

Committee Name and Date of Committee Meeting

Cabinet – 18 December 2023

Report Title

Fly Tipping and Littering Fixed Penalty Charge Increase

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

Lewis Coates, Service Manager Regulation and Enforcement

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Ward(s) Affected

Borough-Wide

Report Summary

The financial level of fixed penalties that can be issued by Local Authorities to fly-tippers and litterers has been increased through the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023. The maximum amounts are now £1,000 for fly-tipping, £600 for household duty of care waste offences and £500 for littering.

The penalty upon conviction via a prosecution for fly-tipping remains an unlimited fine and/or imprisonment.

Recommendations

That Cabinet:

1. Agree the proposed increased level of fixed penalties prescribed by sections 2 and 3 of The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023.
2. To agree to recommend the proposed increases in maximum levels of fixed penalties to Council for adoption as part of the setting of fees and charges for the 2024 to 2025 financial year.

List of Appendices Included

Appendix 1 Initial Equality Screening Assessment

Appendix 2 Carbon Impact Assessment

Background Papers

[Environmental Protection Act 1990 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

[The Environmental Offences \(Fixed Penalties\) \(Amendment\) \(England\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

[The Environmental Offences \(Fixed Penalties\) \(England\) Regulations 2017 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

[Agenda for Council Meeting on Wednesday 1 March 2023, 2.00 p.m. - Rotherham Council](#)

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

Yes

Exempt from the Press and Public

No

Fly Tipping and Littering Fixed Penalty Charge Increase

1. Background

- 1.1 Fly tipping and littering blight our urban and rural environments, with consequent damage to the natural environment and wildlife. These offences directly affect the quality of life of residents and visitors alike and impact upon the attractiveness of the Borough as a place to live, work and visit.
- 1.2 The Council faces increased demand to remove and investigate fly-tipping and littering and consequently increased costs. There is no excuse for either fly-tipping or littering with plentiful provision made by the Council for the disposal of waste and litter. Nationally, there has been calls from Local Authorities to increase the levels of fixed penalties available to Councils, that are appropriate to the offence.
- 1.3 Councils can issue fixed penalty notices where people are found to have littered and may prosecute or issue fixed penalty notices to individuals or companies that commit fly-tipping offences. The level of these fixed penalty notices are set through statutory instruments from Government.
- 1.4 At the Council Meeting on 1 March 2023, the Council set fees for the 2023/24 financial year. Included within these fees were the levels of fixed penalty notices for fly-tipping and littering offences. Currently the Council has set the levels of these fixed penalties in accordance with the Environmental Protection Act 1990 and the Environmental Offences (Fixed Penalties) (England) Regulations 2017, with the maximum amount for littering at £150 and the maximum for fly-tipping at £400.

2. Key Issues

- 2.1 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 commenced on 31 July 2023 and amended both the Environmental Protection Act 1990 and the Environmental Offences (Fixed Penalties) (England) Regulations 2017, in respect of the maximum level of fixed penalties that Councils can issue for fly-tipping and littering offences respectively.
- 2.2 Consequently, there is provision for Councils to issue fixed penalty notices up to a maximum of £1,000 for fly-tipping offences, £600 for waste household duty of care offences and £500 for littering offences.
- 2.3 The Courts remain able to issue unlimited fines and/or imprisonment upon conviction where the Council considers that a prosecution is in the public interest rather than the issuance of a fixed penalty notice.
- 2.4 The Council's littering enforcement provision is provided by authorised Council Officers as well as through a Service Level Agreement with City of Doncaster Council, for which the Council receives a proportion of the fixed penalty amounts once administration costs are accounted for. This Service

Level Agreement is due to expire at the end of December 2023, and a new Service Level Agreement is currently under consideration.

3. Options considered and recommended proposal

3.1 Option 1 - The Council maintain the 'as is' position and keep the fixed penalty levels at the current level given the current cost of living crisis and not increase the maximum level of fixed penalties. However, the increased levels reflect the impact of the offences on communities and consequent costs of removal, disposal and enforcement by Local Authorities.

3.2 Option 2 - The maximum fixed penalty amounts are increased in accordance with the provisions of the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023. This level of fixed penalty better reflects the impact of those offences on the natural and built environment, whilst also providing a better deterrent to those minded to committing such offences. This is the recommended option. However, there is a recognition that the levels of fines must be proportionate and consequently, whilst the maximum levels of fines are adopted and available, proportionality is built into the charges that are levied. Officers retain discretion to take alternative actions or prosecutions where this is deemed appropriate. The proposed charges for individual types of offences are listed below:

- Litter – Maximum fine of £500 reduced to £150 if the fine is paid within 14 days
- Fly-Tipping Maximum of £1,000 however different scales of fly tipping will be subject to differing fine levels:
 - Tier 1 (1-5 bags) - A proposed fine of £800 reduced to £400 if paid within 14 days
 - Tier 2 (over 5 bags/car boot) – A proposed fine of £800 reduced to £400 if paid within 14 days
 - Tier 3 (Large fly tip /tipper load) – A proposed fine of £1000
- Household Duty of Care – Maximum of £600 reduced to £300 if paid within 14 days

4. Consultation on proposal

4.1 The matter relates to legislative change and the development of Legislation conducted through due process in Parliament.

4.2 No local consultation has taken place in respect of these changes and the proposed increase in maximum levels of fixed penalty amounts.

5. Timetable and Accountability for Implementing this Decision

5.1 The increases to maximum fixed penalty amounts will be implemented from the 1 April 2024 subject to Council approval to increase the levels.

5.2 Sam Barstow, Assistant Director Community Safety and Street Scene is accountable for implementing the decision.

6. Financial and Procurement Advice and Implications

- 6.1 The recommendation to increase the level of fines to the maximum level will result in an increase of £600 for fly-tipping fines and £350 for littering offences. Fly-tipping fines are separated into large and small fly-tips, with the large fly-tips being formally classed as fly-tipping and the small fly-tips classed as littering as an illustration from 2022/23, 26 large fly-tip fines and 21 small fly-tip fines were issued. This would equate to an increase in income if all fines were paid at the maximum level, of £15,600 and £7,350 respectively.
- 6.2 It should be noted that not all fines are paid and that where monies cannot be recovered, this will impact directly on income. In the 12 months to the 31st October 2023, the Council received income of £4k from fines. It is hoped that the increase in fines will have a deterrent effect and reduce the number of offences.
- 6.3 The recommendation to increase the level of fines to the maximum level will result in an increase of £600 for fly-tipping fines and £350 for littering offences. Fly-tipping fines are separated into large and small fly-tips, with the large fly-tips being formally classed as fly-tipping and the small fly-tips classed as littering as an illustration from 2022/23, 26 large fly-tip fines and 21 small fly-tip fines were issued. This would equate to an increase in income if all fines were paid at the maximum level, of £15,600 and £7,350 respectively.
- 6.4 Given that there is no expenditure with third party organisations as a result of this activity, there are no procurement implications associated with the proposals contained within this report.

7. Legal Advice and Implications

- 7.1 The relevant legal provisions are referred to within the main body of the report. The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 commenced on 31st July 2023 and amended both the Environmental Protection Act 1990 and the Environmental Offences (Fixed Penalties) (England) Regulations 2017.
- 7.2 Section 2 of the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 amends Regulation 5 of the Environmental Offences (Fixed Penalties) (England) Regulations 2017, firstly in setting the amount of a fixed penalty for littering offences at a minimum of £65 and a maximum of £500: and secondly by setting the fixed penalty amount available to address offences related to distribution of printed information without consent from the Council, at the minimum level of £65 and the maximum level of £150.
- 7.3 Section 3 of the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 amends section 33ZA(9)(a) of the Environmental Protection Act 1990 by setting the maximum fixed penalty amount available for waste deposit [fly-tipping] offences to £1,000, with the minimum amount of

£150 retained. Section 3 also amends section 34ZA(8) of the Environmental Protection Act 1990 by setting the maximum fixed penalty amount available for the household duty of care waste offence to £600, with the minimum amount of £150 retained.

7.4 In the absence of an amount specified for the fixed penalty amounts by the Authority, the legislation specifies what the amount should be. It is therefore important that the Council gives serious consideration to the setting of fixed penalty amounts felt appropriate for the Borough.

7.5 In the event a fixed penalty notice is issued and remains unpaid the matter will be referred to legal services for prosecution. The fixed penalty notice gives the individual an opportunity to discharge their liability for the offence. An increase in the fixed penalty amount may result in an increase in the number remaining unpaid and thus in the number of matters being referred for prosecution.

8. Human Resources Advice and Implications

8.1 There are no human resource implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

9.1 There are implications for Children and Young People and Vulnerable Adults in that families and individuals will find it harder to pay these increased levels of fines with a consequent impact on dealing with the cost of living.

10. Equalities and Human Rights Advice and Implications

10.1 There are no equalities or human rights implications.

10.2 An Initial Equality Screening Assessment is attached at Appendix 1

11. Implications for CO2 Emissions and Climate Change

11.1 Littering and fly tipping have an impact on greenhouse gas emissions through the Council's corporate fleet vehicles. Between April 2021 and March 2022, road sweepers and vehicles used for fly tip removals accounted for ca 120 tCO₂e (tonnes carbon dioxide equivalent) or 5% of all emissions from 'red' and 'white' diesel- fuelled corporate fleet vehicles, over the same period. Increasing the level of fines for littering and fly tipping might help to avoid an increase in emissions from transport if fines were to become a more effective deterrent.

11.2 Littering and fly tipping subvert waste regulations intended to ensure the proper treatment of waste and to manage resources sustainably. Any recycling material which can be recovered from littered and fly tipped waste is more likely to be contaminated, with less avoided greenhouse gas emissions from reduced demand for raw materials. According to a December 2021 'strategic environmental assessment' of the Scottish Government's proposed National Litter and Flytipping Strategy, one tonne of

littered and fly tipped waste can lead to 600 kgCO₂e emissions which could have been avoided, if the waste had been fully recycled.

11.3 A Carbon Impact Assessment is attached at Appendix 2.

12. Implications for Partners

12.1 There are no implications for partners

13. Risks and Mitigation

13.1 The increase in the maximum level of fines if applied, is likely to encourage more individuals not to pay the fines. This in turn will lead to further expense to the Council in prosecuting those who fail to pay and therefore the payment of fines will be closely monitored and appropriate steps taken where individuals do not pay.

13.2 At a regional level, Local Authorities within the Yorkshire and Humber region, in recognition of the risks and costs of non-payment of fines, are engaged in a process of establishing scales of fines for offences, which although not at the maximum levels allowable, are being set at levels that will maintain payment rates. Consequently, Rotherham might appear as a regional exception. Once the regional process is complete, a briefing will be provided to explore further options based on benchmarking.

14. Accountable Officers

Sam Barstow, Assistant Director Community Safety and Street Scene

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp	04/12/23
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	30/11/23
Assistant Director, Legal Services (Monitoring Officer)	Phil Horsfield	30/11/23

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This report is published on the Council's [website](#).