

Rother District Council

Report to:	Cabinet
Date:	28 February 2022
Title:	Environmental Offences - Fixed and Civil Penalty Notices
Report of:	Head of Service - Environmental Services, Licensing and Community Safety
Cabinet Member:	Councillor Field
Ward(s):	All
Purpose of Report:	To approve the levels of fixed penalty notices and civil penalties associated with environmental offences.
Decision Type:	Key
Officer Recommendation(s):	It be RESOLVED : That the fixed penalty notices and civil penalties be increased to the maximum level with a discount being given for payment within the stated period.
Reasons for Recommendations:	To protect the environment by deterring offences from occurring.

Introduction

1. The Council can set fixed penalty notices and civil penalties for some environmental offences.
2. If a fixed penalty notice (FPN) or civil penalty is served and paid within a specified time, then the Council cannot prosecute. If a FPN is not paid, the Council is obliged to prosecute. The standard of proof required to issue a FPN is therefore the same as that required to issue legal proceedings-beyond reasonable doubt. If a civil penalty is not paid then the offender can be pursued through the Courts as a debt.
3. Appendix A sets out the current FPN amount and the recommended increase to the maximum amount, with a discount being given for early payment. Appendix B lists relevant civil penalties.
4. Persons who dispute the issuing of a FPN or civil penalty can ask for the penalty to be cancelled by writing to the Deputy Chief Executive or Head of Service.

Conclusion

5. To protect the environment by deterring offences occurring the amount of fixed penalty notices and civil penalties should be increased.

Crime and Disorder

6. Effective enforcement of environmental offences supports controlling crime and disorder in the district.

Environmental

7. Effective enforcement of environmental offences should improve the energy efficiency of rented properties and the local environment and reduce the negative impact of unauthorised waste disposal (fly-tipping) on land and water.

Financial

8. Contained within existing estimates. Income received from FPNs must be used to fund Council costs associated with that FPN e.g. income received from littering offences must be used for enforcement of this offence or street cleaning.

Human Rights

9. Article 2: Right to life - not applicable
Article 3: Freedom from torture etc - not applicable
Article 4: Freedom from slavery and forced labour - not applicable
Article 5: Right to liberty and security - not applicable
Article 6: Right to a fair trial - complies
Article 7: No punishment without law - complies
Article 8: Respect for private and family life - not affected
Article 9: Freedom of thought, belief and religion - not affected
Article 10: Freedom of expression - not affected
Article 11: Freedom of assembly and association - not affected
Article 12: Right to marry - not affected
Article 14: Right to be free from discrimination - not affected

Protection of property: not applicable

Right to education: not applicable

Other Implications	Applies?	Other Implications	Applies?
Human Rights	Yes	Equalities and Diversity	No
Crime and Disorder	Yes	External Consultation	No
Environmental	Yes	Access to Information	No
Risk Management	No	Exempt from publication	No
Chief Executive	Malcolm Johnston		
Report Contact Officer:	Richard Parker-Harding		
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e-mail address:	Richard.parker-harding@rother.gov.uk		
Appendices:	A-Fixed Penalty Notices B- Civil Penalties		
Background Papers:	None		
Reference Documents:	Code of practice for litter and refuse: Part 1A - effective enforcement (publishing.service.gov.uk) https://www.legislation.gov.uk/ukdsi/2015/9780111132432/contents		

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

Offence	Act	Existing FPN	Maximum FPN	Discounted FPN for payment within 10 days
Depositing Litter	EPA S88	£100	£150	£100
Distribution of printed material	EPA Sch 3A	£100	£150	£135
Graffiti & Flyposting	ASB 2003 S43	£100	£150	£135
Commercial waste receptacles	EPA S47	£100	£110	£100
Noise	Noise Act 1996	£100	£110	£100
Transporting waste	CoP S5	£120	£300	£270
Duty of care	EPA S34	£200	£400	£360
Deposit of waste	EPA S33	£200	£400	£360
Nuisance Parking	CNEA S6	£100	£100	£90
Non-compliance with CPN	ASB 2014 S48	£100	£100	£90
PSPO non-compliance	ASB 2014 S68	£100	£100	£90

Key

EPA- Environmental Protection Act 1990

ASB 2003-Anti-social Behaviour Act 2003

CoP-Control of Pollution (Amendment) Act 1989

CNEA- Clean Neighbourhoods and Environment Act 2005

ASB 2014- Anti-social Behaviour Crime and Policing Act 2014

CPN- Community Protection Notice

PSPO- Public Spaces Protection Order

Civil Penalties

Domestic waste receptacle offence

Civil Penalty: £80

Discount for payment within 14 days: £70

If a householder is given an instruction how to present their waste and recycles for collection (time, place etc) and does not comply then a civil penalty can be imposed.

Energy Efficiency (Private Rented Property) Regulations 2015

Infringement	Penalty (if under 3 months in breach)	Penalty
Renting out non-compliant property	£2,000	£4,000
Providing false or misleading information on the PRS Exemptions Register	£1,000	£1,000
Failure to comply with a compliance notice	£2,000	£2,000

The regulations prohibited the granting of new tenancies from the 1 April 2018 for properties of an Energy Performance Certificate (EPC) rating below E. This was extended to cover all existing tenancies for properties within the scope of the regulations from the 1 April 2020.

A financial penalty notice can be served 18 months after a breach has occurred. The penalties can be applied for each breach and for each property where the breach has occurred. The maximum penalty the landlord can be fined per property is £5,000. However, should the landlord re let property on a new tenancy further financial penalties of up to £5,000 can be imposed.

A landlord may request the local authority to review the penalty notice and if the penalty is upheld on review the landlord may then appeal the penalty notice at the Property First-tier Tribunal.

A publication penalty means Council will publish the details on the public accessible part of the Property Redress Scheme (PRS) exemptions register. The publication penalty for any breach of regulations is set at 12 months.