

Part 11 Fixed Penalty Notices

Introduction

11.1 This guidance covers fixed penalty notices issued for environmental offences under the Environmental Protection Act 1990, the Anti-Social Behaviour Act 2003 and a number of other pieces of legislation, as amended and extended by the Clean Neighbourhoods and Environment Act 2005. This Act makes significant changes to the fixed penalty notice regime. It widens, in some cases, the scope of persons or bodies that may issue fixed penalties. It also allows, also in some cases, for the fixed penalty amount to be specified at the local level. Furthermore, discounts may also be offered for early payment of fixed penalties.

11.2 The guidance also covers the detailed implementing provisions contained in the proposed Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 and the Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006. An index of fixed penalty provisions is provided at Annex A. Drafts of these proposed regulations are to be found in Appendix E of this document.

1 General Principles

11.3 Fixed penalties can provide enforcement agencies with an effective and visible way of responding to low-level environmental crimes, and the Government wishes to encourage their use by local authorities and other agencies. Experience has shown that the public generally welcome the use of fixed penalties, provided that they are issued sensibly, enforced even-handedly and are seen as a response to genuine problems. It is important that the following principles are followed.

Enforcement Strategy

11.4 Fixed penalties should be part of a wider enforcement strategy, designed to address all aspects of environmental crime. This should be used to ensure that resources are focused on priority areas and an appropriate balance is struck between resources devoted to fixed penalties and those spent on prosecutions, both for non-payment of fixed penalties and for more serious incidents. The strategy should also be used to develop standardised fixed penalty procedures to be followed by all those with powers to issue fixed penalties, with guidance on the circumstances in which a fixed penalty notice should be issued. It is good practice to consult the public on the contents of an enforcement strategy, particularly if fixed penalty notices have not previously been used, or used widely, and make the adopted strategy available to the public by publishing on the website of the authority.

11.5 Strong inter-agency partnerships will be central to any successful enforcement strategy. Authorities should consult with any other agency dealing with enforcement in the area and agree working protocols, including

the local authority's capacity to deal with fixed penalties issued by Police Community Support Officers and persons accredited under Community Safety Accreditation Schemes, both under the Police Reform Act 2002.

Non-Payment of Fixed Penalties

11.6 Fixed penalty notices may be issued when an enforcing officer believes that an offence has been committed, and give the putative offender an opportunity to avoid prosecution. **It is essential, therefore, that they are only issued where there is adequate evidence to support a prosecution if a notice is not paid, and that unpaid notices are followed up.** Failure to pursue unpaid notices through the courts will discredit the use of fixed penalties in the locality, and will lead to declining rates of payment. The need to pursue unpaid fixed penalty notices needs to be considered in the development of an enforcement strategy, and will be a key element in the strategy. It is not acceptable for an authority to decide after a fixed penalty notice has been issued that it does not have the resources to prosecute if the notice is unpaid.

Appropriate use of fixed penalties for litter and waste offences

11.7 The availability and level of fixed penalties for environmental crimes reflect the severity of the offences, and it is important that the correct fixed penalty is used for an offence. In particular litter fixed penalties should not normally be used to deal with illegal waste or fly-tipping offences; due to the severity and impact on the environment those responsible should normally be prosecuted (and upon conviction, punished) in the courts. The only exception is for small-scale fly-tipping incidents, such as disposing illegally of a single plastic sack of rubbish, where a litter fixed penalty may be appropriate for a first offence. However, litter fixed penalty notices should not be issued for waste left out at the wrong time. Fixed penalties for this have been specifically introduced under the new section 47ZA(2) of the Environment Protection Act 1990, and these should be used rather than litter fixed penalty notices where a business or householder has failed to meet the requirements of a local authority notice in relation to the placement of waste.

Starting to issue fixed penalty notices

11.8 It is recommended that authorities considering issuing fixed penalty notices for the first time allow a well-publicised lead-in period before any notices are issued. This should help ensure public support for fixed penalties. During this time, when an offence is committed, enforcement officers should not issue any fixed penalties; if the offence is serious they should report the offender with a view to prosecution; in other cases they should issue a warning that in future similar offences may lead to fixed penalty notices (or prosecution). This will help raise awareness amongst the community and should help manage the public's perception.

11.9 Authorities should also develop a communication strategy designed to raise awareness and also to keep public expectation realistic. Such a strategy

could make use of local media, and authorities with websites could publish enforcement statements, details of the legislation and what powers the authority intends to use, and explain why. Officers and members of the authority could get out into the community by, for example, visiting schools, colleges and community meetings and leaflets could be distributed to households.

Parish Councils

11.10 The points above apply equally to parish councils that decide to issue fixed penalty notices. In particular, they must ensure that they have adequate resources to pursue unpaid fixed penalties.

2 Offences for which fixed penalties are available

11.11 The table below lists the fixed penalty notice issuing powers covered by this guidance, including who can issue fixed penalty notices for each offence and the amount (or where appropriate, the default amount) of each fixed penalty.

Table 1:

Section and legislation ⁹	Description of offence	Who can issue FPNs	Amount
s. 6(1) Clean Neighbourhoods and Environment Act 2005	Nuisance parking	Local authority authorised officers	Amount fixed at £100.
s. 2A(1) Refuse Disposal (Amenity) Act 1978	Abandoning a vehicle	Local authority authorised officers	Amount fixed at £200
s. 88(1) Environmental Protection Act 1990	Litter	Litter authority ¹⁰ authorised officers including persons not directly employed by the authority (see paragraph below); Police Community Support Officers and other persons accredited under the Police Reform Act 2002	Can be set at local level. Default £75
s. 94A(2) Environmental Protection Act 1990	Street litter control notices and litter control notices	Principal litter authority authorised officers	Can be set at local level. Default £100
Schedule 3A, para.7(2) Environmental Protection Act 1990	Unauthorised distribution of literature	Principal litter authority authorised officers, including persons not directly employed by the authority (see paragraph 12 below)	Can be set at local level. Default £75
s. 43 Anti-social Behaviour Act 2003	Graffiti and flyposting	Local authority and parish council authorised officers, including persons not directly employed by the authority (see	Can be set at local level.

⁹ Where appropriate, this refers to legislation as amended by the Clean Neighbourhoods and Environment Act

¹⁰ Includes parish councils, National Park authorities and the Broads Authority

		paragraph 12 below); Police Community Support Officers and other persons accredited under Community Accreditation Schemes under the Police Reform Act 2002	Default £75
s. 5B(2) Control of Pollution (Amendment) Act 1989	Failure to produce authority (waste transfer notes)	Waste collection authorities and Environment Agency (acting through their officers)	Amount fixed at £300
s. 34A(2) Environmental Protection Act 1990	Failure to furnish documentation (waste carriers licence)	Waste collection authorities and Environment Agency (acting through their officers)	Amount fixed at £300
s. 47ZA(2) Environmental Protection Act 1990	Offences in relation to Waste receptacles	Waste collection authority authorised officers	Can be set at local level. Default £100
s. 59(2) Clean Neighbourhoods and Environment Act 2005	Offences under Dog control orders	Authorised officers of primary and secondary authorities, including persons not directly employed by the authority (see paragraph 11.12 below); Police Community Support Officers and other persons accredited under Community Accreditation Schemes under the Police Reform Act 2002	Can be set at local level. Default £75
s. 73(2) Clean Neighbourhoods and Environment Act 2005	Failure to nominate key-holder (within an alarm notification area)	Local authority authorised officers, including persons not directly employed by the authority (see paragraph 12 below)	Can be set at local level. Default £75
s. 8 Noise Act 1996	Noise from dwellings	Local authority officers	Can be set at local level. Default £100
	Noise from licensed premises	Local authority officers	Amount fixed at £500

Who can issue fixed penalty notices?

11.12 Authorised officers of various **local authorities** (the authorities are variously described in the relevant statutes: "litter authorities", etc.) can issue any of the fixed penalties listed above. However, the definition of the term 'authorised officer' varies according to the particular provision in question:

- In all cases, it includes an employee of a local authority authorised in writing to issue fixed penalties on behalf of that authority;
- for litter, dog control order, graffiti, flyposting, unauthorised distribution of free literature and alarm notification area offences, it also includes other persons with whom the authority has entered into arrangements (and their employees); in each case the person/employee must be

individually authorised in writing by the local authority to issue fixed penalties on its behalf. This provision enables local authorities to authorise people who work on their behalf but are not directly employed by them to issue fixed penalty notices.

11.13 Employees of **parish councils** and other persons (including their employees) authorised by a parish council can issue fixed penalties for litter, graffiti, fly posting and dog control order offences. However, the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (at regulation 6) require anyone authorised by a parish council to have first successfully completed an approved course by a training provider recognised by the Secretary of State. Parish councillors should not be authorised under this provision.

Note. We are currently designing the necessary training packages, and in due course approved courses and recognised training providers will be listed on the Defra website

11.14 **Police Community Support Officers (PCSOs)** and other persons accredited by Chief Police Officers under the Police Reform Act 2002 can issue fixed penalty notices for litter, dog control order, graffiti and flyposting offences.

11.15 **The Environment Agency** is able to issue fixed penalty notices under the following powers:

- section 5B Control of Pollution (Amendment) Act 1989 – for failure to produce waste carrier registration details; and
- section 34A Environmental Protection Act 1990 - failure to produce waste transfer notes.

11.16 **National Park Authorities**, including the Broads Authority, are regarded as 'litter authorities' in respect of their area and can exercise the same powers as a local authority to issue fixed penalties for litter offences.

Fixed Penalty Amounts

11.17 For eight offences (listed in table 1 above) the various Acts enable a local authority to specify the amount of a fixed penalty. If an authority does not make use of this power, the Acts provide that a standard default amount (of either £75 or £100) applies.

11.18 When a local authority decides to set its own fixed penalty amounts, these must fall within the ranges set out in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (regulation 2). *The proposed ranges are from £50 to £80 for those offences with a default amount of £75 and from £75 to £110 for offences with a default amount of £100.* In determining the level for a fixed penalty, local authorities will need to take into account the deterrent effect of different levels and also peoples' readiness to pay and the levels of fines imposed locally for the relevant offence in

magistrates' courts. Fixed penalties that are too high for local conditions, and lead to substantial non-payment rates, will be counter-productive, as will penalties that are higher than the likely fine in the event of non-payment.

11.19 It is strongly recommended that local authorities consult the police when setting penalty levels. Similarly, a parish council setting fine levels in relation to dog control areas must consult its local authority.

Q34 Do you have any views on the ranges proposed above?

11.20 Local authorities can specify local amounts for some offences only.

11.21 Fixed penalties issued by parish councils (with the exception of their own dog control orders), PCSOs and National Park authorities must use the amount specified by the local authority in whose area they are issued. Local authorities will therefore need to ensure that any persons issuing fixed penalties in their area are aware of the specified amounts.

Discounts for Early Payment

11.22 The Clean Neighbourhoods and Environment Act introduces a power for authorities to offer a discount for early payment of a fixed penalty. This power is available for all the offences listed in table 1, with the exception of noise from licensed premises.

11.23 There is a standard period for payment of fixed penalties, set in the legislation at 14 days. Once a fixed penalty notice has been issued, an authority cannot prosecute for the alleged offence if the fixed penalty is paid within this period, and this must be stated on the notice itself. **For this reason, the period during which a discount for early payment is offered must be less than 14 days and to avoid confusion, it is recommended that it should not be more than 10 days.**

11.24 In addition, the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (regulation 3) specify amounts below which the discounted penalties may not fall. It is proposed that these be:

- For offences with a default rate of £75, **£40**;
- For offences with a default rate of £100, **£60**;
- For offences with a default rate of £200, **£120**;
- For offences with a default rate of £300, **£180**

Q35 Do you have any views on these minimum amounts?

Fixed Penalty Notice Forms

11.25 Although under the legislation the Secretary of State has the power to prescribe the form to be used for fixed penalty notices, she does not intend to make use of this power at the present time. Authorities are not, therefore, required to use a particular form of notice, and the forms previously prescribed

for litter and dog fouling fixed penalty notices are to be repealed. However, it is a legal requirement that a fixed penalty notice:

- gives reasonable details about the circumstances of the alleged offence;
- states that no proceeding for the offence will be instituted if the fixed penalty is paid within 14 days;
- states the amount of the fixed penalty;
- gives details of how the fixed penalty can be paid.

11.26 Where an authority provides for a discount for early payment of a fixed penalty, the notice will need to provide details, and notices should also state prominently that non-payment is likely to result in prosecution for the alleged offence, and the maximum fine payable on conviction.

Q36 Defra intends to develop, with practitioners, models of possible fixed penalty form, which will be made available for comment on the Defra website. Do you think that such models would be helpful?

Failure of alleged offenders to give correct details

11.27 Most fixed penalty provisions for environmental offences have been amended to provide those authorised to issue fixed penalties with the power to require the name and address of a person they wish to issue with a fixed penalty notice. In such cases failure to supply these details or to give a false name and address to an authorised officer is an offence for which a maximum fine of level 3 on the standard scale may be given upon conviction. If designated with the power to detain, a Police Community Support Officer may require a person to wait with them for a period of up to 30 minutes, pending the arrival of a police constable, where the individual refuses to provide details of name and address or where they suspect that the information provided is false. Waste collection authorities and the Environment Agency have powers under section 108 of the Environment Act 1995 to request information to assist with fly-tipping investigations. Failure to supply the information is also an offence for which a level 3 fine may be given.

Use of fixed penalty receipts

11.28 The various Acts under which fixed penalties are levied enable local authorities to use their fixed penalty receipts only to help meet the cost of certain specified functions. However, where a local authority is categorised as 'excellent' or 'good' under the Comprehensive Performance Assessment, and is subsequently categorised accordingly by Order made by the Secretary of State, the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 (regulation 4) or the Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006 (regulation 2) allow that authority to spend the penalty receipts on any of its functions. Where a high performing authority falls out of the 'excellent' or 'good' category the Regulations (regulation 5 of the former; regulation 3 of the latter) allow it to continue spending its receipts on any function for the duration of one year.

11.29 Specified functions in relation to different offences are listed in the following table:

Description of fixed penalty offence	Where are the functions specified in the legislation?	Qualifying Functions for which receipts may be used
Nuisance parking	s. 8(2) CNEA	<ul style="list-style-type: none"> • functions under Refuse Disposal (Amenity) Act 1978 • functions under sections 99-102 Road Traffic Regulation Act 1984 • enforcement of sections 3 and 4 Clean Neighbourhoods and Environment Act 2005
Abandoning a vehicle	s.2C(2) Refuse Disposal (Amenity) Act 1978 (see s.10 CNEA)	<ul style="list-style-type: none"> • functions under the Refuse Disposal (Amenity) Act 1978 • functions under sections 99-102 Road Traffic Regulation Act 1984 • enforcement of sections 3 and 4 Clean Neighbourhoods and Environment Act 2005
Litter Litter Control Notices Street Litter Control Notices Unauthorised distribution of literature Graffiti and flyposting Dog Control Orders	s. 96 CNEA	<ul style="list-style-type: none"> • Litter-related functions under Part 4, Environmental Protection Act 1990 • Graffiti and flyposting functions under section 43 Anti-social Behaviour Act 2003) • Dog Control Orders functions under Part 1, Chapter 6 Clean Neighbourhoods and Environment Act 2005
Failure to produce authority (waste carriers licence)	s.5C(3) Control of Pollution (Amendment) Act 1989 (see s.38 CNEA)	<ul style="list-style-type: none"> • functions, including enforcement re offences, under section 5 Control of Pollution (Amendment) Act 1989)
Failure to furnish documentation (waste transfer notes)	s.73A Environmental Protection Act 1990 (relates to both s34A and 47ZA EPA 1990)	<ul style="list-style-type: none"> • functions, including enforcement re offences, under Part 2 Environmental Protection Act 1990
Waste receptacles	(see s.52 CNEA)	
Failure to nominate key-holder (within an alarm notification area)	s. 75(2) CNEA	<ul style="list-style-type: none"> • functions under Chapter 1, Part 7 Clean Neighbourhoods and Environment Act 2005 • functions under the Noise Act 1996 • functions under sections 79 to 82 of the Environmental Protection Act 1990, in connection with statutory nuisances and noise

Noise from domestic premises	s.9(4A) Noise Act 1996)	<ul style="list-style-type: none"> • functions under the Noise Act 1996 • functions under Chapter 1, Part 7 Clean Neighbourhoods and Environment Act 2005 • functions under sections under 79 to 82 of the Environmental Protection Act 1990, in connection with statutory nuisances and noise
Noise from licensed premises	(see s.83 CNEA)	

11.30 The Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006 (regulation 4) provide for similar arrangements for parish councils, allowing them to use fixed penalty receipts to help meet the cost of their functions in relation to litter, graffiti, flyposting and dog control order offences. However, parish councils that have been granted "Quality" status may spend their receipts on any function (regulation 4(2)(d)), and, if a parish council loses this status, transitional arrangements are provided for the duration of one year (regulation 5).

11.31 The Environment Agency must pay all its fixed penalty receipts to the Secretary of State.

Fixed Penalty Notice Returns

11.32 The various statutes oblige local authorities to supply the Secretary of State with such details of their fixed penalty receipts as she may require. The Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006 (regulation 4(3)) extend the same requirement to parish councils.

Issue of fixed penalties to juveniles

11.33 Guidance on issuing fixed penalties to juveniles is being developed separately, and will be issued for comment as soon as it is available.

Issuing fixed penalties on private land

11.34 Authorised officers are required to gain the permission of the landowner or occupier before they can enter private land, unless that land is privately owned land to which the public are entitled to have access, where they already have implied permission to enter. Upon consented entry fixed penalties may be issued. Waste collection authorities have powers under section 108 of the Environment Act 1995 in certain circumstances to enter private land to carry out fly-tipping investigations.

Annex A: Index of Legislation for Fixed Penalty Notices

Description of offence	Act	Power to Issue	Who can issue them	Amount	Discount	Supply of name/address details	Use of Receipts
Nuisance parking	Clean Neighbourhoods and Environment Act 2005	s.6(1)	s.6.(1), 9(2)	s.6(8)	s.6(10)	s.7	s.8
Abandoning a vehicle	Refuse Disposal (Amenity) Act 1978	s.2A(1)	s.2A(1) & (14)	s.2A(8)	s.2A(10)	s.2B	s.2C
Litter	Environmental Protection Act 1990	s.88(1)	s.88(1),(9) & (10)	s.88(6A)	s.88(7)	s.88(8A)-(8C)	s.96 & 97 CNEA
Street litter control notices and litter clearing notices	Environmental Protection Act 1990	s.94A(2)	s.94A(2) & (7)	s.94A(4)	s.94A(5)	N/A	s.96 CNEA
Unauthorised distribution of literature	Environmental Protection Act 1990	Sch3A, para.7(2)	Sch3A, para.7(2) & para.8	Sch3A, para.7(4)	Sch3A, para.7(5)	Sch3A, para.7(7)-(9)	s.96 CNEA
Failure to produce waste carrier registration documents	Control of Pollution (Amendment) Act 1989	s.5B(2)	s.5B(2)	s.5B(9)	s.5B(11)	N/A	s.5C
Failure to produce waste transfer notes	Environmental Protection Act 1990	s.34A(2)	s.34A(2) & (14)	s.34A(9)	s.34A(11)	N/A	s.73A
Waste receptacles	Environmental Protection Act 1990	s.47ZA(2)	s.47ZA(2) & (10)	s.47ZB(2)	s.47ZB(3)	N/A	s.73A
Dog control orders	Clean Neighbourhoods and Environment Act 2005	s.59(2)	s.59(2),(11) & s.58	s.60(1)	s.60(3)	s.61	s.96 & 97 CNEA
Failure to nominate key-holder (within alarm notification area)	Clean Neighbourhoods and Environment Act 2005	s.73(2)	s.73(2) & (11)	s.74(2)	s.74(3)	s.76	s.75
Noise from premises (domestic and licensed)	Noise Act 1996	s.8(1)	s.8(1)	s.8A(2) & (2A)	s.8A(3) – no discount for licensed premises	s.8B	s.9
Graffiti and flyposting	Anti-social Behaviour Act 2003	s.43(1)	s.43(1) & s.47(1)	s.43A(1)	s.43A(3)	s.43B	s.96 & 97 CNEA