

2006 No. 783

ENVIRONMENTAL PROTECTION, ENGLAND

The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006

<i>Made</i> - - - -	10th March 2006
<i>Laid before Parliament</i>	16th March 2006
<i>Coming into force</i> - -	6th April 2006

The Secretary of State is, in relation to England, the appropriate person as defined—

- (a) in section 11(1) of the Refuse Disposal (Amenity) Act 1978(a), for the purpose of exercising the powers conferred by sections 2A(11) and 2C(2)(d) and (3) of that Act;
- (b) in section 9(1) of the Control of Pollution (Amendment) Act 1989(b), for the purpose of exercising the powers conferred by sections 5B(12) and 5C(3)(b) and (4) of that Act;
- (c) in section 29(1A)(a) of the Environmental Protection Act 1990(c), for the purpose of exercising the powers conferred by sections 34A(12), 47ZB(4) and (5) and 73A(2)(b) and (3) of that Act;
- (d) in section 98(1A)(a) of the Environmental Protection Act 1990(d), for the purpose of exercising the powers conferred by sections 88(11) and 97A(1), (2) and (4) of that Act;
- (e) in section 11(2A)(a) of the Noise Act 1996(e), for the purpose of exercising the powers conferred by sections 8A(4) and (5) and 9(4A)(b) and (4B) of that Act;
- (f) in section 47(1) of the Anti-social Behaviour Act 2003(f), for the purpose of exercising the powers conferred by sections 43A(4) and (5) and 47(4) of that Act;

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- (a) 1978 c.3; the definition of the “appropriate person” in section 11(1) was inserted by section 14(3) of the Clean Neighbourhoods and Environment Act 2005 (c.16), and sections 2A and 2C were inserted by section 10 of the 2005 Act.
 - (b) 1989 c.14; the definition of the “appropriate person” in section 9(1) was inserted by section 39(2) of the Clean Neighbourhoods and Environment Act 2005, and sections 5B and 5C were inserted by section 38 of the 2005 Act.
 - (c) 1990 c.43; section 29(1A) was inserted by section 51 of the Clean Neighbourhoods and Environment Act 2005, section 34A was inserted by section 45 of the 2005 Act, section 47ZB was inserted by section 48 of the 2005 Act, and section 73A was inserted by section 52 of the 2005 Act.
 - (d) 1990 c.43; section 98(1A) was inserted by section 26 of the Clean Neighbourhoods and Environment Act 2005, section 88(11) was inserted by section 19(6) of the 2005 Act, and section 97A was inserted by section 24 of the 2005 Act.
 - (e) 1996 c.37; section 11(2A) was inserted by section 85(2) of the Clean Neighbourhoods and Environment Act 2005, and section 8A was inserted by section 82(2) of the 2005 Act; section 9(4A) and (4B) was inserted by section 42(5) of the Anti-social Behaviour Act 2003 (c.38), and section 9(4A) was subsequently amended by section 84 of, and Schedule 1 (paragraph 12(4)) to, the 2005 Act.
 - (f) 2003 c.38; section 43A was inserted by section 28(2) of the Clean Neighbourhoods and Environment Act 2005, and section 47(4) was inserted by section 30(2) of the 2005 Act.

(g) in section 9(2) of the Clean Neighbourhoods and Environment Act 2005(a), for the purpose of exercising the powers conferred by sections 6(11) and 8(2)(d) and (3) of that Act;

(h) in section 66(a) of the Clean Neighbourhoods and Environment Act 2005, for the purpose of exercising the powers conferred by sections 59(12) and 60(4) and (5) of that Act; and

(i) in section 81(1) of the Clean Neighbourhoods and Environment Act 2005, for the purpose of exercising the powers conferred by sections 74(4) and (5) and 75(2)(d) and (3) of that Act.

Where applicable, the powers cited in sub-paragraphs (a), (b), (c), (e), (g) and (i) of the preceding paragraph are exercised in accordance with section 100(1) of the Local Government Act 2003(b).

In respect of regulations 4 and 5, in accordance with section 2C(7) of the Refuse Disposal (Amenity) Act 1978, section 5C(8) of the Control of Pollution (Amendment) Act 1989, section 73A(7) of the Environmental Protection Act 1990, section 9(4F) of the Noise Act 1996(c), and sections 8(7) and 75(7) of the Clean Neighbourhoods and Environment Act 2005 the Secretary of State has consulted those authorities(d) to which these Regulations apply and such other persons as she thought fit or, in the case of section 9(4F)(b) of the Noise Act 1996, considered appropriate.

The Secretary of State now makes the following Regulations in exercise of the powers cited in sub-paragraphs (a) to (i) of the first paragraph:

Title, commencement and application

1. These Regulations—

- (a) may be cited as the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006;
- (b) come into force on 6th April 2006;
- (c) apply in England only.

Prescribed ranges of fixed penalties

2.—(1) The amount of a fixed penalty capable of being specified by—

- (a) a principal litter authority in England under section 88(6A)(a) of the Environmental Protection Act 1990(e);
- (b) a principal litter authority in England under paragraph 7(4)(a) of Schedule 3A to the Environmental Protection Act 1990(f);

(a) 2005 c.16.

(b) 2003 c.26. It is provided that the powers to make regulations conferred by the following sections are, for the purposes of section 100(1) of the Local Government Act 2003, to be regarded as included among the powers mentioned in section 100(2) of that Act: section 2C of the Refuse Disposal (Amenity) Act 1978 (c.3) (by section 2C(8)); section 5C of the Control of Pollution (Amendment) Act 1989 (c.14) (by section 5C(9)); section 73A of the Environmental Protection Act 1990 (c.43) (by section 73A(9)); section 9 of the Noise Act 1996 (c.37) (by section 9(4G), inserted by section 83(3) of the Clean Neighbourhoods and Environment Act 2005 (c.16)); and section 8 (by section 8(8)) and section 75 (by section 75(8)) of the Clean Neighbourhoods and Environment Act 2005.

(c) Section 9(4F) of the Noise Act 1996 was inserted by section 42(5) of the Anti-social Behaviour Act 2003 (c.38), and was subsequently amended by section 84 of, and Schedule 1 (paragraph 12(6)) to, the Clean Neighbourhoods and Environment Act 2005.

(d) In section 73A(7)(a) of the Environmental Protection Act 1990 the requirement is to consult the “waste collection authorities”, and in section 9(4F)(a) of the Noise Act 1996 and section 75(7)(a) of the Clean Neighbourhoods and Environment Act 2005 the requirement is to consult the “local authorities”.

(e) Section 88(6A) was inserted by section 19(2) of the Clean Neighbourhoods and Environment Act 2005.

(f) Schedule 3A, and section 94B which gives it effect, were inserted by section 23 of the Clean Neighbourhoods and Environment Act 2005.

- (c) a relevant local authority in England under section 43A(1)(a) of the Anti-social Behaviour Act 2003;
- (d) a primary authority or a secondary authority in England under section 60(1)(a) of the Clean Neighbourhoods and Environment Act 2005 in relation to any dog control order made by that authority;
- (e) a local authority in England under section 74(2)(a) of the Clean Neighbourhoods and Environment Act 2005,

shall be not less than £50 and not more than £80.

(2) The amount of a fixed penalty capable of being specified by—

- (a) a waste collection authority in England under section 47ZB(2)(a) of the Environmental Protection Act 1990;
- (b) a principal litter authority in England under section 94A(4)(a) of the Environmental Protection Act 1990(a);
- (c) a local authority in England under section 8A(2)(a) of the Noise Act 1996,

shall be not less than £75 and not more than £110.

(3) An authority acting under more than one of the provisions in paragraph (1) or in paragraph (2) may specify a different amount under each such provision.

Lesser amounts of fixed penalties

3.—(1) Where—

- (a) a litter authority in England acting under section 88(7) of the Environmental Protection Act 1990(b);
- (b) a principal litter authority in England acting under paragraph 7(5) of Schedule 3A to the Environmental Protection Act 1990;
- (c) a local authority in England acting under section 43A(3) of the Anti-social Behaviour Act 2003;
- (d) a primary authority or a secondary authority in England acting under section 60(3) of the Clean Neighbourhoods and Environment Act 2005;
- (e) a local authority in England acting under section 74(3) of the Clean Neighbourhoods and Environment Act 2005,

makes provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by that authority, such lesser amount shall be not less than £50.

(2) Where—

- (a) a waste collection authority in England acting under section 47ZB(3) of the Environmental Protection Act 1990;
- (b) a principal litter authority in England acting under section 94A(5) of the Environmental Protection Act 1990;
- (c) a local authority in England acting under section 8A(3) of the Noise Act 1996;
- (d) a local authority acting under section 6(10) of the Clean Neighbourhoods and Environment Act 2005,

makes provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by that authority, such lesser amount shall be not less than £60.

(a) 1990 c.43; section 94A was inserted by section 22 of the Clean Neighbourhoods and Environment Act 2005.

(b) 1990 c.43; section 88(7) was inserted by section 19(2) of the Clean Neighbourhoods and Environment Act 2005.

(3) Where a local authority acting under section 2A(10) of the Refuse Disposal (Amenity) Act 1978(a) makes provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by that authority, such lesser amount shall be not less than £120.

(4) Where—

- (a) a regulation authority acting under section 5B(11) of the Control of Pollution (Amendment) Act 1989(b);
- (b) an enforcement authority acting under section 34A(11) of the Environmental Protection Act 1990(c),

makes provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by that authority, such lesser amount shall be not less than £180.

(5) An authority acting under more than one of the sub-paragraphs in paragraph (1), paragraph (2) or paragraph (4) may specify a different lesser amount under each such sub-paragraph.

Use of fixed penalty receipts: specification of functions

4.—(1) Where, and for as long as, any authority of a type described in paragraph (2) is categorised as “excellent” or “good” in a categorisation Order, any functions of that authority (in addition to those already specified in the section referred to in the relevant description) are hereby specified as functions or, in the case of an authority of a type described in paragraph (2)(d) or (f), as “qualifying functions”, of the authority for the purposes of which it may use its fixed penalty receipts.

(2) The types of authority are—

- (a) a local authority to which section 2C of the Refuse Disposal (Amenity) Act 1978 applies;
- (b) a waste collection authority to which section 5C of the Control of Pollution (Amendment) Act 1989 applies;
- (c) a waste collection authority to which section 73A of the Environmental Protection Act 1990 applies;
- (d) a local authority to which section 9(4), as read with section 9(4A), of the Noise Act 1996(d) applies;
- (e) a local authority to which section 8 of the Clean Neighbourhoods and Environment Act 2005(e) applies;
- (f) a local authority to which section 75 of the Clean Neighbourhoods and Environment Act 2005 applies.

(3) In this regulation and in regulation 5 a “categorisation Order” means an Order made by the Secretary of State under section 99(4) of the Local Government Act 2003(f).

Use of fixed penalty receipts: transitional arrangement

5. In the event that any authority of a type described in regulation 4(2) is no longer categorised as “excellent” or “good” in a categorisation Order, regulation 4(1) will continue to apply for a period of one year from the date on which that cessation comes into effect as though that authority were still categorised as “excellent” or “good”.

(a) 1978 c.3; section 2A was inserted by section 10 of the Clean Neighbourhoods and Environment Act 2005 (c.16).

(b) 1989 c.14; section 5B was inserted by section 38 of the Clean Neighbourhoods and Environment Act 2005.

(c) 1990 c.43; section 34A was inserted by section 45 of the Clean Neighbourhoods and Environment Act 2005.

(d) 1996 c.37; section 9(4) was substituted by, and section 9(4A) was inserted by, section 42(5) of the Anti-social Behaviour Act 2003 (c.38).

(e) 2005 c.16.

(f) 2003 c.26.

Condition to be satisfied by a person before he may issue certain fixed penalty notices

6.—(1) No person shall be an authorised officer of a parish council, or in relation to the provision listed in sub-paragraph (c) of another person or body designated under section 58(3) of the Clean Neighbourhoods and Environment Act 2005 as a secondary authority in England for the purposes of Chapter 1 of Part 6 of that Act, for the purpose of giving notices under—

- (a) section 88 of the Environmental Protection Act 1990;
- (b) section 43(1) of the Anti-social Behaviour Act 2003;
- (c) section 59 of the Clean Neighbourhoods and Environment Act 2005,

unless he has successfully completed an approved course of training provided by a recognised training provider.

(2) For the purposes of this regulation—

- (a) an approved course of training is one approved by the Secretary of State as being suitable for equipping a person who successfully completes it for the purpose of issuing notices under one or more of the provisions listed in paragraph (1).
- (b) a recognised training provider is one recognised by the Secretary of State as providing an approved course of training.

(3) The Secretary of State shall publish a list of—

- (a) the courses approved, and
- (b) the training providers recognised,

by her in accordance with paragraph (2).

Date 10th March 2006

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations prescribe the ranges within which the amounts of certain fixed penalties that are capable of being specified (in place of the amount prescribed in the relevant Statute) by a local authority (as variously described in the relevant Statutes) are required to fall (*regulation 2*). The Regulations also prescribe the minimum amount of fixed penalty that a local authority may (if it chooses to do so) treat as full payment of the fixed penalty where a lesser amount than the full prescribed amount (whether this is the amount specified locally by the authority, or that prescribed in the relevant Statute) is paid within such period of less than 14 days as may be specified by the local authority in the notice (*regulation 3*).

Accordingly, in respect of a notice of a fixed penalty that is capable of being issued for certain offences for which the amount prescribed in the relevant Statute is £75, the Regulations prescribe that the range within which a local authority may choose to specify its own locally applicable amount is between £50 and £80 (*regulation 2(1)*). If a local authority decides to treat a lesser sum paid within a specified period as full payment of the fixed penalty, the Regulations provide that that lesser sum shall not be less than £50 (*regulation 3(1)*).

In respect of certain other offences, for which the amount of fixed penalty prescribed in the relevant Statute is £100, the Regulations prescribe that the range within which a local authority may choose to specify its own locally applicable amount is between £75 and £110 (*regulation 2(2)*). In respect of any of those offences, if a local authority decides to treat a lesser sum paid within a specified period as full payment of the fixed penalty, the Regulations provide that that lesser sum shall not be less than £60 (*regulation 3(2)(a), (b) and (c)*).

In respect of other offences, for which the amounts of fixed penalty prescribed in the relevant Statutes are, respectively, £100, £200 and £300 (but in each case with no facility for an authority to specify a different locally applicable amount), an authority may still decide to treat a lesser sum paid within a specified period as full payment of the fixed penalty, and the Regulations provide that those lesser sums shall not be less than £60 (*regulation 3(2)(d)*); £120 (*regulation 3(3)*); or £180 (*regulation 3(4)*), respectively.

The Regulations also provide that certain fixed penalty receipts paid to a local authority (as variously described in the relevant Statutes), may, where such a local authority is categorised as either “excellent” or “good” in a categorisation Order made by the Secretary of State under section 99(4) of the Local Government Act 2003, be used for any functions of that local authority. Such functions are accordingly specified as “qualifying functions” of that authority, in addition to the qualifying functions already specified in respect of such fixed penalty receipts in the relevant Statutes (*regulation 4*).

In the event that an authority described in regulation 4 ceases to be categorised as “excellent” or “good”, the Regulations provide that it may continue to use any fixed penalty receipts in relation to which regulation 4 would otherwise have applied for any of its functions for one year after it ceases to be categorised as “excellent” or “good” (*regulation 5*).

The Regulations also prescribe the condition that must be satisfied before a person may be an authorised officer of a parish council for the purposes of giving a notice of a fixed penalty under either section 88 of the Environmental Protection Act 1990 (c.43) or section 43(1) of the Anti-social Behaviour Act 2003 (c.38), or before he may be an authorised officer of a parish council or other designated secondary authority in England for the purposes of giving a notice of a fixed penalty under section 59 of the Clean Neighbourhoods and Environment Act 2005 (c.16). The condition is that the person should successfully complete a course of training approved by the Secretary of State that is provided by a training provider recognised by the Secretary of State (*regulation 6*).

A full regulatory impact assessment of the effect of the then Clean Neighbourhoods and Environment Bill was prepared (fixed penalty notices are dealt with on pp.71-77), and was deposited in the libraries of both Houses of Parliament; copies of it are available from the Department for Environment, Food and Rural Affairs, Ashdown House, 123 Victoria Street, London SW1E 6DE. A separate regulatory impact assessment has not been produced for these Regulations as they have no impact on the costs of business.

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