

FIXED PENALTY NOTICES FOR ENVIROCRIMES – SERVICE OF NOTICES, SETTING LOCAL PENALTY LEVELS AND DISCOUNTS FOR EARLY PAYMENT

Background

There are 13 offences listed in Table 1. For 5 of these, the amount of fixed penalty has been set by the Government. For 8 offences the various Acts enable the Council to use its local discretion and specify the amount of a fixed penalty. If the Council does not make use of this power, the Acts provide that a standard default amount applies. These offences are highlighted in grey in Table 1. Where the Council does decide to set its own fixed penalty amounts, these must fall within certain ranges which are also indicated below.

In addition, for all the offences listed (with the exception of noise from licensed premises) the Council may offer a discount for early payment of a Fixed Penalty Notice (FPN). The amount below which the discounted penalty must not fall is also shown in the table.

Setting the penalty levels

Defra guidance offers the following advice on setting penalty levels:-

'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'

However, the offences listed have generally not been pursued in the Courts in Oxfordshire, so local information on levels of fines is not available. Similarly there is no information on people's readiness to pay.

The Defra guidance strongly recommends consulting the police when setting penalty levels. This has been done, and a response received suggesting use of the default penalty levels. There was also support for consistency across Oxfordshire. It had been suggested that neighbouring authorities of similar nature set similar penalty levels for consistency. However, it can be argued this goes against the principle in the legislation of allowing local discretion. To date, no information has been received from the other Oxfordshire authorities as to any penalty levels they have set or are considering setting.

The Council's Community Safety Team have also been asked for their views. In the absence of available information on these topics, they have also suggested use of the default penalty levels.

In drawing up the relevant legislation, the Government has consulted widely over the past few years, and has drawn on a wealth of research and expert opinion. It can therefore be argued that, in the absence of local information to the contrary, the default levels they set are fair and reasonable. It is therefore suggested the default penalties be adopted.

The use of FPNs will develop nationally over the next few years following the implementation of the clean Neighbourhoods and Environment Act 2005. It would therefore be sensible for the Council to review the penalty levels after a reasonable time, and 3 years is suggested.

Setting early payment discounts.

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. For this reason, the period during which a discount for early payment

is offered must be less than 14 days and, to avoid confusion, Defra recommend that it should not be more than 10 working days and it is suggested this period be adopted.

It is considered important to offer a reasonably large early payment discount for a fixed penalty notice. This will encourage prompt payment and help achieve high payment rates. The Government has set the amounts below which the fixed penalty levels may not fall. Again, in the absence of local information to the contrary, these offer reasonably large discounts so it is suggested these are adopted.

Table 1

Offences for which fixed penalties are available

The table below lists the fixed penalty notice issuing powers covered by Defra guidance. The shaded rows represent those FPNs where the local authority may use its discretion to set its own penalty levels within the specified range. If the local authority does not set its own penalty levels, the default penalty which applies is shown.

The local authority may also set an early payment discount for all the fixed penalties listed, unless otherwise indicated. The amounts below which the discounted penalties may not fall are:-

- For offences with a default rate of £75, £50.
- 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.

Section & Legislation	Description of Offence	Penalty Amount for fixed penalty notice set in legislation	Amount below which discounted penalty may not fall	Recommended VOWHDC local penalty	Recommended Discounted level for early payment of fixed penalty notice
s. 6(1) Clean Neighbourhoods and Environment Act 2005	Nuisance parking	Amount fixed at £100.	£60	Not applicable	£60
s. 2A(1) Refuse Disposal (Amenity) Act 1978	Abandoning a vehicle	Amount fixed at £200	£120	Not applicable	£120
s. 88(1) Environmental Protection Act 1990	Litter	Can be set at local level (between (£50-£80). Default £75	£50	£75	£50

s. 94A(2) Environmental Protection Act 1990	Street litter control notices and litter clearing notices	Can be set at local level (between £75- £110). Default £100	£60	£100	£60
Schedule 3A, para.7(2) Environmental Protection Act 1990	Unauthorised distribution of literature on designated land	Can be set at local level (between £50- £80). Default £75	£50	£75	£50
s. 43 Anti-social Behaviour Act 2003	Graffiti and fly- posting	Can be set at local level (between £50- £80). Default £75	£50	£75	£50
s. 5B(2) Control of Pollution (Amendment) Act 1989)	Failure to produce authority (waste transfer notes)	Amount fixed at £300	£180	Not applicable	£180
s. 34A(2) Environmental Protection Act 1990	Failure to furnish documentation (waste carrier's licence)	Amount fixed at £300	£180	Not applicable	£180
s. 47ZA(2) Environmental Protection Act 1990	Offences in relation to waste receptacles	Can be set at local level (between £75- £110). Default £100	£60	£100	£60

s. 59(2) Clean Neighbourhoods and Environment Act 2005	Offences under Dog Control Orders	Can be set at local level (between £50-£80). Default £75	£50	£75	£50
s. 73(2) Clean Neighbourhoods and Environment Act 2005	Failure to nominate key holder (within an alarm notification area) or to notify local authority in writing of nominated key holder's details	Can be set at local level (between £50-£80). Default £75	£50	£75	£50
s. 8 Noise Act 1996	Noise from dwellings	Can be set at local level (between £75-£110). Default £100	£60	£100	£60
s. 8 Noise Act 1996	Noise from licensed premises	Amount fixed at £500	Not applicable (NOTE NO DISCOUNT AVAILABLE ON THIS PARTICULAR PENALTY FOR EARLY PAYMENT)	Not applicable	Not applicable
