

Flycapture Lead Users
All Local Authorities

Date 4 August 2006

Dear Sir/Madam

Clean Neighbourhoods & Environment Act Update

This letter gives an update on the Clean Neighbourhoods and Environment Act 2005 and in particular the fixed penalty notice powers that were commenced on 6 April 2006. The supplementary note (attached at **Annex A**) corrects errors in Defra's printed guidance documents on the Clean Neighbourhoods and Environment Act 2005, Code of Practice on Litter and Refuse, and Parish Council Guide to Environmental Enforcement, issued in April 2006.

The Clean Neighbourhoods and Environment Act 2005 amended the Environmental Protection Act 1990 to introduce a range of fixed penalty notice (FPN) powers, including the option of issuing notices for various waste offences. Fixed penalty notices are now available for the more minor, record keeping offences under the waste duty of care and waste carrier systems. Penalty notices are also available for the offence of putting waste out incorrectly under sections 46 and 47 of the Environmental Protection Act 1990.

Waste Fixed Penalty Notices:

Failure to produce authority (waste transfer notes)	s. 34A Environmental Protection Act 1990	Local authority officers, Environment Agency	Amount fixed at £300
Failure to furnish documentation (waste carriers licence)	s. 5B Control of Pollution (Amendment) Act 1989	Local authority officers, Environment Agency	Amount fixed at £300
Waste receptacles & putting waste out	s. 47ZA Environmental Protection Act 1990	Local authority officers	Can be set at local level within a range. Default £100

We are keen to see these fixed penalty notices being used as part of local authorities' suite of actions used to deal with waste crime and fly-tipping. However, it is also important that local authorities are complying with current requirements when issuing such notices.

The £300 fixed penalty notices for duty of care and waste carriers are for failure to produce the required documentation within the specified time. Local authorities must give a person 7 days to present their documents at the specified place. Only then would the offence of failing to produce the documentation have been committed and thus the FPN could be offered.

It remains an offence under section 1(1) of the Control of Pollution (Amendment) Act 1989 to transport controlled waste without being registered and there are also powers under section 5 of the 1989 Act for waste collection authorities to stop and search vehicles that are carrying waste illegally.

The penalty notices for sections 46 and 47 of the Environmental Protection Act 1990 relate to waste receptacles for household and commercial/industrial waste. Local authorities are able to issue notices to occupiers under these sections specifying certain requirements relating to the waste receptacles, such as wheelie bins or black sacks. Notices can set out:

- the size, construction and maintenance of the receptacles;
- the placing of receptacles for facilitating the emptying of them;
- the placing of receptacles for that purpose on highways;
- the substances which may or may not be put into the receptacles; and
- the steps to be taken by occupiers to facilitate the collection of waste.

These notices can therefore be used to help deal with side waste and waste being put out incorrectly. They can also include the times receptacles should be placed out to facilitate collection. Failure to follow such a notice is an offence, for which a £100 FPN can now be issued under section 47ZA of the 1990 Act. The default amount for the penalty notice is £100, but the waste collection authority may specify a different sum, which must be not less than £75 and not more than £110. This new fixed penalty notice option may be used to enforce non-compliance with notices issued under section 46 and 47. Litter fixed penalty notices under section 88 should not, therefore, be used for this purpose. It is important that local authorities make sure any requirements set out in a section 46 or 47 notice are 'reasonable'. It is also crucial that residents and businesses are notified regularly about the waste collection requirements, as this will help to ensure waste is dealt with safely and legally leading to more efficient waste services.

Fixed penalties should be part of a local fly-tipping strategy, designed to address all aspects of waste crime and including awareness and education as well as enforcement. Fixed penalty notices may be issued when an enforcing officer considers that an offence has been committed, and he may give the offender an opportunity to avoid prosecution by payment of the penalty.

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.

Any fixed penalty notices issued and paid for these waste offences should be reported to the 'actions taken' screen of the Flycapture database. It is also important to remember that fixed penalty notices should not be included in the 'fine' section of the 'actions taken' page. Authorities will be contacted for annual details of FPNs issued and paid for all waste and LEQ issues separately at the end of the year.

Fixed Penalty Notices for Litter Thrown from Vehicles

We have received a number of requests from local authorities to make improvements to legislation to help deal with litter thrown from vehicles, particularly, to consider whether responsibility could be placed onto the registered owner or keeper of a vehicle for any litter thrown from it. Following detailed examination of the existing legislation and possible alternatives with our lawyers, we are not satisfied that any amendment can be made without undermining the function of fixed penalty notices as a quick, immediate and effective alternative to prosecution.

Were responsibility to be placed onto the registered owner/keeper of the vehicle, the defendant would need to be given the opportunity to challenge the basis upon which the FPN was issued, especially if someone else in the vehicle had dropped the litter. If that opportunity were not available, the defendant would run the risk, if the matter progressed to a summary trial, of receiving a criminal conviction for an offence they did not commit. However, there are evidential problems associated with the provision of such defences that would make the legislation very difficult to enforce, for example, the offence could be blamed on the person's spouse who, whilst a competent witness, could not be compelled to give evidence.

Given that it would not be possible to introduce a more robust legal provision for dealing with this issue, we continue to advise that fixed penalty notices under section 88 of the EPA 1990 may be issued for litter dropped from vehicles, however, before doing so, an authorised officer issuing the notice must be satisfied that he/she has sufficient evidence of the individual who actually dropped the litter. Fixed penalty notices are offered as an alternative to prosecution, therefore, they must only be issued on the basis of evidence that would stand up to scrutiny in a criminal court.

Defra is currently developing guidance to offer further, more detailed advice on the use of fixed penalty notices, particularly where there are barriers or difficulties in using the legislation. The guidance will help to share good practice and will be made available later in the year.

Street Litter Control Notices

The Clean Neighbourhoods and Environment Act 2005 introduced improvements to the existing legislation on Street Litter Control Notices under sections 93 and 94 of the Environmental Protection Act 1990. Defra is currently looking at further extending these

powers so that they can be used to help deal with smoking-related litter outside all office and eating and drinking establishments. A public consultation will take place on any proposed changes to the legislation.

We would appreciate if you could distribute this information throughout your authority.

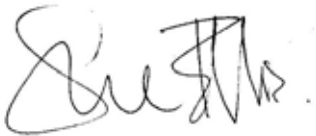
Further information about local environmental quality can be found here:

www.defra.gov.uk/environment/localenv

More information about waste crime and fly-tipping is set out here:

www.defra.gov.uk/environment/localenv/flytipping

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sue Ellis'.

Sue Ellis
Head of Local Environmental Quality Division

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ANNEX A

ADDENDUM

This supplementary note corrects errors in Defra's printed guidance documents on the Clean Neighbourhoods and Environment Act 2005, Code of Practice on Litter and Refuse, and Parish Council Guide to Environmental Enforcement, issued in April 2006:

DOG CONTROL ORDERS (PB11577g)

Paragraph 26, on page 9, states that existing byelaws continue to remain in force. It has come to our attention that there is one exception: dog fouling byelaws made by local authorities cease to have effect on 6 August 2006 if they apply to land capable of being designated under the Dogs (Fouling of Land) Act 1996, even though it has been repealed. Any local authorities with dog fouling byelaws in place should therefore seek to replace such byelaws with a Dog Control Order regarding dog fouling. This issue does not affect any fouling byelaws made by Parish Councils.

FIXED PENALTY NOTICES (PB11577i)

The 'Description of offence' for waste offences in the tables contained on pages 8-9 and 22 have been mixed up. Section 5B(2) of the Control of Pollution (Amendment) Act 1989 should refer to failure to produce a waste carrier's licence. Section 34A(2) of the Environmental Protection Act 1990 should instead refer to failure to produce a waste transfer note.

LITTER AND REFUSE (PB11577d)

The bracketed subheadings on pages 36 and 37 are incorrect. On page 36 the subheading should read 'section 94A' not 'section 94'. On page 37 the correct subheading is 'section 94B & schedule 3A', not 'section 92B'.

CODE OF PRACTICE ON LITTER AND REFUSE (PB11577b)

On page 16 the headings and text for the Set A: Grade B and C photos have been wrongly placed. The text beneath the photograph featuring a bus stop should be 'Grade B – Predominately free of litter and refuse apart from some small items', whilst that beneath the photograph featuring a white vehicle should state 'Grade C – Widespread distribution of litter and/or refuse with minor accumulations'.

PARISH GUIDE TO ENVIRONMENTAL ENFORCEMENT (PB11577a)

Pages 50-2 have been printed in the wrong order, and should therefore be read in the following sequence: 52, 51, 50.