EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL OFFENCES (FIXED PENALTIES) (AMENDMENT) (ENGLAND) REGULATIONS 2026

2026 No. 816

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. Declaration

2.1 Emma Reynolds MP, Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 James Cruddas, Deputy Director for Resources and Waste, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Muna Ahmad at the Department for Environment, Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: flytipping@defra.gov.uk

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument will allow local authorities greater freedom to set fixed penalty levels for certain environmental offences in line with their local enforcement strategies and priorities. If an authority does not a set a fixed penalty notice (FPN) level, then the pre-existing default level will still apply.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

5.1 Dealing with litter and fly-tipping places a substantial financial and operational burden on local authorities, diverting hundreds of millions of pounds each year away from other essential public services. In 2024/25 local authorities in England dealt with 1.26 million incidents of fly-tipping, an increase of 9% from the 1.15 million incidents reported in 2023/24. With 20% of all waste estimated to be illegally

managed,[1] waste crime is costing the economy £1 billion each year.[2] In 2023-24, at least £150 million in revenue was lost due to Landfill Tax evasion.[3]

5.2 FPNs provide the relevant enforcing authorities with an effective and visible way of responding to these waste-related offences and a lower-cost alternative to prosecution. FPNs 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. In paying an FPN, a person can discharge their criminal liability for the offence.

5.3 The Government committed in the Waste Crime Action Plan, which was published on 20 March 2026, to ensure that penalties for waste-related offences match the harm that they cause. The Government therefore resolved to explore what more could be done to further ensure that those who commit waste crime are appropriately punished. This instrument increases the upper limits for the FPNs that can be issued for littering and fly-tipping offences.

What was the previous policy, how is this different?

5.4 The previous upper limits for fixed penalties for littering and fly-tipping offences were £500 and £1000 respectively. The new upper limit for littering offences will be £750 and for fly-tipping offences the new upper limit will be £5000.

5.5 These new upper limits are intended to allow local authorities greater freedom to set fixed penalties locally from a wider range. Increasing the upper limit of these penalties will help to reduce levels of littering and fly-tipping as higher penalties are expected to act as a deterrent. A decrease in littering and fly-tipping offences would also help to bring down the costs to local authorities in connection with clearing up litter and fly-tipping on public land.

6. Legislative and Legal Context

How has the law changed?

6.1 Leaving litter is an offence under section 87 of the Environmental Protection Act 1990 and the unauthorised deposit of waste ("fly-tipping") is an offence under section 33 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. In 2005 litter authorities were given discretion to set the level of fixed penalties for littering offences locally between £50 and £80, with a default of £75. The levels for fixed penalties for litter along with other offences were increased by the Environmental Offences (Fixed Penalties) (England) Regulations 2017 to the minimum, default and maximum fixed penalty rates of £65, £100 and £150 respectively.

6.3 Fixed penalties for fly-tipping offences were introduced by the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016. The upper limit was set at £400, with a default of £200 and minimum of £150.

6.4 The Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 (2023/770) amended the Environmental Offences (Fixed Penalties) (England) Regulations 2017 and the Environmental Protection Act 1990 to increase the upper

[1] https://www.gov.uk/government/publications/national-waste-crime-survey-2025/national-waste-crime-survey-2025-summary
[2] https://archiveesauk.org/application/files/3716/2694/1872/ESA_Cost_of_Waste_Crime.pdf
[3] https://www.gov.uk/government/statistics/measuring-tax-gaps/6-tax-gaps-other-taxes#landfill-tax

limit of fixed penalty notices for littering (along with other offences) 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.

6.5 This instrument amends regulation 5 of the Environmental Offences (Fixed Penalties) (England) Regulations 2017 so the amount of a fixed penalty capable of being specified by a principal litter authority under section 88(6A)(a) of the Environmental Protection Act 1990 is not less than £65 and not more than £750.

6.6 It also amends section 33ZA(9)(a) of the Environmental Protection Act 1990 so that the fixed penalty is an amount not less than £150 and not more than £5000.

6.7 Powers to increase the upper limits for littering offences are found in section 97A of the Environmental Protection Act 1990. For fly-tipping these powers were introduced in the Environment Act 2021 by amendments to section 33ZA(10A) of the Environmental Protection Act 1990.

Why was this approach taken to change the law?

6.8 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

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

8. Applicable Guidance

8.1 The Government has previously published guidance for local authorities on the use of their enforcement powers for littering and related offences.[4] This guidance is still applicable.

8.2 The Government has secured powers in the Crime and Policing Act 2026 to issue statutory fly-tipping enforcement guidance to support councils to consistently, appropriately and effectively exercise their existing enforcement powers on fly-tipping offences. Drafting of this guidance will commerce in due course. The Department is required to carry out a consultation on the draft guidance before laying it in Parliament.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 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.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does impact small or micro businesses.

9.4 No negative impacts on small businesses are expected.

[4] https://www.gov.uk/government/publications/litter-enforcement-powers-when-and-how-to-use-them/litter-enforcement-powers-when-and-how-to-use-them

9.5 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.

9.6 There is no, or no significant, impact on the public sector because these regulations do not compel the relevant authorities to make any changes to their current FPN levels.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring of this legislation is through the course of usual engagement with local authorities to understand the effectiveness this policy is having in reducing the number of instances of fly-tipping.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Emma Reynolds MP, Secretary of State has made the following statement:

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

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Emma Reynolds MP, Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").