

FIXED PENALTY NOTICES FOR OFFENCES RELATING TO THE MISUSE OF WASTE RECEPTACLES: GUIDANCE NOTE

1. BACKGROUND

1.1 Article 10 of The Waste (Amendment) (Northern Ireland) Order 2007 (“the 2007 Order”) enables authorised officers of local councils in Northern Ireland to issue fixed penalties for offences under Articles 21 and 22 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”). This Article was commenced on 7 April 2008 and a summary of the relevant powers now available to councils is attached.

1.2 Offences under Articles 21 and 22 of the 1997 Order concern the improper use of waste receptacles for household, commercial and industrial waste. Under these Articles, district councils can issue a notice to occupiers specifying certain requirements relating to the waste receptacles (such as wheelie bins and recycling containers). A notice can include provisions relating to:

- The placing of waste in a particular type and number of receptacles;
- The size, construction and maintenance of these receptacles;
- The placing of receptacles to facilitate access and emptying;
- The placing of receptacles to facilitate emptying on roads;
- The substances which may or may not be put into the receptacles and any precautions that should be taken; and
- The steps to be taken by occupiers to facilitate the collection of waste.

1.3 Failure to comply with the requirements of such a notice is an offence and, with the commencement of Article 10 of the 2007 Order, a £100 fixed penalty notice (FPN) can now be served for such an offence.

1.4 Prior to the commencement of Article 10, district councils taking action against the occupiers of houses or business premises for such offences had to prosecute them through the courts. The objective of FPNs is to provide a more cost-effective and less time-consuming means of enforcing the legislation, with benefits for both councils and occupiers.

2. USE OF FIXED PENALTY NOTICES

2.1 Use of fixed penalties

2.1.1 The advice contained in this guidance note may be of assistance to district councils. Our intention is to help councils, which will be using these powers for the first time, to adopt them in a planned and considered way and in a manner which will help to ensure that they are used successfully.

2.1.2 Our main advice is that a council should only use these new powers after an appropriate education and publicity campaign, after ensuring that all other methods to ensure compliance have been pursued and only if an occupier demonstrates continued and intentional non-cooperation with the council's requirements.

2.1.3 The Department does however recognise that the detailed workings of its enforcement regime will be the responsibility of each district council operating the scheme.

2.2 Education and communication

2.2.1 The Department recommends that district councils issuing FPNs for the first time allow a well-publicised lead-in period. This should help to ensure public support for FPNs. During this time, if an offence is committed, it is recommended that the district council does not issue fixed penalties; if the offence is serious, it might issue a warning that in future similar offences may lead to fixed penalty notices (or prosecution). The Department's view is that this would help raise awareness amongst the community, help the public to

adapt to the new system and should help to manage public perception. Of course councils would still have the option of pursuing more serious offences through the courts, even during this lead-in period.

2.2.2 The Department also recommends that detailed guidance be produced by district councils intending to implement this new enforcement regime, to be distributed prior to the introduction of the new system.

2.2.3 Guidance material will obviously vary between district councils, as each has its own waste collection system. However it would seem appropriate that the guidance should include:

- an explanation of how waste receptacles should be used;
- the warning procedure for improper use,
- the fact that the occupier of a property will be the recipient of any fixed penalty to be issued in respect of that property;
- the process by which FPNs will be issued and then prosecutions pursued.

In the interests of fairness, the Department recommends that each council should be consistent with the occupiers of houses and business premises within its district in relation to the number of warnings issued before a fixed penalty is administered.

2.2.4 The Department also recommends that district councils develop a communications strategy designed to raise awareness of the new enforcement system. Again strategies would need to be tailored to meet the needs of individual district councils. However they could make use of local media and council websites to provide details of the new legislation and explain how and why the council intends to use these powers. Councils would wish to consider whether guidance should be distributed to all households and businesses. It might also be considered appropriate to hold community meetings at which council officers could inform the public of the new policy.

2.3 Refusal to pay Fixed Penalties

2.3.1 The Department's view is that FPNs should only be issued where there is adequate evidence to support a prosecution if the amount is not paid. Evidence from GB would suggest that there can be difficulties in enforcing waste receptacle legislation and that a district council must therefore have a very strong case in order to prove in court that an accused was directly responsible for the misuse of the waste receptacle.

2.3.2 Similarly, we recommend that FPNs should not be issued unless councils are certain that they have the financial means to contest the court cases that could arise in the event of refusals to pay fixed penalties. The Department's view is that failure by councils to follow up unpaid FPNs and to pursue them through the courts could discredit their use in the district council area, and lead to declining rates of payment.

2.4 Repeat Offenders

2.4.1 The Department's view is that fixed penalties are not appropriate for persistent offending and recommends that district councils should seek to prosecute repeat offenders through the courts.

3. THE FORM OF A FIXED PENALTY NOTICE

3.1 While the legislation gives the Department the power to prescribe the form to be used for fixed penalty notices, it does not intend to make use of this power at the present time. Therefore, councils are free to tailor their Notices to suit the requirements of their individual areas.

3.2 However, the 2007 Order states that all of the following details must by law be included on the Notice:

- reasonable details of the circumstances of the alleged offence;
- the period during which proceedings will not be taken for the offence;
- the amount of the fixed penalty (see further details below);
- details of how the fixed penalty can be paid.

3.3 Where a district council provides for a discount for early payment of a fixed penalty (see further details below), the notice will need to provide details. Notices should also state prominently that non-payment is likely to result in prosecution for the alleged offence and the maximum fine payable on conviction.

3.4 Full details of the mandatory requirements are stipulated in Article 10 of the 2007 Order. However, to assist district councils, the Department has placed a “model” notice on its website (copy attached). District Councils are free to adapt the form of this notice to suit their needs (provided of course the mandatory requirements are satisfied).

4. TIME PERIODS AND DISCOUNTS FOR EARLY PAYMENT

4.1 The legislation introduces a power for district councils to offer a discount for early payment of a fixed penalty. While the Department has the power to restrict the circumstances in which district councils can exercise this power, it does not intend to make use of this power at the present time. District councils are therefore free to utilise this power to suit local circumstances.

4.2 There is a standard period of 14 days for payment of fixed penalties. Once a FPN has been issued, a district council cannot prosecute for the alleged offence if the fixed penalty is paid within this period, and this must be stated on the notice. For this reason, the period during which a discount for early

payment is offered must be less than 14 days and, to avoid confusion, the Department recommends that it should not be more than 10 days.

5. FIXED PENALTY RECEIPTS

5.1 District councils can only use the receipts raised by use of these fixed penalties for their functions, including enforcement, under Part 2 of the 1997 Order. While the Department has the power to specify other functions for which the receipts may be used, it does not intend to make use of this power at the present time.

5.2 If, in due course, the Department requests information from councils relating to their use of these fixed penalty receipts, councils must be in a position to supply this data.

6. FUTURE SUBORDINATE LEGISLATION

6.1 As mentioned above, the 2007 Order gives the Department the power to legislate further in this field. This includes the power to change the amount of the fixed penalty to be paid for these offences and to prescribe the form of the fixed penalty notice to be used by district councils and the purposes for which councils may use their fixed penalty receipts.

6.2 The Department undertakes to consult fully with district councils before introducing any further legislation in these areas.