

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL OFFENCES (FIXED PENALTIES) (AMENDMENT)
(ENGLAND) REGULATIONS 2023

2023 No. 770

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 His Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the upper fixed penalty limit for the offences of littering, doing graffiti, flyposting, fly-tipping and breaching the household waste duty of care.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

- 5.1 Rebecca Pow MP, Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

“In my view the provisions of the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Leaving litter is an offence under s87 of the Environmental Protection Act 1990; graffiti and fly-posting are offences under s1 of the Criminal Damage Act 1971; the unauthorised deposit of waste (“fly-tipping”) and failure to comply with the household waste duty of care are offences under sections 33 and 34 of the Environmental Protection Act 1990.
- 6.2 Fixed penalties for littering offences were introduced in 1990 at the flat rate of £10. This level was increased in 1996 to £25, and again in 2003 to £50. Fixed penalties for graffiti and fly-posting offences were introduced by the Anti-social Behaviour Act 2003 at a flat rate of £50. In 2005 litter authorities were given discretion to set the level of fixed penalties for both these offences locally between £50 and £80, with a default of £75.

- 6.3 The levels for fixed penalties for litter, graffiti and fly-posting were increased by the Environmental Offences (Fixed Penalties) (England) Regulations 2017 to the current minimum, default and maximum fixed penalty rates of £65, £100 and £150 respectively.
- 6.4 Fixed penalties for fly-tipping offences were introduced by the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016, with fixed penalties for breaching the household waste duty of care introduced by the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018. For both offences the upper limit was set at £400, with a default of £200 and minimum of £150.
- 6.5 This instrument amends the Environmental Offences (Fixed Penalties) (England) Regulations 2017 and the Environmental Protection Act 1990 to increase the upper limit of fixed penalty notices for littering, graffiti and fly-posting offences from £150 to £500; for household waste duty of care offences from £400 to £600; and for fly-tipping offences from £400 to £1,000.
- 6.6 Powers to increase the upper limits for littering offences are found in the Environmental Protection Act 1990, s97A, and for graffiti and fly-posting offences in the Anti-social Behaviour Act 2003, s43A. For fly-tipping and breach of household waste duty of care, these powers were introduced in the Environment Act 2021 by amendments to s33ZA(10A) and 34ZA(9A) of the Environmental Protection Act 1990.

7. Policy background

What is being done and why?

- 7.1 Littering, graffiti, fly-posting and fly-tipping blight communities, impose avoidable costs on the public purse and can harm the environment, with fly-tipping being aggravated by householders giving waste to unauthorised carriers. Fixed penalty notices provide the relevant enforcing authorities with an effective and visible way of responding to these environmental crimes and a lower-cost alternative to prosecution.
- 7.2 Fixed penalty notices can be issued by authorised officers of a litter authority or waste collection authority as described in s88 and s30 of the Environmental Protection Act 1990. This includes county, district, and London borough councils. Fixed penalty notices for breach of the household waste duty of care can also be issued by authorised officers of the Environment Agency. In paying a fixed penalty notice, a person can discharge their criminal liability for the offence.
- 7.3 In the 2023 Anti-social Behaviour Action Plan, the Government explained that it wanted to see councils take a much tougher approach to these forms of anti-social behaviour and set out new upper limits for fixed penalties notices. This instrument increases the upper limit for the fixed penalties that can be issued for these offences.

Explanations

Why is it being changed?

- 7.4 The estimated national cost of fly-tipping to England's economy has risen from £209 million in 2015 to £392 million in 2018/19, and reports of fly-tipping have continued to rise. Street cleansing, including clearing up litter and fly-tipping, cost local authorities in England £743 million in 2021/22.

- 7.5 Litter, graffiti, flyposting and fly-tipping can also have a negative impact on amenity, people's wellbeing and pride in place. As such, these are issues which people deeply care about. The 2018 National rural crime survey found that 57% of respondents had witnessed fly-tipping, and the 2022 National Crime Survey showed that 27% of people say rubbish or litter lying around is a very or fairly big problem in their area. Offensive graffiti and tagging are deemed unacceptable by approximately 90% of the population, according to a 2021 YouGov survey.
- 7.6 These figures show that more action needs to be taken to prevent people from committing these offences. Raising the available FPN upper limits reflects the increased severity with which government views these crimes and allows councils to take tougher action.

What will it now do?

- 7.7 This instrument will allow local authorities greater freedom to set FPN levels in line with their local enforcement strategies and priorities. If an authority does not set an FPN level, then the pre-existing default level will still apply.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 No consolidation of legislation is required.

10. Consultation outcome

- 10.1 No consultation was necessary because these regulations do not compel the relevant authorities to make any changes to their current FPN levels.

11. Guidance

- 11.1 The Government has previously published guidance for local authorities on the use of their enforcement powers for littering and related offences and on the use of fixed penalty notices for household waste duty of care breaches. This guidance is still applicable and can be found at <https://www.gov.uk/government/publications/code-of-practice-on-litter-and-refuse> and <https://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance/guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notices>.

12. Impact

- 12.1 There is no, or no significant, impact on businesses, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because of the low expected impact per business and small number of businesses affected.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No negative impacts on small businesses are expected. The increase to FPN levels may have positive impacts on business and/or profit levels for private enforcement contractors, some of whom may be small businesses. Therefore, no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through the course of usual engagement with local authorities.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Rebecca Pow MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, has made the following statement,

“In my view a review provision is not appropriate given the minimal impact on business.”

15. Contact

15.1 Pippa Harper at the Department for Environment, Food and Rural Affairs Telephone: 0208 7202159 or email: pippa.harper@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Preston, Deputy Director for Resources and Waste at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rebecca Pow MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.