

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL OFFENCES (FIXED PENALTIES) (ENGLAND)
REGULATIONS 2017

2017 No. 1050

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument supplements various Acts of Parliament by (1) prescribing various amounts in connection with fixed penalties which may be imposed instead of criminal prosecution for certain offences (“environmental offences”), (2) remaking provisions for other offences unchanged and (3) revoking provisions in relation to penalties which no longer exist.
- 2.2 This instrument also removes the requirement for the Secretary of State to approve the list of training courses deemed suitable for equipping parish council enforcement officers to issue fixed penalties for these offences.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

This instrument supplements various Acts of Parliament, and also amends the Environmental Protection Act 1990 (the 1990 Act). This instrument sets out the range within which an authority may specify the amount of penalty for leaving litter (from 1st April 2019 £65 to £150) and amends section 97A of the 1990 Act to increase the default amount if an authority has not specified a local amount to £100. It also re-makes existing provision for the amount which may discharge liability to payment of the full amount if paid early (£50). The instrument supplements in a similar way the Acts of Parliament which set out the other environmental offences.

- 4.1 The levels for fixed penalties under section 88 of the Environmental Protection Act 1990 have not changed since 2006 and are now out of line with inflation, and practice in other parts of the UK. For example, in Wales, fixed penalties for environmental offences range from £75-£150 and in Scotland, fixed penalties for littering were increased in 2014 from £50 to £80.

- 4.2 Legislative changes since 2007 mean that the previous fixed penalties were also out-of-step with the level of fixed penalties for similar offences in more recent legislation. For example the maximum possible fixed penalty for a dog fouling offence (breach of a Public Spaces Protection Order under the Anti-social Behaviour, Crime and Policing Act 2014) is now £100.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State for the Environment Thérèse Coffey has made the following statement regarding Human Rights:

“In my view the provisions of the Environmental Offences (Fixed Penalties) (England) Regulations 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 Littering, and associated environmental offences like dog fouling, blight communities and impose avoidable costs on the public purse. On-the-spot fines for littering offences were introduced in 1990 at the flat rate of £10. This level was increased in 1996 to £25, and then in 2003 to £50. In 2005 councils were given discretion to set the level of fixed penalties locally between £50 and £80, with a default of £75. These levels for fixed penalties, under section 88 of the Environmental Protection Act 1990, have not changed since 2006. This instrument increases the minimum, default and maximum fixed penalty to £65, £100 and £150 respectively (the increase in the minimum from £50 to £65 is deferred under April 2019).
- 7.2 Currently parish council enforcement officers are required to attend a training course that has been approved by the Secretary of State. The department's view is that parish councils and the people they wish to authorise for enforcement are better placed to assess the available training options and ensure that each enforcement officer receives appropriate training. Since training providers also compete for this market, the requirement that the Secretary of State approve training courses represents a barrier to entry into the market. This instrument therefore retains the requirement that parish enforcement officers must successfully complete a suitable fixed penalty training course but removes the legal requirement for the Secretary of State issue a list of approved courses.
- 7.3 The department recognises that increasing the level of fixed penalties may create the perception that fixed penalties could be used to generate income for councils. The department's view is clear that fixed penalties should not be used in this way, and has given a public commitment to publish improved guidance on the proportionate use of these enforcement powers.

Consolidation

- 7.4 This instrument consolidates the current secondary legislation dealing with fixed penalties etc for environmental offences by partially revoking the Environmental

Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 and revoking in their entirety the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012.

8. Consultation outcome

- 8.1 The Department issued a consultation document which included a draft instrument on 10 April 2017. This consultation ran for 10 weeks and closed on 18 June.
- 8.2 The consultation document sought the public's views on whether to (1) increase the levels for fixed penalties under section 88 of the Environmental Protection Act 1990 for littering and other environmental offences, (2) change the provision for how councils can use the income from fixed penalties for environmental offences and (3) remove the requirement for the parish council enforcement officers to attend a specified training course. In addition to this the consultation document also sought views on potential amendments to the default penalties for littering and related offences. The consultation document also sought views on other environmental enforcement issues.
- 8.3 The consultation was specifically flagged for the attention of: local authorities in England (particularly district councils and unitary authorities), National Park Authorities, the Broads Authority, English parish or community councils and the Local Government Association. In addition to this responses were welcomed from the Environmental Non-Governmental Organisations and charities, research institutions, groups or individual with a particular interest in tackling environmental anti-social behaviour and the public.
- 8.4 The department received a total of 181 separate responses. Of these 67 were from councils. We also received three responses from waste or resource partnerships, representing the views of a further 16 councils between them. We also received two responses from parish councils.
- 8.5 An overwhelming majority of responses (87%) agreed that the fixed penalties for littering should be increased.

9. Guidance

- 9.1 The Department for Environment, Food and Rural Affairs intends to consult on issuing improved guidance to councils on the use of their enforcement powers.

10. Impact

- 10.1 There is no impact on business or voluntary bodies. There is an impact on the independent charity Keep Britain Tidy as it is currently the sole provider of an approved parish council enforcement training course. However, demand for the dedicated parish council training course has been low in recent years (compared to other enforcement training offered by the organisation), so the impact on Keep Britain Tidy is not expected to be significant.
- 10.2 Councils are able to recover their costs for implementing the changes from the income received from fixed penalty notices.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 Not applicable as this instrument is not regulating businesses.

13. Contact

13.1 Muna Ahmad at the Department for Environment, Food and Rural Affairs email: Muna.Ahmad@defra.gsi.gov.uk can answer any queries regarding the instrument.