



London Borough of Enfield

Title of Report:	Review of Fixed Penalty Notices (Waste offences) 2023
Report to:	Cllr Susan Erbil, Cabinet Member for Licensing, Planning & Regulatory Services
Date of Report:	1 December 2023
Cabinet Member:	Cllr Susan Erbil
Directors:	Doug Wilkinson Director of Environment & Street Scenes Simon Pollock Interim Executive Director Environment and Communities
Report Author:	Esther Hughes, Esther.Hughes@enfield.gov.uk
Ward(s) affected:	All
Implementation date, if not called in:	20/12/2023
Classification:	Part I Public

1. Purpose of Report

1.1 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 came into force on the 31st of July 2023, this gave local authorities the option to increase the fines issued under fixed penalty notices (FPN) for the unauthorised or harmful deposit, treatment or disposal of waste and duty of care for household waste.

1.2 This report seeks authority to revise the current fixed penalty for offences related to littering, fly-tipping, and household waste duty of care to new levels; and to introduce a discount for early payment, whilst extending the period during which a payment for FPNs can be made. This would also apply to any authorised third-party contractor who enforces waste offences on our behalf.

Recommendations

- 1) Adopt new levels for fixed penalty notice (FPN) for offences related to littering, fly-tipping, household waste duty of care, graffiti and fly posting and to give a discount for early payment detailed in the following table.

Offence	Proposed FPN Level	Proposed early payment discounted FPN Level
s33 - Fly tipping	£1,000	£500
s87 - Littering (dropped litter & dumped household waste (black bags) *)	£500	£250
S34 ZA -Household Duty of Care	£600	£500
Graffiti	£500	£250
Fly Posting	£500	£250

- 2) Amend the payment period for FPNs for littering, fly-tipping, household waste duty of care, fly tipping and graffiti to 28 days and the early payment (discounted FPN level) period to 14 days.

- 3) We introduce the new FPN levels from the 1 January 2024

2. Background and Options

- 2.1. In the 2023 Anti-social Behaviour Action Plan, the government set out that it wanted councils to take a much tougher stance on these forms of environmental offences and therefore set out new upper limits for Fixed Penalty Notices (FPNs).
- 2.2. The FPN provides 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 an FPN and retains the right to prosecute for all offences regardless of the type or size. However, for some cases and offences, it can be more proportionate than proceeding with a prosecution through the courts. An FPN is offered as an alternative under various legislation and the proposed penalty levels can vary. The Government provides penalty levels at which local authority FPN levels must be set.
- 2.3. Offenders do not have to accept an FPN offered to them (which discharges their liability to conviction for the offence), and the council cannot make anyone pay an FPN. There is no right of appeal to any FPNs, but offenders retain the right to not pay any FPN issued to them and can at any time (before making payment) opt to have their case heard through the court system.
- 2.4. A maximum sentence for FPNs has been set by legislation, and the Council has given careful consideration 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 behaviour and to act as a deterrent to future offending.
- 2.5. The Environmental Protection Act 1990 creates an offence of depositing-controlled waste, or knowingly causing or permitting controlled waste to be deposited in or on any land. The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 amends this framework enabling authorities to increase the level of fine they issue if they so choose. The Environmental Protection Act 1990 is amended:
 - Section 33ZA(9)(a) 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.
 - Section 34ZA (8) from £400 to £600 - this relates to duty of care etc. in respect to household waste.
- 2.6. The Regulations also amend the Environmental Offences (fixed Penalties) (England) Regulations 2017 to amend regulation 5 in relation to the littering offences:
 - Under s88(6A) (a) of the Environmental Protection Act 1990 and s43A(1)(a) of the Antisocial Behaviour Act 2003. The minimum fine is not less than £65 and maximum £500

2.7. Summary Table

Offence	Previous Maximum FPN Level	New Maximum FPN Level
Fly tipping	£400	£1,000
Littering	£150	£500
Household Duty of Care	£400	£600
Graffiti	£150	£500
Fly Posting	£150	£500

2.8. The changes to the level of fines **have not altered** the Waste Duty of Care offence (**commercial**) under Section 34(5)/34A of the Environmental Protection Act 1990. These are currently set locally at **£300 with no early payment**.

2.9. When an FPN has been issued, an authority cannot prosecute for the alleged offence if the FPN is paid within 14 days of it being issued. Where the FPN is not paid and there is sufficient evidence to prosecute for the substantive offence this may ensue.

2.10 Currently there are no proposed changes to the sentencing guidelines¹ issued to courts and therefore consideration should be given to the fine levels currently issued by the courts. If the FPN level is higher than the average court fine issued, there is a possibility that some defendants will no longer see 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.

2.11 By means of a deterrent and to demonstrate how seriously the Council takes this issue, the number of FPNs issued per month and the Court results are published on social media.

2.12 To recognise and be consistent with most billing arrangements and salary payments it is recommended to extend the existing payment period to 28 days and provide an early repayment opportunity of 14 days. Payment for FPNs can only be accepted by the council for the relevant amount (either full or discounted rate depending on the time since it was issued). However, in cases of extreme financial difficulties, officers will continue to have discretion to be able to extend the lower threshold payment period (subject to legal restrictions) and will work together with those issued FPNs to avoid prosecution where possible.

3 Options

3.1. Option 1. Do Nothing and retain current levels.

3.2. Option 2. Increase the FPN to the maximum permitted level and offer no early payment

3.3. Option 3. Increase the FPN to the maximum permitted level and offer an early payment

¹ <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/2-fine-bands/>

3.4. Option 4. Increase the FPN below the maximum permitted level and offer no early payment

3.5. Option 5. Increase the FPN below the maximum permitted level and offer an early payment.

4. Preferred Option and Reasons for Preferred Option

4.1. Option 3 Increase the FPN to the maximum permitted level and offer an early payment.

4.2. Advantages

- The Government has recognised this a serious issue, increasing the maximum FPN amounts that Local Authorities may issue.
- Enfield has historically set the FPN at the maximum permitted level, demonstrating how serious the Council takes this matter. Retaining this strong stance will continue to support this and the priorities in the Investing in Enfield Council Plan 2023-2026.
- The level of fine should act as a deterrent.
- Whilst accepting the highest FPN value but offering a discount demonstrates the seriousness of the offence but offers a reasonable approach.
- We have benchmarked with other boroughs and our approach is consistent with them. Subject to formal notification we understand that neighbouring Authorities (Haringey and Waltham Forrest) are also proposing to increase the FPNs to either the maximum or near to.

5. Relevance to Council Plans and Strategies

- **Priority One: Clean and Green Spaces** by keeping our streets and public spaces clean and welcoming. Additionally, the 2022 Labour Manifesto Pledge committed to *“continue to issue fines and prosecute those who fly tip.”*

Environmental enforcement services contribute positively towards clean and green spaces improving quality of life.

- **Priority Two: Strong, healthy, and safe communities**

The provision of environmental enforcement contributes positively towards creating strong, healthy, and safe communities. It directly contributes to discouraging the “broken window theory” where visible signs of crime, anti-social behaviour create an environment that encourages further crime.

- **Priority Five: An Economy that works for everyone**

The provision of environmental enforcement contributes positively towards creating an environment to those who wish to invest in

the economy of the borough by creating an attractive place to live and work.

Financial Implications

6. This report seeks authority to revise the current fixed penalty for offences related to littering, fly-tipping, and household waste duty of care to new levels; and to introduce a discount for early payment, whilst extending the period during which a payment for FPNs can be made. This would also apply to any authorised third-party contractor who enforces waste offences on our behalf.

Adopt new levels for fixed penalty notice (FPN) for offences related to littering, fly-tipping, and household waste duty of care and to give a discount for early payment detailed in the following table.

Offence	Proposed FPN Level	Proposed early payment discounted FPN Level
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Amend the payment period for FPNs for littering, fly-tipping, household waste duty of care, fly tipping and graffiti to 28 days and the early payment (discounted FPN level) period to 14 days.

We introduce the new FPN levels from the 1 January 2024

Legal Implications

7. The Council has a duty under section 89 of the Environmental Protection Act 1990 to, as far as is practicable, ensure that the highways and land for which it is responsible are kept clear of litter and refuse.

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The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 make changes to the Environmental Offences (Fixed Penalties) (England) Regulations 2017 and the Environmental Protection Act 1990, to enable local authorities to amend the level of fine for prescribed offences; the Regulations came into force 31 July 2023.

The 2023 Regulations increases the upper limit of Fixed Penalty Notices for littering, graffiti, and fly-posting offences from £150 to £500. In relation to fly-tipping, the upper limit of the Fixed Penalty Notice is increased from £400 to £1,000. For Household Duty of Care offences, the upper limit for Fixed Penalty Notices has increased from £400 to £600. The Council can set the level of fines for Fixed Penalty Notices to a level it considers appropriate, as long as those levels are within the legislative framework.

The Council's preferred option to increase the Fixed Penalty Notice to the maximum permitted level and offer an early payment, is a recommendation it is entitled to make. This recommendation is consistent with the amendments to the Environmental Offences (Fixed Penalties) (England) Regulations 2017.

The Council's understanding of The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 is legally sound, and the decision to increase the FPN to the maximum permitted level is directly linked to three of the Council's priorities as listed above in section 5. The Council's decision to increase the FPN to the maximum level is therefore a rational decision, and less prone to successful legal challenge.

In considering the level of Fixed Penalty maximum, the Council needs to set it at a level that will act as a deterrent to offending and promote its duty of ensuring land and highways are kept clear of litter and refuse.

The risk of legal challenges to the Council's recommendation has been mitigated by ensuring that the recommendation made was reached through a rational process, and within the restrictions of environmental legislation.

There is no duty of consultation prior to making this decision.

An Equalities Impact Assessment has been undertaken to mitigate the risk of a legal challenge on the grounds of direct or indirect discrimination. The Council is required to give due consideration to the impact recommendations may have on persons with protected characteristics under the Equality Act 2010; and therefore, the Council's equality impact assessment should regularly be reviewed, updated, and considered.

In addition, the Council will allow for adjustments to FPN levels if this is required.

Equalities Implications

8. Please see Appendix A - EQIA

The Equality Impact Assessment demonstrates that the project is expected to have a positive impact on Enfield residents who will see a reduction in these environmental offences as a result of the proposed changes. In cases of extreme financial difficulties, officers will continue to have discretion to be able to extend lower threshold payment periods (subject to legal restrictions). In the event of enforcement action being

taken against any person who may have a disability, medical verification will be sought prior to a final decision.

Public Health Implications (if any, delete if not relevant)

9. The provision of an Environmental Enforcement will help to maintain the street scene and thereby contribute to the wellbeing of the borough.

Climate Action Implications

10. Effectively tackling waste offences reduces the environmental impact of waste on our communities, not only the dispersing of harmful plastics, but also contamination from toxic materials and polluting public spaces, contributing to more efficient waste management and our recycling rates.

Safeguarding Implications

11. Enforcement action will not be instigated against any minors.

Crime and Disorder Implications (if any, delete if not relevant)

12. It is hoped that enforcement will act as a deterrent to persons committing waste offence, improve the overall street scene and avoid the “broken window theory,” whereby visible signs of crime create an environment that encourages further crime.

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Background Papers

(*) <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/2-fine-bands/>

(**)
https://assets.publishing.service.gov.uk/media/652e72fed86b1b000d3a50f2/Part_1A_-_Effective_enforcement.pdf

Costs of Fly tipping
https://www.legislation.gov.uk/ukxi/2023/770/pdfs/ukxiem_20230770_en_001.pdf