

REPORT TO: Executive Board sub Committee

DATE: 19th June 2008

REPORTING OFFICER: Strategic Director - Environment

SUBJECT: Clean Neighbourhoods and Environment Act 2005 - Fixed Penalty Notice Provisions

WARDS: Borough-wide

1.0 PURPOSE OF THE REPORT

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

2.0 RECOMMENDATION: That

2.1 The sub Committee:

2.1.1 Note 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;
- (e) Noise from Licensed Premises - £500.

2.1.2 Approve 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;

2.1.3 Approve the following Fixed Penalty Notice amounts discounted for early payment:

(a) Litter - £50;

(b) Street Litter Control Notices and Litter Clearing Notices - £75;

(c) Unauthorised Distribution of Literature on Designated Land - £50;

(d) Graffiti and Fly-Posting - £50;

(e) Failure to Produce Authority (Waste Transfer Notes) - £250;

(f) Failure to Furnish Documentation (Waste Carrier's Licence) - £250;

(g) Offences in Relation to Waste Receptacles - £70;

(h) Offences under Dog Control Orders - £50;

2.1.4 Approve the time period for early payment discount as being within ten days.

2.1.5 That the committee delegates authority to the Strategic Director Environment and the Operational Director Environment and Regulatory Services (E&RS) to make any future changes to Fixed Penalty Notice amounts and early payment discounts as may be required.

2.1.6 The Operational Director E&RS be given the power to authorise suitable individual persons to implement these powers and issue fixed penalty notices.

3.0 SUPPORTING INFORMATION

3.1 The Clean Neighbourhoods and Environment Act 2005 received Royal assent on 7th 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. The 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. 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.

3.2 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.

- 3.3 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.
- 3.4 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.
- 3.5 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.
- 3.6 The table below sets out specified FPN amounts and recommendations where the Council has discretion.

Offence	Statutory FPN Amount	Statutory Minimum FPN Amount for Early Payment	Recommended HBC FPN Amount	Recommended HBC FPN Amount for Early Payment
Litter	£50-£80	£50	£75	£50
Street Litter Control Notices and Litter Clearing Notices	£75-£110	£60	£100	£75
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	£250
Failure to Furnish Documentation (Waste Carrier's Licence)	£300	£180	£300	£250
Offences in Relation to Waste Receptacles	£75-£110	£60	£100	£75
Offences under Dog Control Orders	£50-£80	£50	£75	£50

- 3.7 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.
- 3.8 A number of Council Officers are already authorised to enforce the new and revised powers introduced by the Act. Under the original 1990 legislation it referred only to an officer of a litter authority i.e. an employee, authorised in writing for the purpose of issuing fixed penalty notices. Litter authorities can now enter into arrangements so as to enable 'any person' (or the employee of any such person) to give such notices. In addition it should be noted that PCSOs also have the power to issue section 88 notices under the Police Reform Act 2002. The department are currently looking at how this could be put to best effect in a wider project to address litter waste and untidy area which will be the subject of a separate later report. It is being recommended however that the Operational Director E&RS be given the power to authorise suitable individual persons to implement these powers and issue fixed penalty notices.
- 3.9 Once approved, the new FPN levels will be publicised to assist in education and reinforce the deterrent effect.

4.0 POLICY IMPLICATIONS

- 4.1 Adopting the new provisions can be accommodated within existing policy
- 4.2 There are no identified implications in respect of the Human Rights Act 1998 arising from this report.
- 4.2 There are no identified implications in respect of the Data Protection Act arising from this report.

5.0 OTHER IMPLICATIONS

- 5.1 The new provisions contained within the Act strengthen the existing powers available to the Council's Enforcement Officers.
- 5.2 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.

- 5.3 Dependent upon the use of fixed penalty notices particularly for commonly occurring offences like depositing litter there could be implications of resourcing enforcement particularly the impact upon legal services if there is a high level of non payment of fixed penalty notices resulting in prosecution.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 Children and Young People in Halton

There will be close co-operation with schools and colleges in Halton to promote a clean borough.

6.2 Employment, Learning and Skills in Halton

No direct impact

6.3 A Healthy Halton

No direct impact, but improving the environment and the appearance of the borough shall have an overall beneficial affect

6.4 A Safer Halton

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, reduce environmental crime and have a positive impact upon the Safer Halton Priority, and contribute towards the 'Cleaner, Greener, Safer' agenda

6.5 Halton's Urban Renewal

No direct impact, but overall environmental benefits should make the borough a more attractive location for investment. Planning controls will be utilised to ensure adequate receptacles are provided in appropriate circumstances.

7.0 RISK ANALYSIS

The Act has made new powers available to the Council and the Government has 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. Effective training of authorised staff and practical enforcement protocols will ensure a sensible and proportionate approach. National guidance exists and will be followed for dealing with juveniles.

8.0 EQUALITY AND DIVERSITY ISSUES

The department's regulatory services aim to be consistent and even handed in all regards and as such the service does not apply differently to any particular group. The enforcement of this piece of legislation is not intended to have either a positive or negative impact upon equality and diversity. The service invites and seeks feedback on its regulatory activities and would respond to any suggestion of differential impact.

9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

There are no background papers within the meaning of the Act

Appendix 1

Clean Neighbourhoods and Environment Act - Outline of 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 Behavior 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.