

THURSDAY, 14 JUNE 2018

**REPORT OF THE PORTFOLIO HOLDER FOR COMMUNITIES AND WELLBEING****UPDATED ENVIRONMENTAL CRIME POLICY AND REVISION TO FIXED PENALTY STRUCTURE****EXEMPT INFORMATION****PURPOSE**

To accept revised environmental crime policy and revision of fixed penalty structure

**RECOMMENDATIONS**

That Members:

- Approve revised policy in line with legislative updates
- Agree the default fixed penalty level for core environmental offences
- Agree higher level of penalties for fly tipping
- Approve phased implementation of civil penalty regime for littering from vehicles
- Agree standard level of penalty for littering from vehicles

**EXECUTIVE SUMMARY**

The Council's Environmental Crime policy outlines the actions and enforcement considerations for Environmental anti-social behaviour and was first adopted in 2012.

**Fixed Penalty Levels**

The current environmental policy states that Tamworth would charge the maximum permissible for offences which is not in alignment with the ASB Crime and Policing Act 2014. The levels for Community Protection Notices and Public Space Protection Orders, which have updated the dog control penalties and other environmental offences, are set at £100.

Following the national consultation arising from the Litter Strategy for England 2017 the vast majority of respondents agreed that environmental crimes should receive a higher penalty in line with other legislation.

The government proposals for core environmental offences were as follows:-

<b>Offence</b>	<b>Default penalty</b>	<b>Minimum full penalty</b>	<b>Maximum full penalty</b>	<b>Minimum discounted penalty</b>
Littering	£100	£50	£150	£50
Graffiti	£100	£50	£150	£50
Fly-posting	£100	£50	£150	£50
Nuisance parking	£100	£100	£100	£60
Abandoning a vehicle	£200	£200	£200	£120
Failure to produce a waste transfer note	£300	£300	£300	£180
Industrial and commercial waste receptacle offences	£100	£75	£110	£60

Based on the current environmental policy, core offences (where there has been a change) would attract maximum penalties of £150 (reduced to £50 for early payment). This change would put all fine levels out of alignment with other standard penalties set by statute under the ASB Crime and Policing Act 2014 – currently £100 for other environmental related offences under the Community Protection Notices and Public Space Protection Order – Dog Control. Penalties for abandoned vehicles and failure to produce waste transfer notices remain unchanged.

It is proposed, that with immediate effect that the core offences (excluding fly tipping) are set to attract the default penalty level as above and outlined in the updated policy

### **Fly-tipping**

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 introduced the ability to issue immediate fixed penalties to fly tippers. The current policy permitted the Council to charge the maximum permissible amount.

Due to the level of concern nationally with regard to the illegal dumping of waste and to add further deterrent for perpetrators, it is proposed that the penalty for fly-tipping remains at the maximum level of £400 reduced to £120 if paid within 14 days.

### **Littering from Vehicles**

Under Section 154 of the Anti-social Behaviour, Crime and Policing Act 2014 as amended, introduced a new section 88A to the Environmental Protection Act 1990 : “Littering from vehicles: civil penalty regime” ( “S88A”). In order to introduce this option the Council will seek to adopt The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 which came into force on 1<sup>st</sup> April 2018.

Littering from vehicles and the subsequent problems on verges, highways and danger to animals is of major concern to the public.

Following full discussion with Stoke on Trent Parking Services who manage the Civil Parking Enforcement for the Council, it is proposed that the Regulations (if approved) be adopted from 1<sup>st</sup> September 2018.

The adoption of the regulations will allow the Council to issue a civil penalty notice to the keeper of a vehicle from which litter is thrown, requiring the keeper to pay a civil penalty. The keeper does not assume any criminal liability for the littering offence: failure to pay the civil penalty results in a civil debt, not prosecution for the littering offence.

The Council will consider all available avenues to identify a keeper, whilst taking care not to enforce against an innocent party.

It is proposed that powers are adopted and appropriate processes approved by the Traffic Penalty Tribunal it is propose that the Council will issue a civil penalty of £100 (reduced to £85 if paid within 14 days) which aligns with penalties under the ASB, Crime and Policing Act 2014

### **Appeal**

A civil penalty notice can challenged their liability to pay on a number of grounds, including cases where the vehicle has been hired to someone else, or the keeper can prove that the vehicle had been stolen at the time the littering offence was committed. In the first instance, keepers will be able to make representations in writing against the civil penalty notice to the council. If this does not resolve the matter, they would then have a right to appeal the civil penalty notice to an independent adjudicator. The Traffic Penalty Tribunal England and Wales will act as the independent adjudicator for the civil penalty notice regime.

## **OPTIONS CONSIDERED**

The following options were considered and discounted:-

- Remain with option to keep all penalties at the highest rate permissible and not aligned to other regulations
- Take the option not to adopt The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, thereby having no powers to issued penalties to registered vehicle owners for such offences

## **RESOURCE IMPLICATIONS**

Regulations to be enforced within current staffing and budgetary levels

## **LEGAL/RISK IMPLICATIONS BACKGROUND**

- All processes to be considered in accordance with legislation
- Implementation to be done in line with current budgetary arrangements
- Potential increased income from penalties to be recorded and used in accordance with existing legislation for the purposes of environmental improvement

## **SUSTAINABILITY IMPLICATIONS**

Not applicable

## **BACKGROUND INFORMATION**

The original Environmental Crime Policy set the level of fixed penalties for littering at the maximum permissible levels – currently £85.

Following a public consultation as part of the launch of England's first ever Litter Strategy in April 2017, the new findings showed the vast majority of respondents were in favour of increasing on-the-spot fines for littering and other environmental crime.

More than 85% of respondents were in favour of increasing fixed penalties for littering and local authorities agreed that new penalties to tackle littering from cars would help to improve environmental quality in their area.

The Environmental Offences (Fixed Penalties) (England) Regulations 2017 and The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 came into force on 1<sup>st</sup> April 2018. Powers under the ASB, Crime and Policing Act 2014 to regulate Public Space Protection Orders for dog control and the Community Protection Notices (ASB, messy gardens, graffiti) control the fine levels for offences of £100.

The regulations are clear that councils must not abuse the power to impose fines and that local circumstances must be taken into account, such as local ability to pay, when setting the level for these fines.

## **REPORT AUTHOR**

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## **LIST OF BACKGROUND PAPERS**

The Environmental Offences (Fixed Penalties) (England) Regulations 2017

The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

Litter Strategy For England 2017

<https://www.gov.uk/government/publications/litter-strategy-for-england>

## **APPENDICES**

Updated Environmental Crime Policy

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