fixed Penalty Notices are not acting

	<p>as a deterrent.</p> <p>The Council wants to adopt a strong stance towards offenders and increasing the Fixed Penalty Notice levels sends a clear message that the Council takes these matters seriously.</p>
<p>Include a discounted early payment option for all Fixed Penalty Notices</p>	<p>The offences have a significant negative impact in our environment and our communities.</p> <p>Significant Council resources are used in dealing with such incidents.</p> <p>The Council wants to adopt a strong stance towards offenders and by not offering an early payment discount this sends a clear message that Council takes these matters seriously.</p>

10 CONSULTATION

10.1 The Council's Monitoring Officer, Section 151 Officer and Executive Director – Chief Operating Officer have had the opportunity to input to this report.

Contact person	<p>Sarah Alder, Head of Strategic Environmental Services</p> <p>Tel: 01225 394041</p>
Background papers	<p>The Controlled Waste (England and Wales) (Amendment) (England) Regulations 2023</p> <p>The Environmental Protection Act 1990</p>
<p>Please contact the report author if you need to access this report in an alternative format</p>	

APPENDIX A – ENVIRONMENTAL OFFENCES AND ANTI-SOCIAL BEHAVIOUR OFFENCES FIXED PENALTY LEVELS

Offence	Legislation	Current Fixed Penalty Charge	Proposed New Fixed Penalty Charge	Maximum Level
Dropping litter in the street, or from a vehicle	EPA Section 88 (6A)(a) & The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 (paragraph (6 (1)))	£150 (£100 if paid within 14 days)	£200 (£150 if paid within 14 days)	£500
Not putting out domestic waste or recycling properly	EPA Section 46B (1)(a)	£60	£60	£60
Not putting commercial waste out properly – EPA section 47	EPA Section 47ZB (2)(a)	£100	£110	£110
Giving household waste to an unlicensed company for disposal	Environmental Protection Act 1990 34ZA (8)	£300	£300	£600
Failure to produce a waste transfer note for commercial waste	Environmental Protection Act 1990 34ZA (8)	£300	£500	£600
Fly tipping – bag/sack of domestic/commercial waste left next to a litter bin	Environmental Protection Act 1990 33ZA(9)(a)	N/A	£200	£1000
Flytipping – Individual flytipping own household waste	Environmental Protection Act 1990 33ZA(9)(a)	£400	£400	£1000

Flytipping – All other incidents not covered above	Environmental Protection Act 1990 33ZA(9)(a)	£400	£600	£1000
Allowing your dog to foul a street or public space	The Litter (Animal Droppings) Order 1991)	£50	£200	£500
Graffiti	section 43A(1)(a) of the Anti-social Behaviour Act 2003.	N/A	£500	£500
Flyposting	section 43A(1)(a) of the Anti-social Behaviour Act 2003.	N/A	£500	£500
Unauthorised distribution of literature on designated land	EPA Schedule 3A and Section 88 (6A) (a)	N/A	£200	£500
Failure to comply with a Community Protection Notice	Anti-Social Behaviour Crime & Policing Act 2014 (Section 52 (7))	£75	£100	£100