

**Briefing Note on Motion by Councillors Adkinson and Harper**

**1 Introduction**

- 1.1 This note has been prepared to inform members in their consideration of the Motion

“Following the question to Council by a member of the public at its meeting on 15 July 2020, and whilst welcoming the findings of Maidstone Borough Council’s 2020 air quality Annual Status Report, it is disappointing to note that the provisions of Regulation 12 of The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 have still not been implemented by Maidstone Borough Council.

These provisions are even more relevant today as the country slowly emerges from lockdown due to Covid-19. Schools are back, but social distancing rules and understandable anxiety of parents have meant that fewer journeys to schools are being made by public transport. It is estimated that you would need at least 5 times the number of buses the UK currently has to enable safe social distancing. Therefore, there are now more cars on our already polluted roads than ever before – all pumping out noxious fumes. Idling is detrimental to the modern automotive engine, but even more seriously idling engines are adding to already bad air pollution.

Air pollution is linked to poor recovery and higher infection rates of Covid-19 due to damage caused to the lungs. This Council therefore resolves to ensure that the provisions of Regulation 12 of The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 are enacted immediately, with appropriate publicity, training of enforcement officers, engagement with local businesses, bus and taxi operators and presentations in schools as has been done in the London-wide Idling Action’s #enginesoff campaign.

- 1.2 In response to the question from a member of public in July 2020 the following advice was provided
- The Council, through the Low Emission Strategy working group, considered the adoption of the powers to control idling vehicles but found the current legislative framework impractical. The offence is one of leaving your engine idling “unnecessarily”. The key issue being able to prove the driver was idling unnecessarily and how that could be interpreted if, for example, a driver wants to leave his engine idling for the heating, in cold weather, or the air conditioning in hot weather.
  - The majority of complaints we receive in relation to engine idling relate to buses, taxis and school pick-ups. We have addressed these directly through the Taxi-Trade and bus company representatives together with the assistance of schools, with the emphasis on education like the Clean Air for Schools campaign, rather than punitive measures. Generally speaking, emissions from

idling vehicles are low and these are to be contrasted with the additional emissions associated with stopping and restarting an engine which could potentially be worse than emissions from an idling engine.

### **2 Points for discussion September 2020**

- 2.1 Anti idling legislation is intended to prevent vehicles from causing unnecessary emissions at locations where people may be exposed to poor air quality such as schools, transport points such as bus and train stations.
- 2.2 The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 authorises officers of the Council to issue a Fixed Penalty Notice (FPN) to drivers allowing their engines to run unnecessarily while the vehicle is stationary. The Council does not need to adopt the power but does need processes to implement the powers and authorise the most suitable officers to undertake enforcement. This could be parking attendants, community safety officers or environmental health officers.
- 2.3 Arguably the most important part of the legislation is the 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, this would be based on local intelligence or key places within Maidstone's Air Quality Management Area (AQMA). Issuing a Fixed Penalty Notice (FPN) will generally only be a last resort if drivers refuse to co-operate and switch off engines when asked to do so or regularly flout the Regulations.
- 2.4 Anti idling has been considered in Maidstone's Low Emissions Strategy with consideration given to Anti Idling by the Parking Service. The advice provided at the time was that although the contravention of 'Parked with engine running where prohibited' is available under Civil Parking Enforcement legislation, the burden of proof required makes enforcement under current legislation difficult to prove and therefore ineffective.

### **3. Background Information**

- 3.1 Under the Environment Act 1995 and the Local Air Quality Management framework, Maidstone 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.
- 3.2 Implementing the anti-idling legislation has been considered as part of the Low Emissions Strategy (LES) action plan during 2018 to reduce air pollution but due to the wording in the legislation the offence is one of leaving your engine idling "unnecessarily" which can be problematic to enforce. Nonetheless issuing an FPN should be the last step in a wider campaign of education surrounding idling.

- 3.3 The impact on Maidstone would fall mainly to the Parking Service in terms of 'boots on the ground'. A defined policy on how the regulations are to be implemented would be needed between Parking, Environmental Protection and Communications to allow for a targeted approach to enforcement. Suitable delegation of authority to officers will also be required.
- 3.4 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 e.g. 30mph.
- 3.5 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.
- 3.6 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. The Regulations cover all vehicles including cars, taxis, buses and all commercial vehicles.
- 3.7 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. It would be anticipated that FPNs will be issued in limited circumstances and only if a driver refused to switch off an engine when asked to do so by an authorised officer of the Council. The guidance also recommends that a 'common sense' approach is taken by officers when using the powers under the Regulations
- 3.8 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:
- Where a vehicle is stationary owing to the necessities of traffic e.g. when vehicles are queuing at traffic lights;
  - Where an engine is being run so that a defect can be traced and rectified
  - Where machinery on a vehicle requires the engine to be running e.g. where the engine powers refrigeration equipment or the compaction equipment in a refuse vehicle;
  - Where a vehicle is propelled by gas produced by the functioning of plant carried on the vehicle.
- 3.9 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.

- 3.10 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.
- 3.11 There is no formal appeal route under the Regulations to support enforcement. 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. Alternatively, 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.