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<b>REPORT TO:</b>	<b>ENVIRONMENT &amp; DEVELOPMENT SERVICES COMMITTEE</b>	<b>AGENDA ITEM: 7</b>
<b>DATE OF MEETING:</b>	<b>09 NOVEMBER 2023</b>	<b>CATEGORY: RECOMMENDED</b>
<b>REPORT FROM:</b>	<b>STRATEGIC DIRECTOR (SERVICE DELIVERY)</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>MATT HOLFORD HEAD OF ENVIRONMENTAL SERVICES <a href="mailto:matthew.holford@southderbyshire.gov.uk">matthew.holford@southderbyshire.gov.uk</a></b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>FIXED PENALTY NOTICES FOR ENVIRONMENTAL OFFENCES</b>	
<b>WARD(S) AFFECTED:</b>	<b>ALL</b>	<b>TERMS OF REFERENCE: EDS14</b>

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## **1. Recommendations**

- 1.1. That the Committee approves the proposed changes to the local use of prescribed types of Fixed Penalty Notices, where appropriate, to take enforcement action in relation to environmental offences.
- 1.2. That the Committee confirms authorised officers with delegated authority to issue fixed penalties in accordance with an approved variable scale.

## **2. Purpose of the Report**

- 2.1. To seek approval for the use and level of penalties to be imposed in the event of the issue of Fixed Penalty Notices for environmental offences following recent changes in law.

## **3. Detail**

### **Background**

- 3.1. Councils have been given progressively increasing ability to deal with offences for relatively low levels of environmental crime (often described as 'enviro-crime') through the use of Fixed Penalty Notices (FPNs). The use of FPNs for low level criminal offences enables cases to be dealt with proportionately, quickly and consistently without the need to take cases to court.
- 3.2. The maximum available fixed penalty which can be applied for any given offence is set out in statute.
- 3.3. It is for local authorities to approve and adopt at a local level the fixed penalty for each relevant offence which they chose to apply. The existing fixed penalty sanctions used by officers of South Derbyshire District Council have been approved by various Environment & Development Services Committees since the sanction was first introduced into law in 2008.

- 3.4. The Governments [Antisocial Behaviour Plan 2023](#) contained proposals to “give the police and other agencies the tools they need to discourage blight, including higher on-the-spot fines for anti-social behaviour”.
- 3.5. The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 came into force on 31 July 2023. These Regulations increased the maximum available fixed penalty for five different offences:
- Section 88(6A)(a) Environmental Protection Act 1990. This is the offence of throwing down, dropping or otherwise depositing any litter on any land open to the air which is open to the public without the consent of the owner, occupier or other person having control of the place.
  - Section 43A(1)(a) Antisocial Behaviour Act 2003. This is the offence of unauthorised graffiti and flyposting.
  - Schedule 3A, Paragraph 7(4)(a) Environmental Protection Act 1990. This is the offence of distributing any free printed matter without the consent of a principal litter authority on any land which is designated by the authority under the Schedule to the Act.
  - Section 33ZA(9)(a) Environmental Protection Act 1990. This is the offence of knowingly depositing controlled waste, or knowingly causing or permitting controlled waste to be deposited in or on any land unless an environmental permit authorising the deposit is in force and the deposit is in accordance with the licence. This is commonly referred to as ‘fly tipping’, although the scope of the offence covers other waste disposal activities.
  - Section 34ZA(8) Environmental Protection Act 1990. This is the offence of failure to comply with the ‘duty of care’ relating to the transfer of household waste.

### **Current Maximum Fixed Penalties in South Derbyshire**

- 3.6. Table 1 below summarises the existing fixed penalty fees which have been previously authorised by this Committee. It also summarises the previous statutory maximum penalty.
- 3.7. The reduction for early payment applies where payment is received within 14 days of the receipt of the Fixed Penalty Notice.

**Table 1 – Existing Fixed Penalty Notice Charges in South Derbyshire**

<b>Nature of Offence</b>	<b>Statute</b>	<b>Current SDDC Charge</b>	<b>Current Charge for early payment</b>	<b>Former Maximum Permitted Charge</b>
Depositing Waste	Environmental Protection Act 1990, s.33ZA	£400	£280	£400
Failure by waste carriers to produce a waste transfer note	Control of Pollution (Amendment) Act 1989, s.5B(2)	£300	£210	£300
Failure by a waste carrier to provide a waste carriers license	Environmental Protection Act 1990, s.34A(2)	£300	£210	£300
Household duty	Environmental Protection Act s.34	£400	£280	£400

of care	(2A)			
Littering	Environmental Protection Act 1990, s.88(1)	£75	£50	£80
Failing to comply with a Community Protection Notice	Anti-Social Behaviour Crime and Policing Act 2014 s.52(1)	£100	£70	£100
Failure to comply with a Public Spaces Protection Order	Anti-Social Behaviour Crime and Policing Act 2014 s.68(1)	£100	£70	£100
Unauthorised graffiti or flyposting	Section 43A(1)(a) Antisocial Behaviour Act 2003	£75	£50	£75
Unauthorised distribution of printed matter	Schedule 3A, Paragraph 7(4)(a) Environmental Protection Act 1990	£75	£50	£75
Nuisance parking	s.6(1) Clean Neighbourhoods & Environment Act 2005	£100	£70	£100
Abandoning a vehicle	s.2A(1) Refuse Disposal (Amenity) Act 1978	£200	£140	£200

3.8. Table 2 below summarises the national changes to the maximum fixed penalty fees as a result of the changes introduced the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023.

**Table 2 – Proposed Fixed Penalty Notice Charges in South Derbyshire**

Nature of Offence	Statute	Former Maximum Permitted Charge	New Maximum Permitted Charge
Depositing Waste	Environmental Protection Act 1990, s.33ZA	£400	£1,000
Breach of the householder duty of care	Section 34 ZA(8) Environmental Protection Act 1990	£400	£600
Littering	Environmental Protection Act 1990, s.88(1)	£75	£500
Unauthorised graffiti or flyposting	Section 43A(1)(a) Antisocial Behaviour Act 2003	£75	£500
Unauthorised distribution of printed matter	Schedule 3A, Paragraph 7(4)(a) Environmental Protection Act 1990	£75	£150

## **Factors Considered In Setting Proposed Local Fixed Penalty Sanctions**

- 3.9. In setting an appropriate level of fixed penalty, due regard needs to be paid to the purpose of dealing with offences by fixed penalty rather than by any other sanction such as prosecution, caution or warning.
- 3.10. Advice to local authorities on regulatory use of fixed penalty notices is set out in the Code of Practice on Litter and Refuse, DEFRA, 2022, Part 1A - Effective enforcement Code of practice for litter and refuse.
- 3.11. The Code of Practice describes how the use of fixed penalty notices can;
- Provide enforcing authorities with an effective and visible way of responding to environmental crimes.
  - Provide a lower-cost alternative to prosecution in the magistrates' courts.
  - That the overriding objective of enforcement action against environmental offences is to educate the offender and change their behaviour, and to deter others from committing the same offence.
  - In no circumstances should enforcement be considered a means to raise revenue.
  - Enforcing authorities should select an appropriate level to reflect local circumstances, including local ability to pay.
  - The use of fixed penalty notices should be aligned to the regulatory objectives contained in the Councils Corporate Enforcement Policy.
- 3.12. In developing the proposals in this report, a workshop was held with all of the Council officers who issue fixed penalty notices in order to obtain officer feedback about how to set fixed penalty sanctions which best meet these objectives.

### **Existing Use of Fixed Penalties in South Derbyshire**

- 3.13. Based on data published by DEFRA, South Derbyshire District Council currently appears to be making slightly higher than average use of fixed penalties to deal with environmental offences.
- 3.14. The data taken from national statistics for 2021/22 showed that there were 1,091,019 fly tipping incidents across England. Councils issued a total of 13,210 fixed penalties for waste related offences. The data therefore suggests that the national issue rate of fixed penalties for waste offences in relation to reported fly tipping incidents is 8%.
- 3.15. In South Derbyshire in 2021/22, there were 722 reported incidents of fly tipping and 69 fixed penalty notices were issued – equating to an issue rate of 9.6%.

### **Use of Fixed Penalties for Changing Behaviour and Deterring Others**

- 3.16. Based on the same 2021/22 dataset, 14.3% of the fixed penalties issued for waste offences across England were confirmed as having been paid. In South Derbyshire this number was 97%.
- 3.17. This data suggests that South Derbyshire achieves significantly higher than average collection rates for fixed penalties.
- 3.18. In relation to the collection of fixed penalty notice fines the Code of Practice states that "*Failure to pursue unpaid penalties will undermine the threat of enforcement, and their effectiveness as a deterrent*".
- 3.19. Given these comparative statistics, officers were very keen to ensure that any changes to the existing fixed penalty regime ensures that when a fixed penalty is

issued, the overwhelming majority are paid. Changes which do not meet this goal could ultimately undermine the deterrent effect of the use of a fixed penalty.

3.20. It is current practice that officers only issue Fixed Penalty Notices where the suspected offender has;

- admitted to the offence under caution following an investigation,
- verbally accepted to pay a fixed penalty to discharge the offence and
- where the investigating officer is satisfied that the magnitude of the offence and the public interest test are such that a fixed penalty is a proportionate sanction for the offence.

3.21. This process ensures that offenders are fully aware of the weight of evidence against them before they are offered the option to settle the offence through a Fixed Penalty Notice.

3.22. The high collection rate of fixed penalties in South Derbyshire compared to the rest of England is considered to be a direct result of this approach.

3.23. Officers believe that a balance needs to be struck between the Council signalling its intention to have minimal tolerance for environmental crime offences by utilising the maximum available fines, whilst at the same time recognising the guidance in the Code of Practice to prove a “lower cost alternative to prosecution” and to “acknowledge local ability to pay”.

3.24. In developing the proposals for this report, officers have included the following considerations:

- If the maximum level of fines is adopted, then it is anticipated that offenders will choose instead to take their chances in court. This will be in direct conflict with some of the key purposes of the Fixed Penalty Notice regime namely, to speed up processing offences and to reduce the burden on the courts.
- If the maximum level of fines is adopted, then it is anticipated that there will be a significant increase in offenders defaulting on payment of fixed penalties. If an offender defaults on payment, then the offence has not been discharged and the case needs to be dealt with as a prosecution.
- This creates challenges, particularly in relation to offences such as littering which must be referred to court within 6 months of the date of the offence.
- Based on extensive experience of dealing with enviro-crime offences, officers characterise waste disposal offenders as falling into two distinct groups.
- The first group are offenders who knowingly illegally dispose of waste with the explicit motive of making or saving money.
- The second group are those who do not have an explicit financial motivation for committing the offence, but who have committed the offence due to a less avaricious motive such as ignorance or apathy.
- The first group typically involve individuals or small businesses who illegally dispose of waste rather than pay for its legal disposal, or those who take payment from others for disposal of waste and then dispose of it illegally. The adverse environmental impact and societal impact of the first group in officers experience is much greater than the second group.

3.25. Officers also made the observation that the existing discount for early payment offered offenders disproportionate leniency and that this option should be discarded.

3.26. With these observations in mind, Table 3 contains proposed revisions to the fixed penalty charges for South Derbyshire.

**Table 3 – Proposed Fixed Penalty Notice Charges in South Derbyshire**

<b>Nature of Offence</b>	<b>Statute</b>	<b>Proposed Charge</b>
Depositing Waste	Environmental Protection Act 1990, s.33ZA	£1,000 where there is clear evidence of a motive of financial gain
		£500 where there is no clear evidence of motivation of financial gain
Breach of the householder duty of care	Section 34 ZA(8) Environmental Protection Act 1990	£500
Littering	Environmental Protection Act 1990, s.88(1)	£150
Unauthorised graffiti or flyposting	Section 43A(1)(a) Antisocial Behaviour Act 2003	£150
Unauthorised distribution of printed matter	Schedule 3A, Paragraph 7(4)(a) Environmental Protection Act 1990	£150

- 3.27. It is proposed to remove the early payment option for all of the remaining fixed penalty notices described in Table 1.
- 3.28. In order to support the aims stated in the Code of Practice on Litter, the Council will continue to offer phased payment plans for offenders who are unable to pay the fine in a single payment. Payment plans will be agreed between the offender and the officer who issues the Fixed Penalty Notice.
- 3.29. Failure to complete the payments in a payment plan will be treated as a failure to pay the fixed penalty and the case will be handled accordingly.
- 3.30. It should be noted that not all offences in relation to the law stated in Tables 1, 2 and 3 are dealt with by way of a Fixed Penalty Notice. Other sanctions ranging from verbal warnings through to prosecution must be considered by enforcement officers based on the content of the Councils Corporate Enforcement Policy which is published online at [Business compliance and regulation | South Derbyshire District Council](#)
- 3.31. The process by which FPNs are issued and can be challenged are summarised on our website - [Fixed Penalty Notices | South Derbyshire District Council](#)
- 3.32. Officers are not aware that this approach to variable fixed penalties for enviro-crime has been adopted in any other Councils. Therefore, if this Committee approves these proposals, then it will be kept under review and proposed changes will be brought back to this Committee based on learned experience.

#### **4. Financial Implications**

- 4.1. Minor beneficial. The proposed change in maximum for a Fixed Penalty Notice is estimated to generate small additional income of approximately £1,000 per year.

#### **5. Corporate Implications**

##### **Employment Implications**

- 5.1. None. The duty to issue the fixed penalties will be given to the existing Community Safety Enforcement team, who already issues the fixed penalties described in Table 1.

### **Legal Implications**

- 5.2. Moderate. The Council already successfully utilises fixed penalty powers for low-level offences.
- 5.3. The proposals may require a review and modification of related policies such the RIPA Policy, Data Protection Policy and Surveillance Policy.

### **Corporate Plan Implications**

- 5.4. The proposals align with the 'Our Environment' Corporate Plan theme and in particular the aim to "*Reduce fly tipping and litter through education, engagement and zero tolerance enforcement action where appropriate*" as well as the 'Our People' theme to "*Help tackle anti-social behaviour & crime through strong and proportionate action*".

### **Risk Impact**

- 5.5. The proposals will have a beneficial mitigating action against the corporate risk of "Managing the environmental impact of incidents across the District".

## **6. Community Impact**

### **Consultation**

- 6.1. None.

### **Equality and Diversity Impact**

- 6.2. None. Equality and diversity issue are given due consideration during the investigation process and are factors which are considered in the public interest test when deciding on the most appropriate regulatory sanction. This is therefore already embedded in the existing process.

### **Social Value Impact**

- 6.3. Minor beneficial.

### **Environmental Sustainability**

- 6.4. Moderate beneficial.

## **7. Conclusions**

- 7.1. The adoption of revised maximum penalties for Fixed Penalty Notices will enable Community Safety Enforcement Officers to potentially have more impact in tackling enviro-crime.
- 7.2. The governance of the use of fixed penalties is already controlled by clear processes and procedures. An internal audit in February 2019 determined that the Council's processes provide 'comprehensive' assurances that robust procedures are in place, that they meet legal requirements and that they are being followed.

7.3. The proposed scale of penalties represents a proportionate sanction when considered against the statutory guidance in the Code of Practice on Litter and Refuse, DEFRA, 2022, Part 1A - Effective enforcement Code of practice for litter and refuse.

**8. Background Papers**

None