

Executive**On 21st February 2006**

Report Title: Association of London Government – Proposed Arrangements for the Setting of Fixed Penalty Notices Levels

Forward Plan reference number (if applicable)

Report of: **Director of Environmental Services**

Wards(s) affected: **All**

Report for: **Key Decision**

1. Purpose

1.1 To seek Member Executive approval for proposed arrangements relating to the setting of fixed penalty notices provided by London Local Authority Acts.

2. Introduction by Executive Member

2.1 I welcome the London Local Authorities Act 2004 and the Transport for London Act 2003, that give further powers to local authorities to issue fixed penalty notices. Issuing FPNs is essential to improve enforcement activity. FPNs are a useful enforcement tool to make our streets cleaner, greener and safer. The offences in the Act refer to key abuses of the highway, skip permission infringements, street trading, fly posting and noise nuisance that have been highly prioritised by our residents as matters of concern. It is important that the level of FPN is harmonised in London. I welcome the leadership of the Association of London Government in setting the level and ensuring that enforcement activity is carried out equitably across all boroughs.

3. Recommendations

3.1 That the Executive approves the proposed variation of agreement with Association of London Government Transport and Environment Committee (ALGTEC) providing authority for it to act on its behalf as a “joint committee” for the purposes of the London Local Authorities and Transport for London Act 2003 (2003 Act) and the London Local Authorities Act 2004(2004 Act).

3.2 That the Executive authorises the Director of Environmental Services or the Head of Legal Services to sign the proposed variation to ALGTEC agreement in accordance

with the Constitution.

Report Authorised by: **Anne Fisher, Director of Environmental Services**

Contact Officer: **Robin Payne, Assistant Director of Enforcement**

4. Executive Summary

4.1 This report outlines proposals for the ALGTEC to be authorised to support coordinated action in relation to offences provided by 2003 and 2004 London Local Authority Act. Specifically it will allow for London Council's to have the same levels set for a range of fixed penalty notices relating to Highways, Street Trading and Environmental Protection issues. The setting of fines will release these powers for authorised officers to use in Haringey.

4. Reasons for any change in policy or for new policy development (if applicable)

4.1 The Association for London Government is a specified authority for "joint functions" prescribed by London Local Authority Acts. It has consulted on arrangements and is now seeking authorisation from London Local Authorities in relation to joint functions including the setting of certain fixed penalty notice levels.

5. Local Government (Access to Information) Act 1985

5.1 ALG Transport and Environment Committee - Consultation on Fixed Penalty Levels under the London Local Authorities (LLA) Act 2004, 9 December 2005

5.2 ALG Transport and Environment Committee - Consultation on Levels of Penalty for Traffic Contraventions, Highway Obstruction Offences and other Additional Parking Charges in London, 27 January 2004.

5.3 The London Local Authorities and Transport for London Act 2003

5.4 The London Local Authorities Act 2004(2004 Act).

6. Background

6.1 The London Local Authorities and Transport for London Act 2003 (2003 Act) and the London Local Authorities Act 2004(2004 Act) provide for local authorities to use fixed penalty notices in relation to the offences listed in Appendix 1. The offences included relate to abuses of the highway, skip permission infringements, street trading, fly posting and noise nuisance.

6.2 Both Acts provide a duty on local authorities to set the level of fixed penalty notices but provide that this shall be exercised by a joint committee established under section 101(5) of the Local Government Act 1972. In 2001 London boroughs established

arrangements that discharged certain functions to a joint committee known as the ALGTEC.

- 6.3 The Association of London Government is proposing that the existing agreement for ALGTEC is varied so that on behalf of participating boroughs it can exercise the joint functions established under both the 2003 and 2004 Acts. Specifically this will include the setting of fixed penalty fine levels for offences listed in Appendix 1 and other functions such as the publishing of relevant codes of practice.
- 6.4 The 2003 and 2004 Acts prescribe arrangements for fines to be limited by the Secretary of State and the matters to be considered in the setting of fines. The ALG has consulted on the levels of fines that may be set under the 2003 and 2004 Acts. In January 2004 it approved in principle consultation findings that established £100 as the appropriate level for fixed penalty notices arising from the 2003 Act. In October 2004 ALG initiated the first of two consultations on the 2004 Act; Haringey was one of only six London Boroughs that responded. The fines proposed are provided in Appendix 2 and were endorsed by the ALGTEC in December 2005. It is probable that the fines listed here will reflect those levels the ALGTEC will set under the varied agreement.
- 6.5 In Part H4, Section 1 at paragraph 1.01(b) of Haringey's Constitution it states that the full Executive Meeting shall have the power "to enter into new, or confirm existing, joint arrangements with the Executives of other local authorities." This would include authorising any new powers to be exercised through ALGTEC.
- 6.6 Any failure to authorise the ALGTEC for the setting of fixed penalty notice fines would be a breach of s.10 of the 2003 Act and s.17 of the 2004 Act as both sections impose a duty on London borough's to set fixed penalties levels by joint committee.

7. The Use of Fixed Penalty Notices

- 7.1 The Council has delegated the Assistant Director of Enforcement with authority to authorise officers to investigate and enforce matter referred to in Appendix 1. Currently the only fixed penalty notices routinely used as an alternative method of disposing of a criminal offence are for littering offences under the Environmental Protection Act.
- 7.2 Powers contained in this report and additional powers due to be established under the Cleaner Neighbourhoods and Environment Act 2005 will substantially increase the availability of fixed penalty notice options. A further report proposing a revised enforcement policy will be brought to the Executive outlining a decision making framework to be adopted in the use of fixed penalty notices.
- 7.3 Since September 2005 the Enforcement business unit has been operating a borough wide uniformed Street Enforcement service supported by additional investment provided for 2005/6. These officers have been trained and authorised to serve fixed

penalty notices and have been further authorised to enforce all offences listed in Appendix 1 except in relation to noise nuisance. Noise nuisance is currently investigated by a dedicated team also operating within the Enforcement service.

8. Summary and Conclusions

8.1 Authorising the ALGTEC is required to release fixed penalty notices that will enhance street enforcement and noise nuisance enforcement. Failure to authorise would be a technical breach of the 2003 and 2004 Acts.

9. Comments of the Director of Finance

9.1 The issuing of fixed penalty notices is a useful and necessary tool in the enforcement of a variety of offences within an active enforcement policy. Income raised from fixed penalty notices is unlikely to be significant in relation to costs but will nevertheless be a useful contribution towards costs particularly any increased legal costs.

10. Comments of the Head of Legal Services

10.1 The Head of Legal Services has been consulted in the preparation of this report. The legal implications are fully explained in the paragraphs above

11. Equalities Implications

11.1 There are no equalities implications raised by this report. The use of fixed penalty notices will be discussed in a further report.

12. Appendices and Tables

12.1 Appendix 1 - Offences under the 2003 and 2004 Acts for which penalty notices can be used.

12.2 Appendix 2 proposed for fixed penalties under The London Local Authorities Act 2004.

Appendix 1

Offences under the Highways Act 1980 in respect of which fixed penalty notices may be served under section 8 of the London Local Authorities and Transport for London Act 2003 schedule 4.

Section	Description of Offence
132(1)	Painting or otherwise inscribing or affixing picture etc. upon the surface of a highway or upon a tree, structure or works on or in a highway
137(1)	Wilful obstruction of highway
138	Erecting a building, fence or hedge on highway
139(3)	Depositing builder's skip on highway without permission
139(4)(a)	Failure to secure lighting or other marking of builder's skip
139(4)(b)	Failure to secure marking of builder's skip with name and address
139(4)(c)	Failure to secure removal of builder's skip
139(4)(d)	Failure to comply with conditions of permission
140(3)	Failure to remove or reposition builder's skip
141(3)	Failure to comply with notice requiring removal of tree or shrub
147A(2)	Using of stall etc. for road side sales in certain circumstances
148(a)	Depositing material etc. on a made-up carriageway
148(b)	Depositing material etc. within 15 feet from centre of made-up carriageway
148(c)	Depositing anything on highway to the interruption of user
148(d)	Pitching of booths, stalls or stands or encamping on highway
151(3)	Failure to comply with notice requiring works to prevent soil or refuse escaping onto street or into sewer

152(4)	Failure to comply with notice requiring removal of projection from buildings
153(5)	Failure to comply with notice requiring alteration of door, gate or bar opening outwards onto street
155(2)	Keeping of animals straying or lying on side of highway
161(1)	Depositing things on highway which cause injury or danger
169(5)	Erecting scaffolding or other structure without licence or failing to comply with terms of licence or perform duty under subsection (4)

Offences in respect of which fixed penalty notices may be served under section 15 of the London Local Authorities Act 2004 schedule 2.

Act	Section	Description of Offence
Environmental Protection Act 1990 (c. 43)	80(4)	Contravention or failure to comply with requirement or prohibition imposed by abatement notice
Town and Country Planning Act 1990 (c. 8)	224(3)	Displaying advertisement in contravention of regulations
London Local Authorities Act 1990 (c. vii)	34(1)	Contravention of condition of street trading licence or temporary licence
	34(2)	Making false statement in connection with application for street trading licence or temporary licence
	34(3)	Resisting or obstructing authorised officer
	34(4)	Failure to produce street trading licence on demand
	38(1)	Unlicensed street trading

Appendix 2

Levels proposed for Fixed Penalties under The London Local Authorities Act 2004.

(1) Act	(2) Section	(3) Description of Offence	Proposed Fixed Penalty Levels
Environmental Protection Act 1990 (c. 43)	80(4)	Contravention or failure to comply with requirement or prohibition imposed by abatement notice	£100 (Residential) £250 (Industrial/Trade/Business)
Town and Country Planning Act 1990 (c. 8)	224(3)	Displaying advertisement in contravention of regulations	£80
London Local Authorities Act 1990 (c. vii)	34(1)	Contravention of condition of street trading licence or temporary licence	£100
	34(2)	Making false statement in connection with application for street trading licence or temporary licence	£125
	34(3)	Resisting or obstructing authorised officer	£100
	34(4)	Failure to produce street trading licence on demand	£100
	38(1)	Unlicensed street trading	£150