



## **Appendix F**

# ENVIRONMENTAL ENFORCEMENT

## FIXED PENALTY NOTICES OPERATIONAL POLICY

**January 2018**

# ENVIRONMENTAL ENFORCEMENT - FIXED PENALTY NOTICES OPERATIONAL POLICY

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## 1. The purpose of this policy

- 1.1 Establish standardised fixed penalty procedures to be followed by all those with powers to issue fixed penalty notices for environmental offences.

## 2. Who does this policy apply to?

- 2.1 Everyone in the council involved in the enforcement, prosecution and administration of such fixed penalty notices.

## 3. Introduction

- 3.1 The Clean Neighbourhoods and Environment Act 2005 extended and amended the powers available to local authorities to tackle environmental crime. In particular the Act extended the use of fixed penalty notices (FPNs) across a range of environmental offences with an increasing emphasis on their use as a key means of tackling such offences. FPNs provide a quick, visible and effective way of dealing with low-level straightforward environmental crimes, and an alternative to prosecution.
- 3.2 Also the Anti-social Behaviour Crime and Policing Act 2014 allows local authorities to tackle anti-social behaviour by the introduction of public spaces protections orders. In particular, all dog control orders are now made under this Act.
- 3.3 A fixed penalty is not a fine. Payment of the penalty by the recipient discharges their liability to conviction for the offence for which the FPN was issued. It does not constitute an admission of guilt, but removes the possibility of the creation of a record of criminal conviction.
- 3.4 It is very important that there is a framework in place to ensure that offenders will be prosecuted if they choose not to pay the fine. This gives a powerful message to the community that such crimes will not be tolerated. If there is a reluctance to prosecute, this will give out a negative message and will undermine the credibility of FPNs, and word will soon spread that the payment of FPNs are optional.
- 3.5 FPNs should not be used in isolation; they are just one method of enforcement which range from words of advice through to prosecution. Their use should be supported by education and campaigning strategies, and they should be targeted appropriately. Targeting will achieve the best results in that it is more likely to catch offenders, create an improvement and attract public support.
- 3.6 The purpose of this guidance is to establish standardised fixed penalty procedures to be followed by all those with the power to issue fixed penalties. It has been prepared in line with guidance from DEFRA on the use of FPNs and complements the existing Enforcement Concordat and the council's single overarching enforcement and prosecution policy and its supplementary policies.

## 4. Working practices

- 4.1 Only officers who have been authorised in writing can issue FPNs on behalf of the authority. Such authorised officers must carry with them at all times the relevant authorisation/identification.
- 4.2 Whilst it is not a strict requirement, and whilst there may be occasions when 'covert' enforcement is appropriate, it is considered good practice that the issue of a FPN is by an enforcement officer in uniform. This tends to legitimise what the enforcement officer is doing and visibly demonstrates to the community that the authority is tackling inappropriate behaviour. The reassurance element of this should not be under-estimated.
- 4.3 Whether in uniform or not an enforcement officer should always identify themselves as such and be prepared to show their identification card and authorisation.

## 5. Relevant offences

- 5.1 At present there are twelve different offences which can be dealt with by authorised officers. They are as follows:
- Nuisance parking
  - Abandoning a vehicle
  - Litter
  - Fly tipping
  - Street Litter Control Notices and Litter Clearing Notices
  - Unauthorised distribution of literature on designated land
  - Failure to produce a Waste Transfer Note
  - Failure to produce waste carrier registration documents
  - Waste receptacles
  - Graffiti and fly posting
  - Noise from premises (domestic and licensed)
  - Failure to nominate key-holder (within an alarm notification area)
  - Public Spaces Protection Orders
- 5.2 A short description of these offences and the relevant legislation can be found at Appendix 1.

## 6. Grounds for issuing FPNs

- 6.1 It is not the intention of this policy to deal formally with each and every situation where an offence has been witnessed. Neither is it the intention of the policy to be prescriptive as to when a FPN should be issued. Enforcement officers quite properly have discretion and must consider each set of circumstances when reaching a decision as to whether the issue of a FPN is appropriate.
- 6.2 The authority does not have a 'zero tolerance' approach, but neither will it be appropriate to simply advise all those who commit offences. Instead the authority relies upon the professional judgement of its enforcement officers to operate within the broad guidelines of this policy and to exercise a balance between education and enforcement.
- 6.3 An FPN may only be issued where an officer has reason to believe a person has committed a penalty offence and there is sufficient and appropriate evidence to a criminal standard of proof to support a prosecution in court, should the penalty notice go unpaid.
- 6.4 FPNs are designed to deal with low-level offending only. When the nature or extent of the offence is so serious that the issue of a FPN would bring the system into disrepute, then prosecution should be considered instead.
- 6.5 Normally offences resulting in an FPN will be witnessed directly by the officer, albeit that an officer may consider it appropriate to issue a FPN when they have not directly witnessed the offence but have reliable witness testimony.
- 6.6 Any interview and questioning must be consistent with the practice and procedures established by Code C of the Police and Criminal Evidence Act 1984.

## 7. Second offences

- 7.1 There will be occasions when those who have received an FPN fail to modify their behaviour and commit a further offence.
- 7.2 As one of the purposes of an FPN is to change offending behaviour, generally an FPN should be regarded as a 'once only offer'. In cases where an offender commits the same offence on a second occasion it is reasonable to argue that the original FPN has failed to have the desired affect and that prosecution is the most appropriate course of action.
- 7.3 As it can be difficult to access the required information, if any officer has reason to believe that an offender has been dealt with by way of an FPN on a previous occasion, the appropriate course of action may be to issue a Notice of Environmental Crime and thus allow the required checks to be carried out prior to the enforcement decision.
- 7.4 Notwithstanding the above it will be acceptable to issue an FPN to the same person on more than one occasion if the offences are different.

## 8. When an FPN is not appropriate

- 8.1 An FPN should only be issued where the alleged offender is compliant and able to understand fully what is going on and where there is sufficient evidence as to his identity and address.
- 8.2 Where a person is uncooperative, threatening, abusive or violent consideration should be given to alternative methods of disposal, (e.g. prosecution and/or police involvement). If an offender gives false details, or they are suspected to be false, or refuses to give them and subsequently their identity is established, the offence should normally be pursued by prosecution, where practicable, rather than with an FPN.
- 8.3 Additionally an FPN will *not be* appropriate:
- where there is insufficient evidence to support prosecution for the original offence in the magistrates' court should the FPN go unpaid;
  - where the offence that has been committed is considered to be too 'serious' in scale or effect to merit an FPN;
  - where the offence that has been committed is so small or trivial in its effect that action might not be in the public interest. It is often difficult for the enforcement officer to make this decision 'on the ground' at the time of the offence. The Notice of Environmental Crime can be useful in such circumstances. Additionally the 'Appeals and Payment Procedure (Section 12) provides an opportunity for the relevant service manager to address this point;
  - where the suspect appears to be unable to understand what is being offered to them or there is any doubt about their ability to understand English;
  - where the suspect's behaviour suggests they have learning disabilities or a mental disorder;
  - where the suspect is drunk or under the influence of drugs;
  - where the suspect is a non-resident foreign national;
  - where there is no satisfactory address for enforcement purposes, for example where the suspect is homeless.

## 9. FPNs and Young People

- 9.1 The issuing of FPNs to young people below 18 years is not straightforward. In law, a local authority FPN can be issued to anyone over the age of 10. Parents and guardians are not responsible in law for paying FPNs issued to young offenders. However, a court can order the parent/guardian to pay any fine it may impose.

- 9.2 In dealing with an alleged young offender the name, address, age and date of birth of the person should be obtained, together with the name and address of his or her parents or legal guardian. No interview should be undertaken of any young person under the age of 17 without the presence of a 'responsible' adult.
- 9.3 An FPN must not be issued to anyone who is under 10 years of age.
- 9.4 **10-15 year olds** - Where an offence is straightforward, for example a littering offence, and a formal interview is not required, an FPN may be issued, albeit that an FPN will not be issued 'on the spot' to an alleged offender within this 10 to 15 year old age group. Instead, an appropriate course of action will be decided following consultation with the Youth Offending Service. In such circumstances it is extremely unlikely that an FPN would be issued for a first offence, as a warning would be the most likely outcome. In all instances, a young person's parents or legal guardian should be informed at the earliest opportunity of the circumstances and the action/consultation that is being taken. The council will take every effort to avoid the service of an FPN on a person in this 10 to 15 year old age band, and will only do so in extreme cases of persistent offending and where it is evident that there is little or no remorse.
- 9.5 **16-17 year olds** - FPNs can be issued to this age group using the same procedure as for adults. The Youth Offending Service will be notified in writing of the event. They will also be consulted if the youth has committed a second FPN offence prior to the consideration of prosecution.
- 9.6 There should be a multi-faceted approach to the problem of young offenders. An FPN is just one method of enforcement and consideration will be given to other areas such as education work in schools and initiatives such as litter picking.

## 10. Method of Issue

- 10.1 FPNs may be issued on the spot by enforcement officers and indeed this is generally regarded as the preferred and the most appropriate method of issue. There may, however, be occasions when the officer considers that this is not the most appropriate method, and on such occasions it is permissible to issue a Notice of Environmental Crime. This notice serves to inform an offender that they may receive an FPN by post. Such an approach:
- allows evidence to be checked before the notice is issued;
  - allows names and addresses to fully checked;
  - allows an opportunity to check for previous offences;
  - is less confrontational for the enforcement officer.

## 11. Evidence

- 11.1 An FPN should not be issued unless the issuing officer believes that there is sufficient evidence to support a successful prosecution.

- 11.2 As such, the FPN and accompanying statement should include all of the points required to prove the offence, should it end in the magistrates' court.
- 11.3 Any supporting evidence, not required at the time of submitting the officer's copy of the FPN, should be safely and securely stored.
- 11.4 Where the officer has issued a Notice of Environmental Crime they should complete their witness statement in the same way as if they had issued an FPN. Should a decision subsequently be made to issue an FPN, the copy FPN can then simply be linked to the Notice of Environmental Crime for evidential purposes.
- 11.5 Whilst there is a degree of debate as to when, or if, an offender needs to be cautioned in certain circumstances, enforcement officers should be mindful that if they wish to question an alleged offender over and above asking for name, address, date of birth and in the case of dog fouling, to confirm if a dog is with a particular person, and they may want to use any of the answers in any subsequent prosecution, then they must caution the person.
- 11.6 Other than in the most straightforward of offences, therefore, where the testimony of an enforcement officer who has witnessed the offence should be sufficient to support a prosecution, or when the alleged offender is under the age of 17 and any 'interview' should be in the presence of an appropriate (responsible) adult, it should be regarded as good practice to caution.
- 11.7 Obtaining the right identity of an alleged offender is key to the process of issuing a FPN. Under Section 7 of the Clean Neighbourhoods and Environment Act 2005 an authorised officer proposing to give a person an FPN may require the person to give him his name and address. A person commits an offence if he fails to give his name and address when required to do so, or he gives a false or inaccurate name or address.
- 11.8 Whilst this is a useful power, in practice it may be difficult for an enforcement officer to know when false details have been given, albeit that experience will usually alert an officer to this. It is good practice therefore to seek from an alleged offender some means of identification that supports the details they have given, albeit there is no power to require that they produce this, and to only offer an FPN when as confident as is reasonably practicable that correct details have been provided.
- 11.9 If there is any doubt over someone's identity they should not be offered an FPN at the time. Rather, the enforcement officer should see if it is possible to verify the individual's identity. If, following further enquiries, it turns out that the alleged offender was providing the correct details then an FPN can be issued retrospectively. If it transpires that false details were provided and the enforcement officer is able to establish the correct identity then consideration will be given to prosecute the alleged offender for the original offence in addition to the offence of refusing to provide name and/or address or failing to provide accurate name and address details.



- 11.10 It is accepted that this approach means that some offences may go unpunished, but such a position is important if the integrity of the FPN process is not to be compromised.

## 12. Appeals and Payment Procedure

- 12.1 Once an FPN has been issued, the recipient may decide to write in, email or telephone to plead mitigation or contest the FPN. The person should be advised that there is no obligation to pay the fine if he/she wishes to contest it. However, as there is no formal appeals procedure the only appropriate place to challenge an FPN is the magistrates' court.
- 12.2 Notwithstanding the above and the fact that there is no appeals procedure, a service manager whose staff are authorised to issue FPNs may cancel any FPN following a review of the circumstances. Where an FPN is cancelled the service manager will write to the recipient of the FPN explaining why the notice is cancelled, and a copy of the letter and notice will be retained for audit purposes.
- 12.3 Prosecuting alleged offenders in court is expensive and as such high payment rates for FPNs is central to the success of their use. A paid FPN is always a better outcome than one that goes unpaid with the original offence then having to be prosecuted at court. Legislation allows those who have been issued with an FPN 14 days to pay. However, this does not mean that late payment cannot be accepted; indeed in certain circumstances an alternative payment option can be advantageous if this works to secure payment and prevent a prosecution.
- 12.4 The general principle remains that an FPN must be paid within 14 days. However, the relevant service manager does have the authority to offer an alternative payment option. Any request for an alternative way of paying must be carefully considered on a case by case basis and the service manager will offer it only where satisfied that there are genuine reasons, and not routinely or as a matter of course.
- 12.5 Genuine reasons are likely to be:
- when it is a young person (aged under 18) who is not in employment, for example a student;
  - when someone is on benefits;
  - where there is otherwise a proven case of hardship.
- 12.6 An alternative payment option may be:
- payment by instalments; or
  - deferred payment.
- 12.7 Where an alternative payment option is offered, the detail of it will be fully documented, and if it is subsequently disregarded, the original offence will be prosecuted in court.

- 12.8 Whilst there is no obligation to send a reminder to the recipient of an FPN, the reality is that on occasion a notice may not be paid within the 14 days. Where this is the case, prior to initiating court proceedings for the original offence, a letter will be sent to the alleged offender reminding them of the offence alleged and the action required of them to avoid a possible prosecution. This reminder will effectively give an alleged offender a further 7 days in which to pay the FPN.

### 13. Pursuing Offences in Court

- 13.1 The conclusion of any FPN that goes unpaid after the 14 day payment window has closed and after a reminder letter has been sent will be prosecution for the original offence in the magistrates' court, unless there is good reason not to.

### 14. Training and Management Systems

- 14.1 All staff who are responsible for the issue and progressing of FPNs will be fully trained in the appropriate procedures to follow. A list will be maintained of all individuals who are authorised to issue FPNs.
- 14.2 A system will monitor all FPNs from issue through to payment or prosecution. This system will maintain up to date records of enforcement activity, i.e. numbers of notices issued, how much money has been generated in receipts and the number of court prosecutions for non-payment. This information is legally required by DEFRA on a yearly basis.

### 15. Compliance

- 15.1 All FPNs issued will be monitored by the respective service manager; this will ensure that FPNs are being issued lawfully and that this policy is being followed.
- 15.2 Failure to follow this policy will have an impact in a number of areas. Failure to pursue unpaid notices through the courts will discredit the use of FPNs and will lead to declining payment rates. If the guidelines are not followed this may result in unsuccessful prosecutions through the courts, and may also result in the council acting unlawfully.

## Appendix 1

### Fixed Penalty Notices

# A Guide for Herefordshire Council

## *Disclaimer*

The Cleaner Neighbourhoods and Environment Act 2005 extended and amended powers available to local authorities to tackle environmental crime. In particular, environmental crimes. This document serves as a guide to, and synopsis of, the law relating to the relevant crimes. It is not comprehensive and it may be misleading if relied upon as a complete explanation of the legal issues involved. If any matter is to be acted upon, the full texts of all the Acts and relevant statutory instruments must be consulted.

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## **Nuisance Parking - Section 3 (1) and 4 (1) Clean Neighbourhoods and Environment Act 2005**

### **Section 3 Exposing vehicles for sale on a road**

A person is guilty of the offence if at any time if –

- a) he leaves two or more motor vehicles within 500 metres of each other on a road or roads where they are exposed or advertised for sale.
- b) he causes two or more vehicles to be so left.

This offence is aimed at businesses and garages and therefore would not apply to an individual selling a vehicle privately and not as part of his business.

### **Section 4 Repairing vehicles on a road**

A person is guilty of an offence who carries out restricted works on a motor vehicle on a road.

This offence is aimed at people who repair vehicles on the street and cause a nuisance, for example by taking up valuable car parking space or by allowing oil to leak onto the road.

There are two exceptions. Firstly where the person proves he was not repairing the vehicle in the course of a business. This is only available where the works did not give “reasonable cause for annoyance to persons in the vicinity”. Therefore a private individual could commit the offence if the works gave cause for annoyance.

The second exception is where the repairs arose from a breakdown or accident and repairs were carried out promptly.

### **Fixed penalty fine**

Set at £100, can be discounted to £60 if paid within 10 days.

### **Power to require name and address**

**Section 7 (1)** gives an authorised officer of a local authority the power to **require** name and address of the offender if the officer proposes to issue a fixed penalty notice. **Section 7 (2)** makes it an offence to fail to provide the information asked for or to give inaccurate information.

## **Abandoning a Vehicle – Refuse Disposal (Amenity) Act 1978 – section 2**

It is an offence to abandon a motor vehicle or anything that has formed part of a motor vehicle on any land in the open air or on any other land forming part of a highway.

### **Fixed penalty fine**

Set at £200, can be discounted to £120 if paid within 10 days.

## Power to require name and address

**Section 2B** gives an authorised officer of the local authority the power to **require** the name and address of the person he proposes to issue a fixed penalty notice. It is an offence to give false or inaccurate details.

## Definitions

**A road** is as defined in section 142 of the Road Traffic Regulation Act 1984 – any length of highway or other road to which the public has access. The main feature of a road is that it is a means of getting from A to B; it could include roads through estates that are owned by organisations such as Housing Associations or by the actual residents. It would not normally include a car park. It includes both the carriageway and footpath.

**A motor vehicle** has the same meaning as in the Refuse Disposal (Amenity) Act 1978, “a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of the vehicle or trailer and anything attached to such vehicle or trailer”.

**Restricted works** means repairing, maintaining, servicing, improvement or dismantling of a motor vehicle or any part or accessory of a vehicle, or installing, replacing or renewing any such part or accessory.

## Litter – Environmental Protection Act 1990 – section 87(1)

It is an offence to throw down, drop or otherwise deposit, and then leave litter. This applies to all places that are open to the air, including private land and land covered by water.

There is no definition of litter, it is therefore very wide. Subsection 98(5A) of the 1990 Act now makes it clear that the term specifically includes smoking related litter such as cigarette ends and cigars, and discarded chewing gum and bubble gum. There is a degree of judgement when it comes to larger items of discarded material - as a guideline a single plastic sack of rubbish can be dealt with as fly-tipping.

A covered place is ‘open to the air’ if it is open to the air on at least one side (e.g. a bus shelter). The legislation only applies then, however, if the public have access to the covered place, with or without payment. The question of public access is no longer relevant for any other place in the open air.

## Fixed Penalty Fine

Can be set locally at between £50 and £80, default £75, can be discounted to £50 if paid within 10 days.

## Power to require name and address

Section 88 (8A-8C) gives an authorised officer of the local authority the power to **require** the name and address of the person of whom he proposes to give a fixed

penalty notice. It is an offence to provide these details or give false or inaccurate details.

### **Fly tipping – Environmental Protection Act 1990 – section 33(1)**

It is an offence to fly tip waste where no waste management licence is in force. This applies to all places that are open to the air, including private land and land covered by water.

A covered place is 'open to the air' if it is open to the air on at least one side (e.g. a bus shelter). The legislation only applies then, however, if the public have access to the covered place, with or without payment. The question of public access is no longer relevant for any other place in the open air.

#### **Fixed Penalty Fine**

Can be set locally at between £150 and £400, default £200, can be discounted to £120 if paid within 10 days.

#### **Power to require name and address**

Section 88 (8A-8C) gives an authorised officer of the local authority the power to **require** the name and address of the person of whom he proposes to give a fixed penalty notice. It is an offence to provide these details or give false or inaccurate details.

### **Street Litter Control Notices and Litter Clearing Notices – Environmental Protection Act 1990 - section 94(8)**

A local authority can require the owners of certain types of commercial premises to prevent or remove accumulations of litter to the detriment of the amenity of the area. Where a litter problem can clearly be traced to certain types of business, e.g. takeaways or mobile vendors, a local authority can issue a Street Litter Control Notice. This requires the occupier or owner of a business or retail premises to clear up litter and or implement measures to prevent land becoming defaced again.

It is an offence to fail to comply with the Street Litter Control Notice.

The Cleaner Neighbourhoods and Environment Act 2005 has amended sections 93 and 94 of the 1990 Act to make it an immediate offence not to comply with the specifications of the notice. There is no requirement on the authority to first seek an order from the magistrate's court. A fixed penalty notice may be issued for the failure to comply.

#### **Fixed Penalty Fine**

Can be set locally between £75 and £110, default £75. Can be discounted to £60 if paid within 10 days.

## **Unauthorised Distribution of Literature on Designated Land – Environmental Protection Act 1990 – Schedule 3A (1), para 1(1) & (2)**

A local authority can designate areas by Order, where it is an offence to distribute free printed materials, such as leaflets or flyers.

It is an offence to distribute such leaflets or flyers, or to ask another person to do so, without the consent of the authority, on any land that the authority has designated under this Schedule.

Authorised officers have the power to seize any materials that are being distributed in contravention of the Order, and can issue a fixed penalty notice.

### **Fixed Penalty Fine**

This can be set locally between £50 and £80, default £75. Can be discounted to £50 if paid within 10 days.

### **Power to require name and address**

Schedule 3A, para 7(7)-(9) gives an authorised officer of the local authority the power to **require** the name and address of the person of whom he proposes to give a fixed penalty notice. It is an offence not to provide these details or give false or inaccurate details.

## **Waste Offences**

Section 34 of the Act sets out the waste duty of care, which applies to anyone who is the holder of controlled waste. Subject to certain exemptions, this includes everyone who produces waste (in the course of their business for example); everyone who transports waste; everyone who stores waste; and everyone who recycles, incinerates, landfills or otherwise recovers or disposes of waste.

The duty of care for waste is the duty to take all such measures as are reasonable in the circumstances to:

- prevent the waste from escaping (i.e. to ensure it is properly contained);
- ensure that, when the waste is transferred, it is only transferred to an authorised person (e.g. a council waste collector; a registered waste carrier; a holder of a waste management licence); and
- ensure that, when the waste is transferred, a written description of the waste goes with it.

It is also necessary to complete a Waste Transfer Note when waste is transferred from one person to another. This must contain certain information, including about the nature and quantity of the waste; the address and status of the transferring and receiving parties; and the time and place of the transfer. The written description of the waste and the transfer note may be contained in the same document. Both parties must keep their copy of these.

The breach of any of these duty of care requirements constitutes a criminal offence; there are two specific offences that local authorities can deal with by way of fixed penalty notice as follows:

### **Failure to Produce a Waste Transfer Note – Environmental Protection Act 1990 – section 34A (2)**

It is an offence to fail to produce a waste transfer note to a local authority officer.

### **Failure to Produce Waste Carrier Registration Documents – Control of Pollution (Amendment) Act 1989 – section 5B**

Section 5 gives powers to police, the Environment Agency and waste collection authorities to stop, search and seize any vehicle believed to be used for the transportation of controlled waste without being registered. Only a constable in uniform has the power to stop a vehicle on a road. Local authority officers have the power to issue a fixed penalty notice for failing to produce authority for transporting controlled waste. It is an offence to fail to assist or to otherwise obstruct an officer, including giving false or incorrect information.

#### **Fixed Penalty Fine for both offences**

This is set at £300, it can be reduced to £180 if paid within 10 days.

#### **Definitions**

Controlled waste encompasses household, industrial and commercial waste.

Household waste is that which arises from dwellings of various types including houses, caravans, houseboats, campsites, prisons and wastes from schools, colleges and universities.

Commercial waste comes from premises used wholly or mainly for trade, business, sport, recreation or entertainment; excludes household and industrial waste.

Industrial waste is waste from a factory or industrial process; it excludes wastes from mines and quarries and agricultural wastes.

#### **Exempt waste types**

Waste producers carrying **only** their own waste, except building or demolition waste.

Persons transporting waste which comprises **only** animal by-products.

Persons transporting **only** mines and quarries waste or **only** agricultural waste.



This exemption from registration applies if these are the **only** types of waste being transported. If there is a mix of these types of waste with other waste, the transporter will need to be a registered carrier.

## **Waste Receptacles – Environmental Protection Act 1990- section 46 and 47**

Sections 46 and 47 deal with receptacles for household, commercial and industrial waste. Local authorities can serve notice on owners or occupiers specifying certain conditions, e.g. that they must put their waste in a certain place to facilitate waste collection. A fixed penalty can be issued to people who fail to comply with this notice.

### **Fixed Penalty Fines**

This can be set locally between £75 and £110, default £100. Can be discounted to £60 if paid within 10 days.

## **Public Spaces Protection Orders**

These orders can be created by the council under Section 59 of the Anti-social Behaviour Crime and Policing Act 2014, in order to tackle any antisocial behaviour in an area.

This can include issues such as dog control, alcohol control. See specific Public Spaces Protection Order for detail.

### **Fixed Penalty Fine**

This set amount is £100, but an order can specify a discount if paid within 10 days.

## **Dogs (Fouling of Land) Act 1996**

(1) If a dog defecates at any time on designated land and a person who is in charge of the dog at that time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless—

- (a) he has a reasonable excuse for failing to do so; or
- (b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

### **Fixed Penalty Fine**

Set at £50.

## **Graffiti and Fly posting – Anti-Social Behaviour Act 2003 – section 43**

The Act gives local authorities the power to deal with graffiti and fly-posting offences. These powers should only be used for minor offences of graffiti and fly posting that would not be in the public interest to pursue through the courts. Repeated ‘tagging’ of property or multiple incidents of illegal displays of promotional posters should be prosecuted under the appropriate legislation, i.e. the Criminal Damage Act 1971 or the Town and Country Planning Act 1990.

### **Graffiti**

A person is guilty of graffiti if they deface with graffiti any property that is not their own or that they do not have permission of the owner to deface. The offence is made out in the Criminal Damage Act 1971, section 1(1) as intentionally or recklessly damaging any property belonging to another. This offence is restricted for the purposes of issuing fixed penalty notices under the Anti-Social Behaviour Act 2003, to an offence “which involves only the painting or writing on, or the soiling, marking or other defacing of, any property by whatever means”.

‘Etching’ which is the etching of glass or Perspex with a sharp implement should not be dealt with by way of fixed penalty as the affected surface has to be removed and replaced, it is therefore not minor.

### **Fly-posting**

Fly-posting is basically the display of advertising material on buildings or street furniture without the consent of the owner and without the required planning consent, both of which are required. Offences can range from small stickers to large posters advertising music events.

A fixed penalty notice should only be given for the most minor of offences, for example where the cost of removal is low or where the advert has not been posted in many locations.

### **Fixed penalty fine for graffiti and fly-posting**

This can be set locally between £50 and £80, default £75. Can be discounted to £50 paid within 10 days.

### **Power to require name and address**

Section 43B gives an authorised officer of the local authority the power to **require** the name and address of the person of whom he proposes to give a fixed penalty notice. It is an offence to fail to provide these details or give false or inaccurate details.

## **Noise from Premises (domestic and licensed) – Noise Act 1996 – section 4**

### **Night-time noise offence**

This is based on an objective measured sound level ('the permitted level'). It applies where the noise is:

- emitted from a premises (dwelling and licensed),
- during night hours (between 2300hrs and 0700hrs),
- measured from within the complainant's dwelling (where they are present) to be in excess of the permitted level.

If the officer is satisfied, either by judgement or measurement that the noise complained of exceeds or may exceed the permitted level during night hours, then a warning notice may be served.

An offence is then committed where a Warning Notice has been served and noise is subsequently emitted within the period specified in the Notice, and exceeds the permitted level as determined using measurements taken within the complainant's dwelling. This offence may then be dealt with by way of fixed penalty notice.

### **Fixed Penalty Fine**

For **dwelling**s this can be set locally at between £75 and £110, default £100, discounted to £50 if paid within 10 days. For **licensed premises** the amount is set at £500 with no opportunity to discount for early payment.

### **Permitted level of noise**

The permitted level of noise which may be emitted during night hours from an offending premises shall be;

- (a) where the underlying level of noise does not exceed 24dB, 34dB;
- (b) where the underlying noise exceeds 24dB, 10dB in excess of that level of underlying noise.

## **Failure to nominate key-holder (within an alarm notification area) – Clean Neighbourhoods and Environment Act 2005 – Sections 73 & 74**

These are powers available to local authorities with designated 'alarm notification areas'. Not applicable at this time to Herefordshire.

The financial amounts referenced in Appendix 1 of this policy are subject to statutory revisions and, as such, may be revised by the government from time to time. The actual specified amounts may therefore vary from this document, which were correct at the time of publishing.

## Appendix 2

### Levels of Fixed Penalty Fine

Section and Legislation	Description of offence	Amount	Discounted rate (if paid within 10 days)
S.3 (1) and 4(1) Clean Neighbourhoods and Environment Act 2005	Nuisance Parking	Set at <b>£100</b>	<b>£60</b>
S.2 Refuse Disposal (Amenity) Act 1978	Abandoning a Vehicle	Set at <b>£200</b>	<b>£120</b>
S.87(1) Environmental Protection Act 1990	Littering	£80 (between £50 and £80) *	<b>£50</b>
S.33 Environmental Protection Act 1990	Fly Tipping	£400 (between £150 and £400)	<b>£120 minimum</b>
Schedule 3A(1), para 1(1) & 2	Unauthorised Distribution of Literature on Designated Land	£80 (between £50 and £80)	<b>£50</b>
S.34A(2) Environmental Protection Act 1990	Failure to Produce a Waste Transfer Note	Set at <b>£300</b>	<b>£180</b>
S.5B Control of Pollution (Amendment) Act 1989	Failure to Produce Waste Carrier Registration Documents	Set at <b>£300</b>	<b>£180</b>
S.46 and S.47 Environmental Protection Act 1990	Offences in Relation to Waste Receptacles	£100 (between £75 and £110)	<b>£60</b>
Anti-social behaviour crime and Policing act 2014	Public Spaces Protection Orders	£100	<b>£50 (if stated in order)</b>
S.43 Anti-Social Behaviour Act 2003	Graffiti and Fly Posting	£80 (between £50 and £80)	<b>£50</b>
S.4 Noise Act 1996	Noise from premises (domestic)	£80	<b>£50</b>

		(between £75 and £110)	
S.4 Noise Act 1996	Noise from Premises (licensed)	Set at <b>£500</b>	<b>N/A</b>
S.73 and S.74 Clean Neighbourhoods and Environment Act 2005	Failure to nominate key-holder in alarm notification area.	£80 (between £50 and £80)	<b>£50</b>

\*The bracketed figures below the amount of fine are the ranges within which local authorities have the power to set a figure. Where no such ranges exist, the fine is a set figure by law.

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The financial amounts referenced in Appendix 2 of this policy are subject to statutory revisions and, as such, may be revised by the government from time to time. The actual specified amounts may therefore vary from this document, which were correct at the time of publishing.