



## **WASTE CRIME FIXED PENALTY NOTICE (FPN) POLICY**

### **1. INTRODUCTION**

- 1.1 The Council enforces against waste crime offences as set out in the Environmental Protection Act 1990. These include:

*Unauthorised depositing of waste – Contrary to Section 33 Environmental Protection Act 1990*

*Duty of Care – contrary to section 34 Environmental Protection Act 1990*

*Offence of leaving litter – contrary to section 87 Environmental Protection Act 1990*

- 1.2 There are a wide range of actions available to the authority to enforce against such offences. These include informal advice and guidance as well as formal warnings, Notices and prosecution.
- 1.3 This document sets out the policy for issuing Fixed Penalty Notices (FPNs) for waste crime offences, the charges and early payment discounts. It also outlines the policy for when prosecution will be pursued rather than issuing an FPN for the offence.

### **2. AIM OF POLICY**

- 2.1 To ensure that enforcement decisions are consistent, transparent and proportionate and that people, businesses, organisations and the community are aware of the basis on which enforcement action is taken.
- 2.2 This policy provides the criteria for issuing each Fixed Penalty Notice which will be applied by Officers when investigating waste crime offences.

### **3. DECISION MAKING**

- 3.1 The decision on whether to issue an FPN, and the level of FPN, will be taken by the Waste Crime Manager, Waste Crime Officer or Public Realm Officer in consultation with this policy, as authorised by the Head of Environment and Public Realm.

#### **3.2 Offence of leaving litter**

- 3.2.1 This is defined within Section 87 of the Environmental Protection Act 1990 as

*(1)A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place to which this section applies and leaves it.*

*(2)This section applies to any place in the area of a principal litter authority which is open to the air, subject to subsection (3) below.*

*(3)This section does not apply to a place which is "open to the air" for the purposes of this Part by virtue of section 86(13) above if the public does not have access to it, with or without payment.*

- 3.2.2 Where an offence of littering has occurred, as witnessed by an Authorised Officer of the Council or where video evidence of the offence is provided to identify the person responsible, a FPN will be considered in the first instance.
- 3.2.3 Two levels of Littering offence are considered by the Council. These are described below:

	<b>Criteria</b>	Charge	Early payment
Level 1	<ul style="list-style-type: none"> <li>- Single item of litter; <b>AND</b></li> <li>- <u>No</u> criteria from Level 2 met</li> </ul>	£250	£200
Level 2	<p><b>This action applies to any <u>one</u> of these:</b></p> <ul style="list-style-type: none"> <li>- Repeated offence</li> <li>- Multiple items</li> <li>- Littering from vehicles</li> <li>- High speed roads (40mph+)</li> <li>- Hazardous waste</li> <li>- Littering in watercourse</li> </ul>	£500	n/a

- 3.2.4 Level 2 Offences are charged at a higher rate due to the cost and resource requirements to carry out cleansing. These will often require traffic management and additional training to carry out the work due to the health and safety risks associated with working on the Highway, around ditches or near water.

### 3.3 Fly tipping

- 3.3.1 This is defined within Section 33 of the Environmental Protection Act 1990

***Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste.***

*a person shall not —*

*(a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste [F2or extractive waste] to be deposited in or on any land unless [F3an environmental permit] authorising the deposit is in force and the deposit is in accordance with the licence;*

- 3.3.2 Evidence from CCTV, witness statements or information within the waste will be used to identify the person responsible for depositing the waste illegally. Where there is evidence found in the waste, this will be used to identify the owner of the waste and they may be served a Section 108 notice from the Environmental Protection Act requiring them to provide details of the person who deposited their waste.
- 3.3.3 Where there is sufficient evidence to identify the person responsible, the Authorised Officer will determine, in consultation with this policy what form of enforcement action will be taken.

	<b>Criteria</b>	Charge	Early Payment
Level 1 FPN	<ul style="list-style-type: none"> <li>- Single item or black bag</li> <li>- <u>No</u> criteria from Level 2 or Prosecution</li> </ul>	£600	£520
Level 2 FPN	<ul style="list-style-type: none"> <li>- Multiple items</li> </ul>	£1000	n/a

	<ul style="list-style-type: none"> <li>- Multiple locations</li> <li>- Specialist equipment required to clear</li> <li>- Hazardous waste</li> <li>- <u>No</u> criteria from Prosecution</li> </ul>		
Prosecution	<p><b>This action applies to any one of these:</b></p> <ul style="list-style-type: none"> <li>- Large scale fly tipping blocking highway</li> <li>- Mixed hazardous waste including asbestos</li> <li>- Commercial waste carrier operating illegally</li> </ul>	n/a	n/a

### 3.4 Duty of Care (Household)

3.4.1 This is defined in Section 34 of the Environmental Protection Act 1990.

*It shall be the duty of the occupier of any domestic property in England to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes*

3.4.2 Residents are required to check the documentation of any person they contract to dispose of their waste. This includes checking for a waste carrier's licence and requesting a Waste Transfer Note. Where a resident has failed to take these measures and their waste is found disposed of illegally, a Duty of Care FPN will be issued by an Authorised Officer.

3.4.3 Duty of Care (household waste) FPN is set at £500. There is an early payment discount for this, reducing it to £400.

### 3.5 Graffiti

3.5.1 Graffiti is considered to be writing or drawings scribbled, scratched, or sprayed illicitly on a wall or other surface in a public place.

Section 43 of the Antisocial Behaviour Act 2003 states

*Where an authorised officer of a local authority has reason to believe that a person has committed a relevant offence in the area of that authority, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a penalty in accordance with the notice.*

3.5.1 Graffiti FPN is set at £250. There is no early payment discount for this.

### 3.6 Fly posting

3.6.1 Fly-posting is the display of advertising material on buildings and street furniture without consent of the owner.

3.6.2 Fly posting FPN is set at £80. There is no early payment discount for this.

### 3.7 Abandonment of a Vehicle

3.7.1 The Refuse Disposal (Amenity) Act 1978 states

*Where it appears to a local authority that a motor vehicle in their area is abandoned without lawful authority on any land in the open air or on any other land forming part of a highway, it shall be the duty of the authority, subject to the following provisions of this section, to remove the vehicle.*

3.7.2 The Clean Neighbourhoods and Environment Act 2005 enables local authorities to issue FPNs for abandoned vehicles. This is set at £100 with no early payment discount.

3.7.3 The vehicle can be deemed to be abandoned if it meets any one of the following criteria:

- it has no keeper on DVLA's database and is untaxed
- it's stationary for a significant amount of time
- it's significantly damaged, run down or unroadworthy, for example has flat tyres, missing wheels or broken windows
- it's burned out
- a number plate is missing

An Authorised Officer will investigate each report and determine whether it meets the criteria of being abandoned and will issue a 15-day Notice (or Notice of Immediate Removal if dangerous due to its condition)

3.8 **Duty of Care (Commercial)**

3.8.1 This is defined in Section 34 of the Environmental Protection Act 1990.

*it shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, [as a dealer or broker], has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances—*

*(a) to prevent any contravention by any other person of section 33 above;*

*[to prevent any contravention by any other person of regulation 12 of [the Environmental Permitting Regulations] or of a condition of an environmental permit;]]*

*(b) to prevent the escape of the waste from his control or that of any other person; and*

*(c) on the transfer of the waste, to secure—*

*(i) that the transfer is only to an authorised person or to a person for authorised transport purposes; and*

*(ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that section [or regulation 12 of [the Environmental Permitting Regulations], or a contravention of a condition of an environmental permit,] and to comply with the duty under this subsection as respects the escape of waste.*

3.8.2 Businesses are required to ensure that their waste is stored correctly and is only given to an authorised person (a waste disposal company that can legally take it.)

- 3.8.3 Where a business is unable to provide copies of their Waste Transfer Notes and prove that their waste is disposed of responsibly through a permitted disposal site, a Duty of Care (Commercial) FPN will be issued.
- 3.8.4 Duty of Care (household waste) FPN is set at £300, the maximum level permitted. There is no early payment discount for this.

**4. CHARGES**

4.1 The full list of FPN charges is as follows:

	Charge	Early payment
Littering (Level 1)	£250	£200
Littering (Level 2)	£500	n/a
Fly tipping (Level 1)	£600	£520
Fly tipping (Level 2)	£1,000	n/a
Graffiti	£250	n/a
Fly posting	£80	n/a
Duty of Care (household)	£500	£400
Duty of Care (commercial)	£300	n/a
Community Protection Notice	£100	n/a
Abandonment of Vehicle	£100	n/a

**5. EARLY PAYMENT DISCOUNT**

5.1 The Council offers a discounted rate for the early payment of Level 1 Littering and Fly tipping FPNs. Payment must be received within 14 days of the date on the issued FPN for the discount to be applied.

**6. PAYMENT**

6.1 Payment of an FPN must be made in full. The Council cannot accept payment in instalments. If paying the full amount of a FPN is a problem we can offer a 30-day extension of time to pay, from the date of the original offence. If there is a particular case of hardship, the recipient can request a longer extension. This must be made in writing and must be supported by evidence of hardship, such as income details.

6.2 Payment details are provided on the FPN, and more information can be found at [www.maidstone.gov.uk](http://www.maidstone.gov.uk)

**7. APPEAL**

7.1 There are no grounds of appeal against an FPN. However, representations may be made by the person upon whom a FPN is served. This is not an appeal system but an opportunity for information to be presented to the authority for consideration about the FPN. Representations must be made in writing before the payment period expires, information for which will be included on the FPN.