

# Fixed Penalty Notices Policy

## **Scope**

This policy relates to the issuing of Fixed Penalty Notices within functions associated with the operation of the relevant Environmental Services Section and provides information on Fixed Penalties and the offences under which such fines are available to the Authority.

This policy does not cover other Services of the Local Authority in relation to the issuing of Fixed Penalty Notices.

## **Objective**

To seek an improvement in neighbourhoods through the consistent and proportionate issuing of Fixed Penalty Notices to tackle a range of environmental issues, thereby helping to minimise pollution, harm to human health or adverse affect to neighbourhoods and to help make South Derbyshire a cleaner, greener and safer environment.

## **Introduction**

This guidance covers Fixed Penalty Notices issued for a range of environmental offences under the Environmental Protection Act 1990, 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.

The Clean Neighbourhoods & Environment Act 2005 makes significant changes to the Fixed Penalty Notice regime. In some cases it widens the scope of who may issue fixed penalties and that it is an offence under certain sections to fail to provide both name and address to any duly authorised officer. In addition, in many cases Local Authorities are also now able to specify both the fixed penalty fine that may be issued (within specific parameters) and introduce discounts for early payments of fixed penalty notices.

## **General Principles**

The general principles of enforcement outlined in the Environmental Health Enforcement Policy will be followed.

Where the option of a fixed penalty fine is available to negate direct court action, this will be utilised at every opportunity. Although the age of criminal responsibility is currently 10 years, any potential action against a child under 16 should only be taken following consultation with the relevant Manager (normally the Environmental Protection Manager for FPNs served by Safer Neighbourhood Wardens) and the Youth Offending Service. In any case, instances where juveniles are below 16 years contact will be made with the parent/guardian of that person. Any contact with parents/guardians will be in writing and will make them aware of their child's actions and the Authority's proposed action.

Fixed penalties can provide the Authority with an effective and visible way of responding to low-level environmental crimes and Central Government wishes to encourage Local Authorities and other agencies to use them as an alternative solution to placing persons through the judicial process.

## **Enforcement**

Fixed penalties are one of enforcement mechanisms that would be utilised within the Environmental Health Enforcement Policy.

The relevant section of Environmental Health has a procedure in place for the correct use and service of fixed penalty notices.

As fixed penalty notices are only intended to prevent the need to go to court and provide another means of enforcement, they will never be used where there is not sufficient evidence to take the matter to court. When such evidence exists, be it photographic or evidence retrieved from the scene, careful consideration should be made as to the likelihood that the evidence would persuade a court of law, as failure to pay the FPN would lead to Court action. If there is any doubt the relevant manager should advise.

## **Non-Payment of Fixed Penalties**

Fixed penalties may be issued when an authorised officer believes that they have sufficient evidence to substantiate that an offence has been committed, and give the person responsible the opportunity to avoid prosecution.

It is essential, therefore, that fixed penalties are only issued where there is adequate evidence to support a prosecution should a fixed penalty not be paid within the specified period. The reason for this is that firstly it is unethical and immoral to do otherwise, but also because of the fact that any failure to pursue unpaid fixed penalties through the courts will also discredit the use of such mechanisms, and will lead to declining rates of payment.

The decision taken by the Authority is that where fixed penalties fail to be paid within the specified period that the normal course of action would be to send a series of reminder letters and ultimately proceeding with a prosecution.

## **Instalment payment of Fixed Penalties**

South Derbyshire District Council understands that for certain individuals the payment of fixed penalties may be difficult. Consequently, persons who provide written confirmation explaining the reasons as to why payment may be difficult will be provided with the opportunity to make such payments in instalments. This will be agreed with the individual concerned and the relevant Manager but under no circumstances will the time for payment of instalments extend beyond 3 calendar months.

South Derbyshire District Council considers legal action as a serious step and wishes to avoid such action if at all possible, however in correspondence individuals will be informed that failure to make, or to continue with payments by dates specified, may result in this Authority proceeding with legal action in this matter.

In such instances individuals will be provided with 14 days to make payment of the full outstanding amount, with prosecution being the normal course of action where this amount fails to be received.

## **Appropriate use of fixed penalties**

The availability and level of fixed penalties for environmental crimes reflect the severity of the offences. It is important therefore that the correct fixed penalties are used for the correct offence (e.g. litter fixed penalties will not be used by this Authority to deal with illegal waste or fly-tipping offences or side waste problems from household or commercial/industrial premises).

## **Zero Tolerance**

The phrase zero tolerance means that the Authority has decided to deal with environmental offences in a fair but consistent way. By doing so the aim of this would be to remove any elements of discretion in so far as people are not treated equally by officers and some Officers may have a different point of tolerance than others.

Officers should feel free to approach anyone who they have reason to believe may be about to commit an offence e.g. dropping litter, dog fouling, with the aim of educating that person. Officers should also use their discretion as to whether it is safe to approach a person, e.g. if that person is with a group of people who appear to be drunk, the Officer may not wish to approach them without assistance.

Officers also have the discretion as to whether a fixed penalty notice should be served where it is found that that person may have accidentally committed an offence (e.g. dropped litter whilst pulling their hand from their pocket, litter dropped from bag whilst rummaging).

## **Three Strike Rule**

The approach being adopted by the Section in relation to the issuing of fixed penalties in relation to dog fouling, littering and certain waste related offences.

Under this rule an individual will on the first and second offence be offered the opportunity to accept a fixed penalty and only on a third will face prosecution for any offences that are deemed to have taken place. It should be noted that other factors may result in a prosecution earlier (e.g. intent, attitude of offender, abusive to authorised officer, etc.).

### **Offences for which fixed penalties are available**

The table below (Table 1) lists the fixed penalties covered by this guidance, including the amount of each Fixed Penalty and the discounted amount for early payment

Table 1

<b>Section &amp; Legislation</b>	<b>Description of offence</b>	<b>Amount</b>	<b>Discounted to for early payment</b>
s.6(1) Clean Neighbourhoods & Environment Act 2005	Nuisance parking	£100	£70
2A(1) Refuse Disposal (Amenity) Act	Abandoning a vehicle	£200	£140
88(1) Environmental Protection Act 1990	Littering	£75	£50
s.94A(2) Environmental Protection Act 1990	Street litter control Notices and Litter Clearing Notices	£100	£70
Schedule 3A, para.7(2) Environmental Protection Act 1990	Unauthorised distribution of literature	£75	£50
s. 43 Anti-social Behaviour Act 2003	Graffiti and fly posting	£75	£50
s. 5B(2) Control of Pollution(Amendment) Act 1989	Failure to produce authority(waste transfer notes)	£300	£210
s.34A(2) Environmental Protection Act1990	Failure to furnish(waste carriers licence)	£300	£210
s.47ZA(2) Environmental Protection Act 1990	Offences in relation to Waste receptacles	£100	£70
s.59(2) Clean Neighbourhoods and Environment Act 2005	Dog control orders	£75	£50

### **Failure of alleged offenders to give correct details**

Most fixed penalty provisions for environmental offences have been amended under provisions within the Clean Neighbourhoods & Environment Act 2005, 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.

Instances where persons fail to supply such details or give false or misleading information to an authorised officer, individuals if traced will not be provided with the option of a fixed penalty. Instead they will face prosecution for both the offence (e.g. littering) and for failing to provide their name and address.

### **Use of Fixed Penalty receipts**

The various Acts under which fixed penalties are levied enable the Authority to use fixed penalty receipts only to help meet the cost of certain specified functions.

Instances where Local Authorities are 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, or the Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006 allow that Authority to spend the penalty receipts on *any* of its functions.

In cases where a high performing Authority falls out of the 'excellent' or 'good' category, the Regulations allow it to continue spending its receipts on any function for the duration of one year. Specified functions in relation to different offences are listed in the following table:

Table 2

<b>Description of Fixed Penalty offence</b>	<b>Where are the functions specified in the legislation?</b>	<b>Qualifying Functions for which receipts may be used</b>
Nuisance parking	s.8(2) Clean Neighbourhoods and Environment Act 2005	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	Functions under the Refuse Disposal (Amenity) Act 1978  Functions under sections 99-102 Road (see s.10 CNEA 2005) Traffic Regulation Act 1984  Enforcement of sections 3 and 4 Clean Neighbourhoods and Environment Act 2005
Litter  Litter Clearing Notices  Street Litter Control Notices  Unauthorised distribution of literature  Graffiti and fly posting    Dog control orders	s96 Clean Neighbourhoods and Environment Act 2005	Litter-related functions under Part 4, Environmental Protection Act 1990          Graffiti and fly posting functions under section 43 Anti-social Behaviour Act 2003   Dog Control Orders functions under Part 1, Chapter 6 Clean Neighbourhoods & Environment Act 2005
Failure to produce authority (waste carriers licence)	s.5C(3) Control of Pollution (Amendment) Act 1989	Functions,, including enforcement regarding offences, under section 5 Control of Pollution (Amendment) Act 1989
Failure to furnish documentation (waste transfer notes)	s.73A Environmental Protection Act 1990	Functions, including enforcement regarding offences, under Part 2 Environmental Protection Act 1990

### **Fixed Penalty Notice Returns**

The various statutes oblige this Local Authority to supply the Secretary of State with such details of their fixed penalty receipts as they may require.

## **Issue of fixed penalties to juveniles**

Currently a decision has been taken to not issue fixed penalties to persons less than 16 years of age.

Where the option of a fixed penalty fine is available, this will be utilised (dependent on factors associated with the offence in question) to issue fixed penalties to adults and juveniles aged 16 years or above.

Instances where juveniles are below 16 years contact will be made with the parent/guardian of that person. Any contact with parents/guardians may be in person and will in all cases also be in writing and will make them aware of their child's actions and inform them that although no criminal proceedings will take place at present, that consideration will be given to other forms of action (ABC's, ASBO's, etc.) should offences continue to take place.

Should a decision be made to vary the age at which fixed penalties will be issued (e.g. reducing age to 10 years or above), offenders may be provided with the opportunity to rectify the offence committed (e.g. pick up litter, remove dog faeces). If they comply with the request from an authorised officer they may be issued with a formal warning, however any persons failing to do so, or who become abusive to any authorised officer will automatically receive a fixed penalty notice or be liable to prosecution.

## **Issuing fixed penalties on private land**

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 and they already have implied permission to enter. Once entry has been consented by the landowner fixed penalties may be issued.

The Authority has statutory powers of entry in certain circumstances to enter land.

## **Customer Care**

Before any person starts dealing with any offences for which fixed penalty fines may be issued, they are required to read and understand the Environmental Health Enforcement Policy and this Fixed Penalty Notice Policy together with the relevant FPN procedure.

## **Comments on this Policy**

This policy will be reviewed on a regular basis. Individuals and organisations that wish to comment on the policy are invited to send their comments in writing to:

Head of Environmental Services  
South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote  
Derbyshire  
DE11 0AH

Tel: 01283 221000