

<b>Cabinet Meeting</b>	
<b>Meeting Date</b>	18 March 2020
<b>Report Title</b>	Adoption and Implementation of Anti-Idling legislation
<b>Cabinet Member</b>	Cllr Tim Valentine, Cabinet Member for Environment
<b>SMT Lead</b>	Nick Vickers, Chief Financial Officer
<b>Head of Service</b>	Tracey Beattie, Mid Kent Environmental Health Manager
<b>Lead Officer</b>	Julie Oates, Environment Protection Team Leader
<b>Key Decision</b>	Non-Key
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. To approve the implementation and enforcement of provisions relating to anti idling as laid down by the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002</li> <li>2. To delegate authority to the Chief Financial Officer and Head of Commissioning, Environment &amp; Leisure to authorise relevant officers or persons to stop the commission of stationary idling offences and issue fixed penalty notices (FPNs) in respect of such offences, in accordance with Regulation 6(3) of the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002.</li> </ol>

## **1 Purpose of Report and Executive Summary**

- 1.1 To seek approval for the implementation of anti-idling legislation as laid down by the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002. This would give officers or persons authorised by the Council the power to stop the commission of stationary idling offences and issue a Fixed Penalty Notice (FPN) to drivers allowing their engines to run unnecessarily while the vehicle is stationary, if they fail to comply with a requirement to stop the running of the engine of that vehicle. The FPN in relation to these Regulations is £20, increasing to £40 if not paid within 28 days. There is no discretion to amend this charge.
  
- 1.2 A stationary idling offence under the 2002 Regulations is defined to be a contravention of, or failure to comply with so much of Regulation 98 of the Road Vehicles (Construction and Use) Regulations 1986 (stopping of engine when stationary) as relates to the prevention of exhaust emissions. The Regulation 98 offence, driver failing when the vehicle is stationary to stop the running of the engine of that vehicle, is contrary to Section 42 of the Road Traffic Act 1988 (as substituted by the Road Traffic Act 1991).

- 1.3 It is envisaged that in the main, information relating to the anti-idling legislation will be disseminated by way of awareness campaigns focussed on 'hot spot' locations such as outside schools, railway stations and other areas where vehicles are known to idle for periods of time. The issue of an FPN will generally only be used as a last resort if drivers refuse to co-operate and switch off engines when asked to do so, or regularly flout the Regulations.
- 1.4 The aim of introducing the Regulations into the Swale Borough Council area is to reduce emissions from idling vehicles particularly in locations where pollution levels are high or exceeding the relevant Air Quality Objective (AQO) and where people likely to be exposed to the vehicle emissions. Swale Borough Council has a Strategic Air Quality Action Plan (AQAP) (approved by Defra in September 2019) detailing both strategic and local measures aimed at minimising and reducing pollution levels in the current 5 declared Air Quality Management Areas and also the borough as a whole. In addition, a Climate Change and Ecological Emergency was declared by the Council in June 2019 and an action plan is in the process of being finalised. The introduction of these powers will support both of these strategies and plans.

## **2 Background**

- 2.1 Under the Environment Act 1995 and the Local Air Quality Management framework, Swale Borough Council has a statutory duty to review and assess air quality within its borough and take the necessary actions to improve areas of poor air quality. If Air Quality Objectives (AQO) for key pollutants are exceeded, an Air Quality Management Area (AQMA) must be declared. To date Swale Borough Council has declared five AQMA's for exceedances of the annual average AQO for nitrogen dioxide (NO<sub>2</sub>):

AQMA 1: Newington, (A2/High St)) declared 2009;

AQMA 2: Ospringle Street, Faversham (A2/Ospringle) declared in June 2011 and revised (as AQMA 6) to the Mount in May 2016. AQMA 2 has now been revoked and renamed and consolidated into one as AQMA 6;

AQMA 3: East Street, Sittingbourne (A2/Canterbury Road) declared January 2013;

AQMA 4: St Pauls Street, Milton, Sittingbourne (B2006) declared January 2013;

AQMA 5: Teynham (A2 /London Rd) declared December 2015; and

AQMA 6: See details in AQMA 2 above.

- 2.2 The 2019 Strategic AQAP outlines actions and measures that will be delivered in order to reduce concentrations of air pollution and exposure to air pollution. The implementation of these Regulations is in accordance with the general thrust of the AQAP in reducing air pollution and will directly support the following actions contained within the AQAP including:

- Air Quality & Low Emission Strategy;
- 'Clean Air Corridor' signage and information scheme; and
- Local School & Business Travel Plans

- 2.3 It is widely recognised that emissions from vehicles play a large part in poor air quality which can exacerbate health problems such as heart and lung disease. As well as emitting NO<sub>2</sub> and particulates, vehicle fumes also contain CO<sub>2</sub> which contributes towards climate change. Idling vehicles can emit more pollution than a vehicle moving at 30mph.
- 2.4 We are currently working with schools in the borough via the Clean Air for Schools campaign (CAFS) and vehicles parked outside schools with engines left running is a common problem. The Environmental Protection Team also receives complaints about idling vehicles outside schools and other locations from time to time. The adoption of these Regulations and the ability for FPNs to be served will enable a greater awareness of the issues arising from leaving vehicle engines running, and potentially an improvement in air quality in local areas.
- 2.5 The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 are made under Section 87 of the Environment Act 1995. Under the Regulations powers are given to Local Authorities to issue FPNs to drivers who allow their vehicle engines to run unnecessarily while the vehicle is parked, if they fail to comply with a requirement to stop the running of the engine of that vehicle. The Regulations cover all vehicles including cars, taxis, buses and all commercial vehicles.
- 2.6 Designation from the Secretary of State is not required for the enforcement of stationary idling offences and as such a Local Authority can authorise any officer of its authority, or any other person, to stop the commission of stationary idling offences (in accordance with Regulation 12) and to issue a FPN in respect of such an offence committed in its area.
- 2.7 Guidance issued by the Secretary of State for Transport 2002 – “Guidance on powers to require drivers to switch off engines” advises that FPNs should be used as a deterrent and only issued as a last resort. With this in mind, it is anticipated that FPNs will be issued in limited circumstances where a driver refuses to switch off an engine when asked to do so by an authorised officer/person of the Council. The guidance also recommends that a ‘common sense’ approach is taken by officers when using the powers under the Regulations.
- 2.8 There are exempted circumstances where vehicles are permitted under Regulation 98(2) of the Road Vehicles (Construction and Use) Regulations 1986 and these apply to the 2002 Regulations:
- (a) when the vehicle is stationary owing to the necessities of traffic;
  - (b) so as to prevent the examination or working of the machinery where the examination is necessitated by any failure or derangement of the machinery or where the machinery is required to be worked for a purpose other than driving the vehicle; or

(c) in respect of a vehicle propelled by gas produced in plant carried on the vehicle, to such plant.

- 2.9 The enforcement process under the 2002 Regulations allows for a £20 FPN to be served in relation to stationary idling offences. This increases to £40 if not paid within 28 days. There is no discretion to amend this charge.
- 2.10 Local Authorities can retain the income generated from the FPNs. However, the amount of income is expected to be minimal as FPNs would only be issued as a last resort.
- 2.11 There is no formal appeal route under the Regulations although, it is required the notice contains the person and address to whom any correspondence relating to the FPN may be sent. The guidance recommends that an FPN can be queried through correspondence with the council. The terms of the FPN remain in place even if a query is raised, although it is envisaged that the Council would not expect payment until it had been decided and notified that the representation had been unsuccessful. Alternatively, a person to whom an FPN has been issued may give notice requesting a hearing in respect of the offence to which the FPN relates. A request in writing for a hearing can be made no later than the 28<sup>th</sup> day after the FPN was issued. A hearing is effectively a prosecution in the Magistrates' Court. In this situation, the FPN is suspended once a hearing has been requested.
- 2.12 Where an FPN remains unpaid after the maximum period allowed of 56 days after service, and a request for a Hearing hasn't been made within the specified time the Regulations state that the penalty can be recoverable through the County Court system. As with any contravention of Regulation 98 of the Road Vehicles (Construction and Use) Regulations 1986, a request to use the County Court system as a means of recovering unpaid FPNs would be dealt with electronically by the Traffic Enforcement Centre (Northampton County Court).
- 2.13 If the recommendations are approved by Cabinet, work will need to be undertaken to implement the procedures for the introduction, service and management of the FPNs. In addition, signage wording and locations will need to be agreed with Kent County Council prior to installation. This will mean there will be a necessary delay before the Regulations will be in force in the borough.

### **3 Proposals**

- 3.1 To approve and authorise the implementation and enforcement of provisions relating to anti-idling as laid down by the Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002.
- 3.2 To delegate authority to the Chief Financial Officer and Head of Commissioning, Environment & Leisure to authorise relevant officers of the Council including Environmental Enforcement Officers and Environmental Protection Officers, and other appropriate persons as required to exercise the powers within the Regulations.

## 4 Alternative Options

- 4.1 Not to approve the use of these powers and not to authorise officers or appropriate persons to issue FPNs. In this situation, education on anti-idling would still continue within the Clean Air for Schools project; however this is limited to areas around participating schools only. The implementation of this legislation and authorisation of officers would enable a greater awareness of the issues arising from leaving vehicle engines running to be made and potentially an improvement in air quality in local areas. In addition, implementation of the legislation supports the actions within the strategic AQAP and also the Climate and Ecological Emergency declaration.

## 5 Consultation Undertaken or Proposed

- 5.1 Consultation is not a requirement to implement these powers. The Council's Strategic AQAP was subject to a formal and public consultation for a period of approximately six weeks and these powers are linked to measures in the AQAP.

## 6 Implications

Issue	Implications
Corporate Plan	The proposals support Priority 2: Investing in our environment and responding positively to global challenges in the emerging Corporate Plan 2020-2023 'Working together for a better borough'.
Financial, Resource and Property	Some revenue may be received from payment of FPNs however this is not likely to be significant. Implementation will be met by existing staff resources. There may be some costs associated with setting up the FPNs and associated signage. These will be financed by previously agreed S106 monies from developments in relation to air quality mitigation measures.
Legal, Statutory and Procurement	The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 are made under Section 87 of the Environment Act 1995. The Environment Act 1995 sets out the standards relating to air quality and the objectives for particular pollutants. Part IV of the Act requires local authorities to review and assess air quality within their districts and take the necessary actions to improve areas of poor air quality. Under the 2002 Regulations (Regulation 6(3)), a Local Authority is not required to be designated by the Secretary of State to stop the commission of stationary idling offences and to issue FPNs in respect of such an offence committed in its area. As such, a local authority can authorise any officer of its authority, or any other person, to deal with the offences. This matter has been discussed with and agreed by Legal.

Crime and Disorder	None identified
Environment and Sustainability	Implementation of the Regulations supports measures in the Strategic Air Quality Action Plan and also supports the declaration of the Environmental and Ecological Climate Emergency.
Health and Wellbeing	The AQAP measures and any reductions in vehicle emissions are beneficial to the health of residents.
Risk Management and Health and Safety	None identified.
Equality and Diversity	None identified at this time. Equalities Impact Assessment attached at Appendix I
Privacy and Data Protection	None identified

## 7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Equality Impact Assessment

## 8 Background Papers

The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 - <http://www.legislation.gov.uk/uksi/2002/1808/contents/made>

Swale Borough Council Strategic Air Quality Action Plan - <https://www.swale.gov.uk/assets/Air-Quality/AQAPSwaleBC2018-final.pdf>