



## **Fixed Penalties for Coronavirus Restrictions Offences**

### **Background**

The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 created a number of offences in relation to breaches of coronavirus restrictions. There are similar regulations for Wales and there have been a series of replacement and amendment regulations and regulations relating to local lockdown areas.

Offences include, where, without reasonable excuse a person:

- Fails to wear a face covering in a relevant place
- Enters or stays in a place that has been designated as a restricted area
- Gathers in a group of six or more (unless an exception applies)
- Organises a gathering of 30 or more people in a private home or public outdoor space (unless an exception applies)
- Obstructs a person who is enforcing the regulations
- Defies directions by the police to leave a gathering or restricted area.

Most offences will be enforced by way of a Fixed Penalty Notice (FPN). Whilst the numbers of FPNs issued has initially been relatively low – 17,039 across England and Wales at 27 July – only about half of these have been paid. There are indications that increased numbers may be issued as the ‘second wave’ takes hold and further restrictions are imposed. It is inevitable that advisers will be seeing cases involving non-payment of these FPNs.

It should also be noted that in some cases an offender may face prosecution rather than receive an FPN and the amount of the fine incurred is likely to be higher than the FPN amount.

### **Amount of Fixed Penalty**

The amount of a Fixed Penalty for most offences is:

In **England** £100 if paid within 14 days increasing to £200 if paid in 28 days. The penalty doubles for each subsequent offence up to a maximum of £6,400.

In **Wales** £30 if paid within 14 days, £60 if paid in 28 days and £120 for each subsequent offence.

There is no appeals process provided for by regulations, but local authorities may offer this – advisers should check the notices received by the client if appropriate, though the client may need to contact a criminal law solicitor if they wish to dispute liability.

### **Enforcement**

Non-payment of an FPN may result in prosecution and the imposition of a fine of unlimited amount. This may then be enforced in the usual way – this may be by attachment of earnings or benefits, bailiffs, or as a last resort, imprisonment - see from page 388 Debt Advice Handbook, 13<sup>th</sup> Edition for further information.

### **Fixed Penalty Notices and DROs**

An FPN is an administrative alternative to prosecution and, as such, it is a qualifying debt for DRO purposes and must be included in the application. However, a prosecution resulting from non-payment is not restricted by the DRO as it is not a “remedy in respect of the debt” which would be restricted under s251(g) Insolvency Act 1986 – it is a punishment for having committed the offence and not an action to enforce payment of the FPN. In this respect, fixed penalties for coronavirus-related offences sit alongside, for example, those for littering, shoplifting, school non-attendance and various driving offences.

The DRO Team have said that payment of a criminal FPN prior to a DRO application does not need to be reported as a preference, so where possible, the best course of action will be for this to be paid before submitting the DRO application. Where this is not possible, payment may be made from surplus income or by a third party to avoid prosecution.

## **Fixed Penalty Notices and Bankruptcy**

Debts which do not prove in bankruptcy are listed at Rule 14.2 The Insolvency (England and Wales) Rules 2016. FPNs are not “fines” as specified at Rule 14.2(2)(c)(i) and defined at s281(8) Insolvency Act 1986 and, therefore, prove in bankruptcy.

A prosecution resulting from non-payment of an FPN will not be a “remedy against the person or property of the bankrupt” which would be restricted by s285(3) Insolvency Act 1986. As with a DRO, this is because it is a punishment rather than an action to enforce or encourage payment of the FPN.

Where possible the client should settle the FPN prior to submitting their bankruptcy application. In bankruptcy, for a preference to have been paid, s340(4) Insolvency Act 1986 requires the bankrupt to have been influenced by a desire to put the person to whom payment has been made into a better position than they would have otherwise been. It is difficult to see how this could be the case here as the client would be wholly motivated by a desire to avoid prosecution.