



Council Name	<b>COTSWOLD DISTRICT COUNCIL</b>
Name and date of Committee	<b>CABINET 7 DECEMBER 2023</b>
Subject	<b>FIXED PENALTY NOTICE LEVEL INCREASES FOR FLY TIPPING AND WASTE CRIME OFFENCES</b>
Wards affected	All
Accountable member	CLlr Juliet Layton, Cabinet Member for Planning and Regulatory Services Email: <a href="mailto:juliet.layton@cotswold.gov.uk">juliet.layton@cotswold.gov.uk</a>
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Report author	Philip Measures, Service Leader Email: <a href="mailto:philip.measures@cotswold.gov.uk">philip.measures@cotswold.gov.uk</a>
Summary/Purpose	To set out the new maximum level fines proposed by Government to deter and punish the offences of littering, fly-tipping, householder duty of care, flyposting and the distribution of free printed matter. To seek approval to introduce these new fine levels.
Annexes	None
Recommendation(s)	That Cabinet resolves to: <ol style="list-style-type: none"><li>1. Note the report.</li><li>2. Agree to increase the fine levels to the maximum levels permissible as outlined in paragraph 3.4.</li><li>3. Agree an early payment discount as outlined in paragraph 3.4.</li><li>4. Delegate authority to the Chief Executive to increase the fine levels as approved.</li></ol>
Corporate priorities	Deliver the highest standards of service.
Key Decision	NO
Exempt	NO
Consultees/ Consultation	Interim Head of Legal, Monitoring Officer, Chief Executive, Chief Finance Officer, Portfolio Holder, Assistant Director, Director of Finance (Publica)



## **1. EXECUTIVE SUMMARY**

- 1.1** The Government, to tackle fly-tipping and other waste crime, has laid statutory instruments to allow local authorities to increase penalties for offences to act as a greater deterrence. New maximum penalties can be applied to fly-tipping, littering, flyposting and distribution of free matter offences. This report sets out the increases and recommends setting the new maximum penalties with a small reduction to encourage early payment.

## **2. BACKGROUND**

- 2.1** Cotswold District Council, as a rural area suffers from the criminal behaviour of fly-tippers and people who litter or fly-post. To be successful in finding and punishing those responsible we have to investigate to find evidence linking a suspected offender to the waste and we include the help of the public to provide us with further evidence, whether that's witness accounts, CCTV/video footage or pictures. Often those identified from the physical evidence within the fly-tip are not always the actual fly-tippers, but they may still be guilty of a failure of a Duty of Care for having consigned waste to an unlicensed person. We therefore aim to make it wider public knowledge that it is everyone's responsibility to ensure waste is only transferred to licensed handlers and failure to do so is an offence. We are increasing our use of surveillance at identified fly-tip hotspots throughout the district in order to catch those responsible. Many fly-tip offences are dealt with by Fixed Penalty Notice, so the cost of fines is critical in deterring people from committing these offences.
- 2.2** The Government has laid a statutory instrument increasing the upper limits for various fixed penalty notices (FPNs). This means that within Cotswold District, the maximum amount those caught fly-tipping could be fined will increase from £400 to £1,000. The maximum amount those who litter or graffiti could be fined will increase from £150 to £500. The maximum amount those who breach their household waste duty of care could be fined will increase from £400 to £600.

## **3. Legislative amendments**

- 3.1** Under The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023, section 33ZA(9)(a) of the Environmental Protection Act 1990 is amended such that the maximum fine for fly-tipping is increased from £400 to £1000. In section 34ZA(8), the maximum fine for household waste duty of care offences is increased from £400 to £600.
- 3.2** Under The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023, The Environmental Offences (Fixed Penalties) (England) Regulations 2017(1) are amended as follows.
- 3.2.1** For regulation 5 the amount of a fixed penalty capable of being specified by the Council for the offences of littering and graffiti is now increased to not less than £65 and not more than



£500, as the principal litter authority under section 88(6A)(a) of the Environmental Protection Act 1990 and the relevant local authority under section 43A(1)(a) of the Anti-social Behaviour Act 2003.

- 3.2.2** For the distribution of free printed matter on land designated by the Council, the amount of a fixed penalty capable of being specified by a principal litter authority under paragraph 7(4)(a) of Schedule 3A to the Environmental Protection Act 1990 is now not less than £65 and not more than £150. Currently there is no such designation within the district of Cotswold District Council.
- 3.3** The Council has an option of lowering the fine to encourage early payment in each case. 25% discounts are recommended, to strike the balance between deterrence and encouraging early payment.
- 3.4** The proposals for the revised fine levels are set out in the report recommendations and TABLE I below.

<b>Offence</b>	<b>Existing Fine</b>	<b>Fine with Discount for early payment</b>	<b>New fine (Payment within 14 days)</b>	<b>Fine with proposed discount (Payment within 14 days)</b>
Fly-tipping	£400	£200*	£1,000	£750
Duty of Care	£400	£200*	£600	£450
Littering and graffiti	£75	£50 **	£500	£375
Distribution of printed matter	£75	£50**	£150	£112

\*Payment within 10 days

\*\*payment within 14 days

- 3.5** Once Cabinet has approved the decision and following the appropriate call-in period, the new charges can be adopted.

#### **4. ALTERNATIVE OPTIONS**

- 4.1** To remove the early payment discount. This is not recommended in order to encourage and provide an incentive for early payment.



- 4.2** To consider an alternative early payment discount, e.g.;
- 4.2.1** 25% for commercial operators, 50% for non-commercial, on the basis that commercial operators should be more aware of the legislation. However, this is not recommended as different rates will make the issuing of FPNs more complex and ignorance of the law is not an excuse.
- 4.3** To consider different fine levels than those proposed. This is highlighted should Members have different views on the fine levels recommended.

## **5. FINANCIAL IMPLICATIONS**

- 5.1** Increasing the fine levels is intended to discourage potential offenders and support the costs of dealing with illegal waste disposal. With typically 25 FPNS served in a year, the fines received will be between £20,000 and £25,000 depending of course on the type of offence and whether full recovery is achieved.

## **6. LEGAL IMPLICATIONS**

- 6.1** The legislation outlined in Section 2 defines the fine level range that Councils can set. Councils cannot set fine levels outside the ranges specified.

## **7. RISK ASSESSMENT**

- 7.1** The risk in increasing the fine level is that offenders will not be prepared to pay the fine, or they will be unable to afford the fine. This will increase the number of cases being referred to Court for prosecution. This is mitigated by having an early payment discount. It is also hoped that this risk is mitigated by the deterrent effect of promoting higher fines for these fines.

## **8. EQUALITIES IMPACT**

- 8.1** Under equality legislation, the Council has a legal duty to pay 'due regard' to the need to eliminate discrimination and promote equality in relation to:

- Race
- Disability
- Gender, including gender reassignment.
- Age
- Sexual Orientation
- Pregnancy and maternity
- Religion or belief

- 8.2** The recommendations of this report have no particular impact on any of the above groups. It does not introduce a new service or policy requiring an accompanying EIA.



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## **9. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS**

- 9.1** Fly-tipping is an environmental hazard, and material dumped may destroy habitats and be poisonous to humans and wildlife. Discarded food waste encourages the growth of rodent populations which are linked to the spread of disease. Measures to reduce fly-tipping will therefore have a positive ecological impact.

## **10. BACKGROUND PAPERS**

- 10.1** None

(END)