
Meeting of Executive Member for Neighbourhood Services and Advisory Panel

18th October 2006

Report of the Director of Neighbourhood Services

Clean Neighbourhoods and Environment Act 2005 – Fixed Penalty Notices

Summary

1. The Clean Neighbourhoods and Environment Act 2005 (CN&EA) extended the use of fixed penalty notices (FPN's) for specific environmental offences with effect from 6th April 2006. The Act also permits for some offences for the fixed penalty amount to be set (within prescribed limits) at a local level including the offering of discounts for early payment.
2. The purpose of this report is to ask Members whether they wish to implement the standard default level for the FPN's; whether to implement the standard default level and offer a reduction for early payment (within 10 days), (in line with local authorities in the North Yorkshire region); or to specify the amount of the FPN's from within the ranges set out in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (regulation 2). These ranges are from £50 to £80 for those offences with a default amount of £75 and from £75 to £110 for offences with a default amount of £100. Members are also asked to approve a proposed communication and awareness strategy, and the commencement date of the 20th November 2006 for implementation of FPN enforcement.

Background

3. Members will be aware of the Government's report Living Places – Cleaner, Safer, Greener. The review of provisions and powers in this area concluded that the powers, duties and guidance for dealing with problems associated with local environmental quality were not working as effectively as they should be. Therefore new powers were introduced in the form of the CN&EA 2005 for providing and maintaining a clean and safe environment, including the ability to issue FPN's, to set at a local level the amount of the fine (within prescribed limits) and the potential to also offer discounts for early payment.
4. FPN's are seen by DEFRA (The Department for Environment Food and Rural Affairs) to be an effective and visible way of responding to low-level environmental crimes provided that they are issued sensibly, enforced even-handedly as a response to genuine problems and included as part of a wider

enforcement strategy. There is, of course, a balance to be struck between resources devoted to fixed penalties and those spent on prosecutions.

5. Annex A, of this report, lists the offences for which fixed penalties apply. This includes details of who can issue the FPN's and the amount (or where appropriate, the default amount) of each fixed penalty. It also details the amount below which discounted penalties should not fall for early payment of fines. From this it can be seen that FPN's can be set locally for litter, street litter control notices and litter clearing notices, the unauthorised distribution of literature on designated land, graffiti, fly-posting and offences concerning waste receptacles, (in effect presenting refuse incorrectly either early or not in correct place). However, if the amount is not set locally the default amounts must be charged.
6. The CN&EA also introduced some relevant technical amendments to statute. The FPN's for littering now applies to all places that are open to the air, private as well as public, rather than being restricted to relevant land and highways. The CN&EA also makes it clear that litter can include smoking related litter such as cigarette ends and cigars and discarded chewing gum or bubble gum.
7. Detailed guidance has been issued by DEFRA about the enforcement of the provisions of the CN&EA 2005 including the use of FPN's and the issuing of fixed penalty notices to juveniles. Although a FPN can be issued to anyone over the age of 10, local authorities are being strongly advised to adopt special procedures for issuing notices to young offenders to ensure compliance with the duties of the Children Act 2004.
8. Street Environment Officers already issue FPN's for litter. Notices are issued at £50, a rate set prior to the introduction of the CN&EA 2005. At present no discount is given for prompt payment, prior to the 14 days allowed for payment.

Consultation

9. On 28th April 2006 a meeting was held involving North Yorkshire District and Borough Councils and City of York to discuss conformity in enforcement of the CN&EA 2005 across the region. The representatives discussed the level of fixed penalties to establish a consistent approach to enforcement. It was agreed that the outcome of the meeting would be relayed to Members and Chief Officers of each Authority for consideration in setting the fines at a local level. It was recommended that the default level of fixed penalty should be applied and that authorities should look to implement reduction if payment was received within 10 days of issue. The recommended reduction is detailed in the table below.

Table One – Fixed penalty notice levels recommended by North Yorkshire Chief Officers Group

Description of Offence	Amount if paid within 10 days (£)	Default Amount (£)
Depositing Litter	50	75
Failure to comply with a street litter control notice	60	100
Failure to comply with a litter clearing notice	60	100
Failure to produce waste documents	180	300
Failure to produce authority to transport waste	180	300
Unauthorised distribution of free printed material	50	75
Failure to comply with a waste receptacles notice	60	100
Graffiti and fly-posting	50	75

Options

10. The options for Members to consider are:
 - a) To set the level for FPN's at the standard default level, in line with surrounding authorities in the North Yorkshire area, including the application of a discount for prompt payment at the minimum level below which the discounted penalties cannot fall, within 10 days of the offence, as detailed in Table One above and Annex A.
 - b) To set the level for the FPN's at the standard default level detailed in Annex A and not to offer a discount for prompt payment.
 - c) To specify the amount of the FPN's from within the ranges set out in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (regulation 2). These ranges are from £50 to £80 for those offences with a default amount of £75 and from £75 to £110 for offences with a default amount of £100. Annex A provides the details of these ranges for each listed offence. Associated with this is that the amount of the discount should also be specified, should Members so wish.
11. In deciding on the level for a fixed penalty, account needs to be taken of the deterrent effect of the different levels and also peoples' readiness to pay.

Analysis

12. The advantage of using FPN's as envisaged by the CN&EA 2005 is that Street Environment Officers (or other delegated officers), will be able to deal with a variety of environmental crime issues more swiftly, with immediate results, whilst allowing them to allocate time and resources to more serious matters such as fly-tipping, or dealing with persistent offenders by prosecution.

13. The use of fixed penalties is not appropriate for persistent offending or for second time offences where prosecution would be more appropriate. The FPN's should only be issued therefore where there is sufficient evidence to support prosecution if the notice is not paid. The Government wishes to encourage their use by local authorities and other agencies and will be monitoring how local authorities utilise these new powers.
14. The government believe that the public as a whole welcomes the use of such penalties. However, it is recommended by DEFRA that local authorities should have a well-publicised lead-in period raising awareness of this enforcement action, as specified within the DEFRA statutory guidance. Additional training of staff will be necessary especially in relation to the issuing of FPN's to juveniles. The current enforcement policy for issuing FPN's will need to be amended to take account of the DEFRA statutory guidance issued, including the use of FPN's with juveniles. A report containing a Street Environment Enforcement policy and procedures of enforcement for areas such as littering, fly-tipping, graffiti, waste presentation, fly-posting etc will be presented to the December 2006 EMAP for approval.
15. Setting the fixed penalties at the default amounts will have the advantage of conformity of enforcement with other authorities in the region. DEFRA's guidance encourages consultation with others when considering the level of fixed penalties. The default levels are recognised as being appropriate in most instances. Uniform levels negate arguments from the public that they are being dealt with unfairly by different authorities.
16. The advantage of the introduction of a discount for early payment, within 10 days of the notice, is that it allows the fixed penalty limits to be set at the uniform default rate whilst in effect allowing the lowest rate to be paid. This takes into account factors such as ability/willingness to pay. In addition such discounts may assist in the general acceptance by the public of the use of these penalties to combat environmental crime.

Communication and Awareness Campaign

17. To satisfy DEFRA statutory guidance a well publicised lead in period is required to raise awareness of the changes to the enforcement action. The following steps will be taken to achieve this.
 - i) Enforcement information will be available on the CYC web
 - ii) Press releases – The first of which was issued with this report. From this it is hoped that the Press and other media such as local radio stations will feature information on enforcement action within the street environment.
 - iii) Information will be placed in council produced external and internal publications, such as YourWard (subject to Ward member approval), and YourCity, at the next possible opportunity.

- iv) Posters will be produced and displayed at sites such as libraries, bus stops and council receptions.
 - v) For offences in relation to waste receptacles and the presentation of waste, leaflets detailing the new enforcement powers will be sent to all addresses on streets where previous enforcement action has been necessary, to ensure that occupiers are aware that FPN's will be issued where sufficient evidence is gained of an offence.
18. FPN's will then be issued, when there is evidence of an offence from the 20th November 2006, after this 4 week awareness and communications campaign.

Corporate Priorities

19. The additional enforcement powers provided by the CN&EA, including the use of FPN's support the Council's corporate objectives of creating a safer city and improving quality and sustainability. The aim of the CN&EA 2005 is at one with the corporate priorities; - to improve the actual and perceived condition and appearance of the city's streets, housing estates and publicly accessible spaces, and reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.
20. The implication of the Fixed Penalty Notices with effect from 20th November will support the Neighbourhood Pride initiatives, and also tie in with the outcomes of the Street Scene Review.

Implications

- 21.
- **Financial** – To be met from existing budgets as there are no significant implications associated with this report.
 - **Human Resources (HR)** - There are no human resources implications
 - **Equalities** -There are no equalities implications other than those around the issuing of FPN's to juveniles. Clarification on the application of this will be taken from the DEFRA statutory guidance and included within the Street Environment Enforcement Policy.
 - **Legal** - There are no legal implications
 - **Crime and Disorder** – No additional implications
 - **Information Technology (IT)** – None
 - **Property** - None
 - **Other** - None

Risk Management

22. There are no known risks.

Recommendations

23. It is recommended that Members approve option (a), outlined in paragraph 10 setting the FPN's at the default amounts as provided by the CN&EA 2005 and a discount applied for prompt payment payment.

Reason: This will enable uniformity of enforcement in the region whilst allowing in effect the lower rate to be paid.

24. It is also recommended that members approve the communication and awareness strategy, as detailed above in paragraphs 17 and 18, along with the commencement date of issuing FPN's of 20th November 2006.

Reason: In order to progress work in this area.

Contact Details

Author:

Author's name : Liz Levett

Title: Acting Street Environment Manager

Dept Name: Neighbourhood Pride Unit

Tel No: 1825

Chief Officer Responsible for the report:

Chief Officer's name: Andy Hudson

Title: Assistant Director (Neighbourhoods)

Report Approved

Yes

Date

19th
2006

September

Co-Author's Name; Zoe Burns

Title: Head of Neighbourhood Pride

Dept Name: Neighbourhood Pride Unit

Tel No: 1817

Wards Affected:

All

All

For further information please contact the author of the report

Specialist Implications Officers - None

Background Papers:

Meeting of the Executive Member for Environment and Sustainability and Advisory Panel 14th December - " Clean Neighbourhoods and Environment Act 2005 Consultation"

Annexes

Annex A – Offences for which fixed Penalties exist