
**CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005
FIXED PENALTY NOTICES**

**Responsible Cabinet Members - Councillor Stephen Harker,
Consumer and Environmental Services Portfolio
Councillor Bill Dixon,
Community and Public Protection Portfolio**

Responsible Director - Cliff Brown, Director of Community Services

Purpose of Report

1. To update the Director of Community Services delegated powers to take into account changes within the Clean Neighbourhoods and Environment Act 2005 and to agree the level of fixed penalty fines.

Information and Analysis

2. Individuals or organisations who commit environmental crimes can be prosecuted through the Courts. The Clean Neighbourhoods and Environment Act 2005 extends the use of Fixed Penalty Notices (FPNs) as a way of dealing with these environmental offences, in particular low level crime. For a particular crime, if a FPN is issued and the individual or organisation pays that fine, then they cannot be prosecuted. If they fail to pay the FPN then prosecution will follow. In some situations, such as major fly tipping, it is always appropriate to proceed through the Courts as opposed to using FPNs as a way of dealing with this type of offence.
3. FPNs do provide an effective and visible way of responding to low level environmental crimes. Generally, experience has shown that the public welcome the use of fixed penalty notices provided that they are issued sensibly, are enforced even-handedly and are seen as a response to a genuine problem.
4. FPNs are not new to Darlington and have been used for a number of years for environmental crimes relating to litter, dog fouling and placing refuse out too early for collection.
5. The Clean Neighbourhoods and Environment Act 2005 has been implemented in stages from April 2005 up to April 2006. During this period, a review of the Council's Uniformed Warden Service was undertaken to ensure that the Council were best placed to utilise the new powers that were being implemented. The new structure of the Uniformed Warden Service now includes:

- (a) A dedicated Manager
 - (b) Two dedicated Anti Social Behaviour Officers
 - (c) 2 x Supervising Uniformed Wardens covering ASB and environmental crime
 - (d) 8 x Uniformed Wardens mainly dedicated towards anti social behaviour
 - (e) 3 x Uniformed Wardens focusing on environmental crime
6. In addition, the recent Review of Community Safety has resulted in the Council's Abandoned Vehicles Officer and Dog Wardens transferring to the new team.
7. To be able to implement the range of powers in the Clean Neighbourhoods and Environment Act, it is necessary to review the delegated powers to the Director of Community Services and Assistant Director – Environmental Services. The existing delegation is as follows:

Appoint officers or agents with the relevant qualifications to enforce the provisions of and institute proceedings with regard to the following:

- (a) *Dogs (Fouling of Land) Act 1996*
 - (b) *Dog Fouling (Fixed Penalties) Order 1996*
 - (c) *Anti Social Behaviour Act 2003, Section 43, 44 and 45*
 - (d) *Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002*
8. It is proposed to add the following delegated powers to the Director of Community Services and Assistant Director – Environmental Services:

Appoint officers or agents with the relevant qualifications to enforce the provisions of and institute proceedings with regard to the following:

- (a) *Environmental Protection Act 1990*
 - (b) *Refuse Disposal (Amenity Act) 1978*
 - (c) *Road Traffic Regulations Act 1984*
 - (d) *Removal and Disposal of Vehicles Regulations 1986*
 - (e) *Clean Neighbourhoods and Environment Act 2005*
 - (f) *Dog Control Orders (Prescribed Offences and Penalties) Regulations 2006*
 - (g) *Dog Control Orders (Procedures) Regulations 2006*
9. The level of fines available has also changed as part of the Clean Neighbourhoods and Environment Act. A number of fines are set at a fixed amount. For others, individual Council's have discretion to set fines locally within a range with a specified default level. Attached as **Appendix 1** is a list of offences with a brief description and the level of fine.

10. In addition to setting locally some fines, there is the opportunity to set discounts for early payment. The standard period for payment for FPNs is set in legislation at 14 days. Once a fixed penalty notice has been issued, an authority cannot prosecute for the offence if the FPN is paid within this period. Therefore, the period during which a discount for early payment is offered must be less than 14 days. The Department for Food and Rural Affairs (DEFRA) also recommends that this should not be more than 10 days. It is therefore proposed that a seven-day discount period be introduced.
11. The amount that discounted penalties cannot fall below is included within the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006. It is, therefore, proposed that the minimum discount permissible within these regulations is applied within Darlington. The amounts are:
 - (a) For offences with a default rate of £75 - **£50**
 - (b) For offences with a default rate of £100 - **£60**
 - (c) For offences with a default rate of £200 - **£120**
 - (d) For offences with a default rate of £300 - **£180**
12. For the actual level of fine, it is proposed that the default value is used where the authority has discretion to set a level of fine. This will therefore be as follows:
 - (a) For fines that range between £50 - £80, **default £75**
 - (b) For fines that range between £75 - £110, **default £100**
13. The income generated by FPNs can be used by the Council to reinvest in enforcement services or improve the local environment with regard to the type of offences the fines are issued for.

Outcome of Consultation

14. No formal consultation has taken place on extending the use of fixed penalty notices.
15. It is proposed that the Council take a pro-active approach to awareness and publicity of FPNs, in particular where extending the range of crimes FPNs will be applied to.

Legal Implications

16. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

17. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
18. Environmental crime has a significant, negative impact on the quality of the local environment. By implementing the new powers under the Clean Neighbourhoods and Environment Act, issuing FPNs where appropriate, will demonstrate that the Council is taking action to improve the quality of life for residents.

Council Policy Framework

19. The issues contained within this report do not represent change to Council policy or the Council's policy framework.

Decision Deadline

20. For the purpose of the 'call-in' procedure this does not represent an urgent matter.

Recommendation

21. It is recommended that:
 - (a) Cabinet approve:
 - (i) A reduced payment level if the Fixed Penalty Notice is paid within seven days.
 - (ii) The level of discounts applicable as set out in paragraph 11.
 - (iii) The level of fine for Fixed Penalty Notices be set at the default level where discretion exists as shown in paragraph 12.
 - (b) Council be recommended to add the change shown in paragraph 8 to the scheme of delegation.

Reasons

22. The recommendations are supported by the following reasons:

- (a) To allow the new powers under the Clean Neighbourhoods and Environment Act to be implemented.
- (b) To set the level of fine and any discounted charges for FPNs.

Cliff Brown
Director of Community Services

Background Papers

Clean Neighbourhoods and Environment Act 2005.

Ian Thompson : Extension 4446
CLD