

CANNOCK CHASE COUNCIL

CABINET

24 AUGUST 2006

REPORT OF DIRECTOR OF PUBLIC HEALTH AND POLICY

RESPONSIBLE PORTFOLIO LEADER - ENVIRONMENT

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 - NEW AND REVISED FIXED  
PENALTY NOTICE PROVISIONS

1. Purpose of Report

- 1.1 To advise Cabinet of the new and revised Fixed Penalty Notice provisions introduced by the Clean Neighbourhoods and Environment Act 2005 and to seek Cabinet approval for the recommended penalty levels and discounts for early payment.

2. Recommendations

- 2.1 That Cabinet notes the following Fixed Penalty Notice amounts that are set by statute:

- (a) Nuisance Parking - £100;
- (b) Abandoning a Vehicle - £200;
- (c) Failure to Produce Authority (Waste Transfer Notes) - £300;
- (d) Failure to Furnish Documentation (Waste Carrier's Licence) - £300; and
- (e) Noise from Licensed Premises - £500.

- 2.2 That Cabinet approves the following Fixed Penalty Notice amounts that may be set by the Local Authority:

- (a) Litter - £75;
- (b) Street Litter Control Notices and Litter Clearing Notices - £100;
- (c) Unauthorised Distribution of Literature on Designated Land - £75;
- (d) Graffiti and Fly-Posting - £75;
- (e) Offences in Relation to Waste Receptacles - £100;
- (f) Offences under Dog Control Orders - £75;

- (g) Failure to Nominate Keyholder (within an alarm notification area) or to notify Local Authority in writing of Nominated Key holder's details - £75; and
- (h) Noise from Dwellings - £100.

2.3 That Cabinet approves the following Fixed Penalty Notice amounts discounted for early payment:

- (a) Nuisance Parking - £75;
- (b) Abandoning a Vehicle - £150;
- (c) Litter - £50;
- (d) Street Litter Control Notices and Litter Clearing Notices - £70;
- (e) Unauthorised Distribution of Literature on Designated Land - £50;
- (f) Graffiti and Fly-Posting - £50;
- (g) Failure to Produce Authority (Waste Transfer Notes) - £200;
- (h) Failure to Furnish Documentation (Waste Carrier's Licence) - £250;
- (i) Offences in Relation to Waste Receptacles - £70;
- (j) Offences under Dog Control Orders - £50;
- (k) Failure to Nominate Keyholder (within an alarm notification area) or to Notify Local Authority in writing of Nominated Key holder's details - £50; and
- (l) Noise from Dwellings - £70.

2.4 That Cabinet approve the time period for early payment discount as being within ten days.

2.5 That Cabinet delegates authority to the Head of Environmental Health to make any future changes to Fixed Penalty Notice amounts and early payment discounts as required.

### 3. Key Issues

3.1 The Clean Neighbourhoods and Environment Act 2005 received Royal assent on 7 April 2005. The Act is intended to improve neighbourhood cleanliness and environmental quality and to strengthen powers and penalties in relation to the growing problem of environmental crime.

3.2 Some provisions of the Act came into force in June 2005. These included an extension of the offence of dropping litter on land anywhere in the open air; extension of the definition of litter to include smoking materials and chewing gum; and changes to statutory defences to tighten controls over fly-posting and the carriage and deposit of waste. Significantly, the maximum penalties for the illegal disposal of waste increased from £20,000 to £50,000 on summary conviction, or imprisonment up to 5 years on conviction on indictment.

3.3 Following extensive consultation on guidance documents, most of the remaining provisions of the Act came into force in June 2006. Of particular significance is the extension of the use of

Fixed Penalty Notices (FPNs) as a means of dealing with offences as an alternative to prosecution. The Act also allows authorities to retain the proceeds of Fixed Penalty receipts to fund enforcement and related activity. Local Authorities have some discretion in setting the level of FPNs.

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**Section 1****Background**

The Clean Neighbourhoods and Environment Act 2005 introduces a number of new provisions and enforcement powers and amends several pieces of existing legislation, including the Environmental Protection Act 1990, to strengthen existing powers. An outline of measures provided in the Act is summarised in the document attached as Annex 1. Principally, the Act provides local Councils with new powers to clamp down on environment crime such as abandoned vehicles, fly-tipping, litter, graffiti, dog fouling, noise and other nuisances including light pollution.

Government guidance directs that FPNs should not be used in respect of fly-tipping offences, other than for very small amounts not exceeding one bag. Due to the serious environmental impact of fly-tipping, incidents should be dealt with by prosecution where the offender has been identified.

For most of those offences for which the Council may issue a FPN, discretion is given under the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 to set the level of the FPN between a prescribed upper and lower limit. In the absence of a decision to set a level there are prescribed default levels that apply. The Act gives Councils discretion to offer a discount for early payment of a FPN. There are prescribed minimum penalty levels that the discounted penalty must not fall below, set out in the 2006 Regulations.

There is a standard payment period of fourteen days set in the legislation. A prosecution cannot be pursued if the FPN is paid within this period. Government guidance recommends that in order to avoid confusion, the early payment discount period should not be more than ten days.

The table below sets out specified FPN amounts and recommendations where the Council has discretion.

Offence	Statutory FPN Amount	Minimum FPN Amount for Early Payment	Recommended CCDC FPN Amount	Recommended CCDC FPN Amount for Early Payment
Nuisance Parking	£100	£60	£100	£75
Abandoning a Vehicle	£200	£120	£200	£150
Litter	£50-£80	£50	£75	£50
Street Litter Control Notices and Litter Clearing Notices	£75-£110	£60	£100	£70
Unauthorised Distribution of Literature on Designated Land	£50-£80	£50	£75	£50
Graffiti and Fly-Posting	£50-£80	£50	£75	£50
Failure to Produce Authority (Waste Transfer Notes)	£300	£180	£300	£200
Failure to Furnish Documentation (Waste Carrier's Licence)	£300	£180	£300	£250
Offences in Relation to Waste Receptacles	£75-£110	£60	£100	£70
Offences under Dog Control Orders	£50-£80	£50	£75	£50

Offence	Statutory FPN Amount	Minimum FPN Amount for Early Payment	Recommended CCDC FPN Amount	Recommended CCDC FPN Amount for Early Payment
Failure to Nominate Keyholder (within an alarm notification area) or to notify Local Authority in writing of Nominated Key holder's Details	£50-£80	£50	£75	£50
Noise from Dwellings	£75-£110	£60	£100	£70
Noise from Licensed Premises	£500	N/A Fixed at £500	£500	£500

In setting FPN levels and discounted amounts for early payment, consideration must be given to the deterrent effect of different levels and also people's readiness to pay, together with the likely fines that would be imposed in the Magistrates' Court for non-payment. Fixed penalties that are too high for local conditions will be counter-productive as they will lead to substantial non-payment rates, as will penalties that are higher than the likely fine in the event of non-payment. The recommended FPN amounts are considered to be reasonable in light of the experience of issuing FPNs to date.

A number of Council Officers are already authorised to enforce the new and revised powers introduced by the Act. The broader issue of enforcement in respect of environmental crimes will be the subject of a further report to Cabinet.

Once approved, the new FPN levels will be publicised to assist in education and reinforce the deterrent effect.

## Section 2

### Details of Matters to be Considered

That Cabinet agree to the new Fixed Penalty Notice levels as contained in the recommendations to this report.

## Section 3

### Contribution to CHASE

The new powers and penalties contained in the Act will facilitate enforcement and provide a greater deterrent, thereby contributing towards a clean, safe and sustainable environment.

## Section 4

### Section 17 (Crime Prevention) Implications

Adoption and utilisation of the new powers under the Act will demonstrate that the Council is committed to dealing with environment crime.

It is hoped that the use of FPNs will act as a deterrent and assist in the improvement of the local environment.

Section 5

Human Rights Act Implications

There are no identified implications in respect of the Human Rights Act 1998 arising from this report.

Section 6

Data Protection Act Implications

There are no identified implications in respect of the Data Protection Act arising from this report.

Section 7

Risk Management Implications

The Act has made new powers available to the Council and the Government have made it clear in guidance that they expect these new powers to be fully utilised. Failure to do this may lead to criticism of the Council thereby damaging its reputation.

Section 8

Legal Implications

The CNEA has given Councils more powers and greater flexibility in seeking to tackle environmental crime, which have been associated with other social ills and assisted in the breakdown of communities and the environment.

A key measure introduced by the CNEA is the use of FPNs. Such measures are regarded as an effective tool in the armoury of Councils to combat environment crime which can have devastating affects upon local communities and the environment.

In order for the Council to effectively use the provisions of the CNEA to address the environmental issues/crime facing the District, Cabinet approval is required to vary and introduce new penalty levels together with discounts for early payment.

There can be considerable costs involved in prosecuting individuals. Whilst the Council would still instigate criminal proceedings in certain cases, there are many actions of individuals which do not warrant prosecution but do nonetheless warrant some other sanction. The use of FPNs provides Council's with a viable and effective alternative to prosecution in such circumstances.

In summary the CNEA deals with the following key environmental issues and measures:

**Crime and Disorder**

- ensures that local Crime and Disorder Reduction Partnerships will take anti-social behaviour affecting the local environment into account in developing crime and disorder reduction strategies.
- gives local authorities new, more effective powers to deal with alleyways affected by anti-social behaviour.

### **Fixed Penalty Notices (Fines)**

- makes greater use of fixed penalties as an alternative to prosecution, in most cases giving local authorities the flexibility to set their own rates;
- gives parish councils the power to issue fixed penalties for litter, graffiti, fly posting and dog offences;

### **Nuisance and Abandoned Vehicles**

- gives local authorities the power to remove abandoned cars from the streets immediately;
- creates two new offences to help local authorities deal with nuisance parking: offering for sale two or more vehicles, or repairing a vehicle, on the road as part of a business.

### **Litter**

- makes it an offence to drop litter anywhere, including private land and rivers, ponds and lakes;
- gives local authorities new powers (litter clearing notices) to require businesses and individuals to clear litter from their land;
- strengthens existing powers for local authorities to require local businesses to help clear up litter they generate (street litter control notices);
- enables local authorities to restrict the distribution of flyers, hand-outs and pamphlets that can end up as litter;
- confirms that cigarette butts and discarded chewing gum are litter.

### **Graffiti and fly-posting**

- extends graffiti removal notices (as introduced by the Anti-social Behaviour Act 2003) to include fly-posting;
- improves local authorities powers to tackle the sale of spray paints to children;
- strengthens the legislation to make it harder for beneficiaries of fly posting to evade prosecution;
- enables local authorities to recover the costs of removing illegal posters.

### **Waste**

- amends provisions for dealing with fly-tipping by:
  - removing the defence of acting under employer's instructions
  - increasing the penalties
  - enabling local authorities and the Environment Agency to recover their investigation and clear-up costs
  - extending provisions on clear up to the landowner in the absence of the occupier.
- gives local authorities and the Environment Agency the power to issue fixed penalty notices (and, in the case of local authorities, to keep the receipts from such penalties):
  - to businesses that fail to produce waste transfer notes
  - to waste carriers that fail to produce their registration details or evidence they do not need to be registered
  - for waste left out on the streets (local authority only)
- introduces a more effective system for stop, search and seizure of vehicles used in illegal waste disposal; and enabling courts to require forfeiture of such vehicles;
- introduces a new provision covering the waste duty of care and the registration of waste carriers;



- introduces a new requirement for site waste management plans for construction and demolition projects;
- repeals the divestment provisions for waste disposal functions to provide greater flexibility for local authorities to deliver waste management services in the most sustainable way;
- reforms the recycling credits scheme to provide increased local flexibility to incentivise more sustainable waste management.

### **Dogs**

- replaces dog byelaws with a new, simplified system which will enable local authorities and parish councils to deal with fouling by dogs, ban dogs from designated areas;
- require dogs to be kept on a lead and restrict the number of dogs that can be walked by one person;
- gives local authorities, rather than police, sole responsibility for stray dogs.

### **Noise**

- reduces nuisance caused by noise by giving local authorities to:
  - deal with burglar alarms
  - impose fixed penalty fines on licensed premises that ignore warnings to reduce excessive noise levels
- gives local authorities greater flexibility in dealing with noise nuisance.

### **Architecture and the Built Environment**

- establishes the Commission for Architecture and the Built Environment (CABE) on a statutory basis.

### **Miscellaneous**

- enables local authorities to recover the costs of dealing with abandoned shopping trolleys from their owners
- extends the list of statutory nuisances to include light pollution and nuisance for insects
- improves the contaminated land appeals process.

## Section 9

### Financial Implications

To be completed by Finance.

## Section 10

### Human Resource Implications

The new provisions contained within the Act strengthen the existing powers available to the Council's Enforcement Officers. There are therefore no identified Human Resources implications.

Section 11

Conclusions

The new powers available to the Council will facilitate a more robust and effective response to incidents of environmental crime.

Section 12

List of Background Papers

Clean Neighbourhoods and Environment Act 2005.

Annexes

Annex 1 – Clean Neighbourhoods and Environment Act - Outline of Measures

**CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT - OUTLINE OF MEASURES**

The Act:

**Crime and Disorder**

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