



HEALTH SOCIAL CARE AND WELLBEING SCRUTINY COMMITTEE - 24TH MARCH 2015

SUBJECT: PROPOSAL TO INCREASE FIXED PENALTY NOTICE FINES FOR LITTER AND DOG CONTROL ORDER OFFENCES AND TO SET FIXED PENALTY NOTICE FINES FOR COMMUNITY PROTECTION NOTICES AND PUBLIC SPACE PROTECTION ORDERS

REPORT BY: CORPORATE DIRECTOR SOCIAL SERVICES

1. PURPOSE OF REPORT

- 1.1 This report seeks approval for a proposed increase to the level of fines attached to Fixed Penalty Notices for litter and Dog Control Order offences and for a proposed fine for Fixed Penalty Notices under the Anti-social Behaviour, Crime and Policing Act 2014. The report is seeking the views of Members prior to its presentation to Cabinet.

2. SUMMARY

- 2.1 Fixed Penalty Notices (FPNs) are issued for offences of littering and in relation to Dog Control Orders. The current fine for both offences is £75 (or £50 if the penalty is paid within 7 days of issue). Fines are currently set at the statutory default level. The maximum level permitted by the legislation is £150. Legislation governing the litter and dog control order offences states that Authorities must formally stipulate and approve their fixed penalty fines levels if these are to differ from the statutory default level of £75. It is proposed that the level of fine for both offences be increased to £100 (or £75 if paid within 7 days of the issue).
- 2.2 The Anti-social Behaviour Crime and Policing Act 2014 sets a statutory maximum fixed penalty fine of £100 for certain offences under a Community Protection Notice or a Public Space Protection Order with local discretion as to the amount to be set. It is proposed that the level of fine be set at £100 (or £75 if paid within 7 days of the issue).

3. LINKS TO STRATEGY

- 3.1 The Public Protection Division consists of a wide range of protective and regulatory functions that seek to protect, promote and improve the health, safety and economic wellbeing of our communities.
- 3.2 Enforcement of littering, antisocial behaviour, and Dog Control Order legislation contributes to the Healthier, Greener, and Safer themes of the Single Plan, *Caerphilly Delivers*, and supports the following Corporate Aspiration:

Our communities must be safe, green and clean places to live to improve resident's quality of life.

3.3 This report supports the following Corporate Priority:

Affordability - To deliver a medium term Financial Plan aimed at ultimately providing a period of stability that helps the authority to have a range of services in the future that are sustainable.

4. THE REPORT

4.1 Under Section 88 of The Environmental Protection Act 1990, the Authority has the power to take enforcement action for littering offences. At present, when enforcement officers witness the offence, they issue a Fixed Penalty Notice (FPN). The current fine is £75 (or £50 if the penalty is paid within 7 days of issue). Fines are currently set at the statutory minimum. Most fines are paid within 7 days, at the rate of £50. If a fine is not paid then in most cases the offenders are prosecuted. The details of FPNs served for litter during 2013-14 are detailed below:

	FPNs served for Litter
No of fixed penalties issued 1.4.13 – 31.3.14	239
No of fixed penalties paid	218
No of cases of non-payment taken to court	3
No of cases of non-payment awaiting court action	7
No of cases not paid where no further court action is being taken	11
No of warning letters issued	33
Amount Collected (£)	£11,200

- 4.2 Under the Clean Neighbourhoods and Environment Act 2005 the Authority has the power to take enforcement action for dog control offences for locations where Dog Control Orders have been made. In March 2013 the Authority made Dog Control Orders to exclude dogs and in respect of dog fouling at 97 enclosed children's play areas and 25 Multi Use Games Areas. The current fine is set at the statutory minimum of £75 reduced to £50 if paid within 7 days. No Fixed Penalty Notices have been issued in respect of Dog Control Orders.
- 4.3 Under the Anti-Social Behaviour, Crime and Policing Act 2014 offences are created for breach of a Public Space Protection Order (PSPO), to prevent anti-social behaviour of a persistent or continuing nature from happening in a geographical area, the 'Restricted Area'. Public Space Protection Orders will replace the current Designated Public Place Orders, which restrict drinking: the current Gating Orders which restrict access to residents only and Dog Control Orders. All current Orders can however remain in place and will continue to be valid for three years from 20th October 2014, following which they will be converted and treated as Public Space Protection Orders. Councils are able to review the need for current orders during the three year transitional period.
- 4.4 Public Space Protection Orders may also be brought into being for other anti-social behaviour issues not related to alcohol, dogs or access. The new regime introduces a fixed penalty notice provision that can be used as an alternative to prosecution for breach.
- 4.5 The Anti-Social Behaviour, Crime and Policing Act 2014 also introduces Community Protection Notices (CPNs) that can be issued against individuals, businesses or organisations responsible for anti-social behaviour affecting a community. Breach of a CPN attracts a fixed penalty notice.
- 4.6 The legislative provisions governing the levels at which fines can be set for litter and dog control are as follows:

- Environmental Protection Act 1990 – Section 88(6A) – states that the Authority must specify the amount of fixed penalty fine that is to be paid for litter offences. If no amount is specified, then the default fine level is £75.
- Clean Neighbourhoods & Environment Act 2005 – Section 60(1) also states that the Authority must specify the amount of fixed penalty fine that is to be paid for dog control order offences. If no amount is specified, then the default fine level is £75.
- Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008 – Section 2 states that the prescribed ranges for both the litter and dog control order offences must be between a minimum of £75 and a maximum of £150. These regulations also state that the Authority can accept a lesser amount if the fine is paid within a specified period (e.g. 7 days) and that lesser amount cannot be less than £50.

- 4.7 The legislative provisions governing the levels at which fines can be set for breach of Public Space Protection Orders and Community Protection Notices under the Anti-social Behaviour, Crime and Policing Act 2014 are as follows;
- PSPOs Section 68- The amount specified must not be more than £100 or a reduced amount if paid within a specified period of not more than 14 days.
 - CPNs Section 52- The amount specified must not be more than £100 or a reduced amount if paid within a specified period of not more than 14 days.
- 4.8 The Authority therefore has the discretion to set and/or vary the levels of fines. It is proposed that Fixed Penalty Notices issued under The Environmental Protection Act 1990, The Clean Neighbourhoods & Environment Act 2005 and the Anti-social Behaviour, Crime and Policing Act 2014 have fines set at £100 reduced to £75 if paid within 7 days.
- 4.9 In 2013-14, Public Protection staff issued 239 Fixed Penalty Notices for littering of which 218 were paid resulting in a total of £11,200 paid fines. Most, though not all, fines were paid at the reduced rate of £50. Looking forward to 2015-16, assuming 239 Fixed Penalty Notices were to be served and 218 paid at the proposed reduced rate of £75, income from littering fines would total £16,350.
- 4.10 There is a possibility that by increasing the fines, the risk of adverse publicity will also increase as, other than Blaenau Gwent CBC that have set their fine at £125 and Gwent Police Penalty Notices for Disorder set at £90, fines are likely to be amongst the highest in the UK (the statutory maximum in England is £80). Additionally, a potential increase in the non-payment rate will increase the need for court action and this will have some resource implications for both Public Protection and Legal Services. We apply to the court for recovery of legal costs, but fines recovered through the courts are awarded to the Home Office rather than to the local authority.
- 4.11 In order to meet the requirements of the legislation in paragraph 4.6 above, the Authority must formally specify and approve any variation to the fixed penalty fines for littering and dog control offences.
- 4.12 At present offences of dog fouling committed on land within the county borough which has been designated under the Dogs (Fouling of Land) Act 1996 attract a Fixed Penalty Notice fine of £75, which cannot be altered and as such these will remain at £75 discounted to £50 if paid within 7 days. It is possible to replace all such designations with a Public Space Protection Order (see paragraph 4.3), but it is not proposed to do so at this time. In 2013/14 Public Protection staff issued 47 Fixed Penalty Notices for dog fouling under the Dogs Fouling of Land Act 1996.

5. EQUALITIES IMPLICATIONS

- 5.1 Dog Control Order legislation provides exemptions in particular cases for registered blind people, deaf people and for other members of the public with disabilities who make use of trained assistance dogs.
- 5.2 There is no requirement for an Equalities Impact Assessment Questionnaire to be completed for this report.

6. FINANCIAL IMPLICATIONS

- 6.1 In 2013-14, Public Protection staff issued 239 Fixed Penalty Notices for littering, attracting paid fines of £11,200. Looking forward to 2015-16, assuming 239 Fixed Penalty Notices were to be served and 218 paid at the proposed reduced rate of £75, income from fines would total £16,350. As the Anti-social Behaviour Crime and Policing Act 2014 is a new piece of legislation it is difficult to predict how many Fixed Penalty Notices might be issued, but the number is expected to be relatively low. It is therefore estimated that there will be additional annual income of approximately £5,000 as a result of the proposals contained within this report.

7. PERSONNEL IMPLICATIONS

- 7.1 An increase in the non-payment rate will lead to an increase in the need for court action and this may have resource implications for Legal Services that will need to be monitored.

8. CONSULTATIONS

- 8.1 This report has been sent to the Consultees listed below and all comments received are reflected in this report.

9. RECOMMENDATIONS

- 9.1 Prior to presentation of this Report to Cabinet the Committee are asked for their views on the following recommendations to Cabinet:
- (i) That the level of fine for Fixed Penalty Notices issued in relation to littering offences under the Environmental Protection Act 1990 is increased to £100 (or £75 if paid within 7 days of the issue).
 - (ii) That the level of fine for Fixed Penalty Notices issued for breaches of Dog Control Orders under the Clean Neighbourhoods and Environment Act 2005 is increased to £100 (or £75 if paid within 7 days of the issue).
 - (iii) That the level of fine for Fixed Penalty Notices issued for Community Protection Notices and Public Space Protection Orders offences under the Anti-social Behaviour Crime and Policing Act 2014 is set at £100 (or £75 if paid within 7 days of the issue).

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To act as a deterrent to irresponsible dog owners and to those anti-social persons that drop litter. To prevent anti-social behaviour.

11. STATUTORY POWER

- 11.1 Environmental Protection Act 1990 – Section 88(6A)

Clean Neighbourhoods & Environment Act 2005 – Section 60(1)
Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations
2008 – Section 2
Anti Social Behaviour Crime and Policing Act 2014

Author: Ceri Edwards, Environmental Health Manager
Consultees: Councillor David Poole, Cabinet Member for Community & Leisure Services
Dave Street, Corporate Director, Social Services
Rob Hartshorn, Head of Public Protection
Gail Williams, Interim Head of Legal Services & Monitoring Officer
Lisa Lane, Solicitor
David A. Thomas, Senior Policy Officer (Equalities & Welsh Language)
Mike Eedy, Finance Manager
Sian Phillips, Human Resources Manager

Background Papers: None