

Fixed Penalty Notices

Consultation Summary

October 2011

Background

1. The Department issued a consultation document on 29 June 2011 containing draft guidance and associated draft Regulations on fixed penalty notices for district councils which will ensure a consistency of approach across the 26 district councils in Northern Ireland. The purpose of the consultation exercise was to invite comments on the draft guidance and Regulations.
2. The status of the guidance will vary according to the offence in respect of which the fixed penalty notice is to be issued:
 - in relation to offences under Article 6 of the Litter (Northern Ireland) Order 1994, it is to be a statutory code of practice. The Department is required to issue such a code under Article 6(8A) of the Litter (Northern Ireland) Order 1994 (as inserted by section 16(3) of the Clean Neighbourhoods and Environment Act (NI) 2011 (the 2011 Act).
 - in relation to relevant graffiti and fly-posting offences as defined in section 26 of the 2011 Act, it is to be statutory guidance issued under section 30 of that Act.
 - it will be non-statutory guidance in relation to various environmental offences under the Pollution Control and Local Government (Northern Ireland) Order 1978, the Litter (Northern Ireland) Order 1994 (“the Litter Order”) and a number of other pieces of legislation, as amended and extended by the 2011 Act.

Responses

3. There were 25 responses to the consultation and of those who submitted comments, 68% were district councils/local government and 32% were interest groups.
4. In general the guidance was welcomed. The Department accepts that many councils currently working within the existing framework of fixed penalties that apply to current legislative provisions have developed a detailed knowledge and experience of the management of the fixed penalty regime within all the disciplines where they can already be used. However, it has been acknowledged by consultees that the introduction of this guidance will give all councils a reference document on which to develop their strategic and operational guidance and will seek to ensure that each council is working to develop consistent approaches in line with Departmental guidance. It has been recognised that the information contained within the guidance will contribute to an improved regulatory culture and will shape processes that are fundamental to enforcing fixed penalty notice provisions.

Issues relating to under 18s

5. Responses received from the Human Rights Commission, Include Youth, Children's Law Centre and Children in NI expressed concerns regarding the issuing of fixed penalty

notices to those aged under 18. The main points of concern were:-

- disappointment that the Department does not have “a view” on using fixed penalty enforcement against those under 18.
- engagement with a wider audience of stakeholders has not taken place in drawing up the draft guidance.
- no real attempt has been made to ensure that the wider youth and community sector even received the consultation.
- a child’s ability to pay a fine given their dependent status.
- young people will be at the sharp end of receiving FPNs due to the false perception that they are to blame for most low level criminal activities, including littering.
- situation regarding “vulnerable” persons
- section on alternatives to FPNs is extremely weak and does not offer councils any substantial examples of alternatives. No mention is made of community-based alternatives.
- concerned that the Department has chosen to list the use of an Anti-Social Behaviour Order as a possible action against ‘more serious offences, such as graffiti’
- suggested additional steps before and after issuing a fixed penalty notice are extremely weak, vague and do not represent adequate diversionary alternatives and will be largely unhelpful to council staff

- the high levels of poverty that exist in Northern Ireland must be acknowledged along with the potential difficulties that this may present both in relation to paying the fixed penalty or default of any subsequent fine

Departmental Response

6. The sole purpose of the legislation is to improve the quality of our local environments and neighbourhoods and thereby improve the quality of life for all of the people in Northern Ireland, including our children and our future generations. The people who should be most affected by the measures are those who offend and damage the local environment. The Department accepts that a different approach in terms of fixed penalty notices for under 18s is required and detailed guidance on this issue forms part of the overall draft guidance document.
7. The Department acknowledges the concerns raised by consultees in relation to issuing fixed penalty notices to under 18s and strongly recommends that, in the case of young offenders, councils take an alternative approach to issuing fixed penalty notices in all but the most exceptional cases and that they should be issued only as an absolute last resort. The guidance will be amended to make this point more clear and to highlight that the rights and welfare of the child must always be of paramount importance when considering any course of action.
8. Taking enforcement action against young people is ultimately a political decision for individual councils to make. However, it

is anticipated that they will generally not take such action but will instead, as they do at the moment, rely on both education in schools and youth groups and advertising campaigns to reach younger age groups. In the extremely rare cases in which a council feels there is no alternative but to issue a fixed penalty notice to someone under the age of 18, the guidance outlines the issues that should be considered and the rules that must be followed to protect the rights of young people.

9. The guidance provides councils with a number of examples of alternatives to issuing FPNs, viz:-

- schools based education;
- warning fixed penalty notices, which are issued but without penalty;
- letters to parents/guardians; and
- explanation of the law and the opportunity to rectify the situation e.g. by picking up the litter that was dropped.

It has been suggested that interaction with local youth clubs and community groups can also be an effective way of getting the message across and changing behaviour and the guidance will be amended to reflect this.

10. The guidance will make it clear that more stringent approaches such as Anti-social Behaviour Orders should only be considered in the most exceptional circumstances and then only by councils working in partnership with the Youth Justice Agency and PSNI.

11. The Department refutes that it did not try to ensure the consultation document was circulated widely. It was sent directly to those children's organisations that had previously shown an interest in the issue of fixed penalty notices as well as being advertised in the three main local newspapers and on the Department's website.
12. Details of other comments raised and the Department's response to those comments are set out below.

Issue	Raised By	Departmental Response
1. Do you have any views on the ranges proposed in the draft Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations (Northern Ireland) 2012 ?		
<p>The Kennel Club commends the guidance on fixed penalty notices (FPNs) on its attempt to differentiate the fixed penalty costs according to the offence. Furthermore, it welcomes the guide's scope of persons or bodies who may issue FPNs and for allowing discounts for early payments.</p>	Kennel Club	Noted
<p>Where fixed penalty provisions currently exist, the proposed range permits for an increase in these penalties - this is welcomed. It is noted that the permitted range is fairly limited, which will ensure some degree of consistency between councils, whilst also allowing for local circumstances to be taken into account.</p> <p>However the range is below the current fines being imposed in the courts for these offences. The default sum is close to the maximum permitted amount, it could be inferred councils are being encouraged to set their local penalty at the higher end of the scale, again this is welcomed.</p>	Coleraine BC Ballymena BC	Noted
<p>It is the view of the council that the ranges are satisfactory. It is anticipated that in the current economic climate the lower limit of £50 for litter, unauthorised literature on land, graffiti and fly posting, dog control orders and audible alarm cases would be chosen and £75 for Street Litter Control Notices and noise from domestic premises.</p>	Limavady BC	Noted
<p>Derry City Council is broadly supportive of the ranges as proposed. Council is of the view however that penalties with regard to street litter control notices and litter clearing notices should be set at the upper limit.</p>	Derry CC	Noted
<p>It is noted that the permitted range is fairly limited, which in effect nullifies any meaningful decision on behalf of the district council. There should be a widening of the permitted range to permit district councils to set a fixed penalty amount that</p>	Antrim BC	The Department is keen to ensure that the level of fixed penalty for the same offence does not vary widely between

<p>reflects their particular council area.</p> <p>It is noted that other offences under the CNEA can be discharged by the payment of a fixed penalty but at a specific rate and cannot be set by the district council (e.g. noise from licensed premises). If the Department has concerns relating to inconsistency across district councils it might be better that all fixed penalties are similarly set.</p>		<p>council areas. However, rather than set fixed amounts for all offences, the Department feels it is important to give councils some flexibility in setting the rates for certain offences depending on whether those offences are a particular problem in that council's area.</p>
<p>The local discretion to set the level of fine afforded by way of the fine ranges is welcomed but it is noted that the ranges are very limited within a defined range. Discretion for councils to set their own lower and upper limit for fixed penalties would be welcomed. This would ensure that the costs of administering the new provisions are fully met. It is appreciated that this would have to be carried out in an open and transparent manner with councils providing robust figures that accurately reflect all associated costs.</p> <p>This approach would be particularly applicable in the case of fly-posting and graffiti offences where the cost of removing the graffiti/fly-posting should be incorporated into the fine, so that full recovery of the costs incurred by councils can be recovered through this process.</p>	<p>Belfast CC NILGA Armagh CDC</p>	<p>Although councils will be able to keep the receipts for the fixed penalties that they issue to help them carry out certain functions in respect of local environmental quality, full cost recovery has never been the intention of the fixed penalty regime. Fixed penalties are an effective and visible way of dealing with low level environmental crimes. If used properly, they can provide an effective deterrent, avoid the cost to councils of taking a court action and are likely to lead to a reduction in general clean-up costs.</p>
<p>The range is quite limited and does not provide councils with the scope to define a wider range of fines where this may be necessary.</p>	<p>Cookstown DC</p>	
<p>The level of proposed fines makes little distinction between an individual depositing litter and a large commercial undertaking which may fail to keep its retail car parking space clear of litter and debris under a "Street Litter Control Notice". The level of potential fines should be graduated to reflect the scale and</p>	<p>Cookstown DC</p>	<p>The comments suggesting changes to the fixed penalty amounts and ranges for various offences are noted. However, the majority of those who responded to the consultation</p>

<p>extent of the offence to which it relates.</p>		
<p>£50 would be the preferred lower limit for all offences for consistency and simplicity, to increase the likelihood of payment and prevent the need for legal proceedings and expensive legal fees.</p>	<p>Limavady BC</p>	
<p>Extending the lower and upper limits from £40 to £200 for graffiti and fly-posting offences would at least allow Councils the ability to recover some of the financial burden that the new regime will introduce.</p> <p>If the system is to remain un-changed, it is felt that the default amount of £75 for the offence of failing to nominate a key holder within an alarm notification area may not be high enough to act as sufficient deterrent to landlords. This new power will bring an additional administrative burden – such as the extent of communication/notification required by the new legislation in designating an alarm notification area. It is therefore recommended that this offence should fall within the £75 to £110 range with a default of £100.</p>	<p>Belfast CC NILGA Armagh CDC</p>	<p>exercise are content with, or have made no comment on, the ranges proposed. The Department is therefore of the view that these ranges should be introduced at this stage. However, the situation will be monitored and should the ranges prove to be inappropriate, they can be amended in the future by way of subordinate legislation.</p> <p>Although councils will be able to keep the receipts for the fixed penalties that they issue to help them carry out certain functions in respect of local environmental quality, full cost recovery has never been the intention of the fixed penalty regime.</p>
<p>It is the view of Elected Members that the maximum penalty should be higher for repeat domestic noise related offences.</p>	<p>Antrim BC</p>	
<p>TIDY Northern Ireland believes that both the upper and lower levels of fixed penalty notices should be set higher than proposed in order to offer a meaningful and effective deterrent. TIDY Northern Ireland argued against the current default amount of £75 for littering, etc offences. Given the £30 million plus cost of street cleansing (and accepting that not all of this cost is solely due to littering or dog fouling) there should be a greater element of polluter pays built into the penalty system.</p> <p>Fines should range from an absolute minimum of the default values and should rise to double that figure (£150).</p> <p>Often fines can be lower in court than the fixed penalty, but this is rarely the case when one adds in the costs usually added to the fine. It is also worth noting that</p>	<p>Tidy NI</p>	<p>Whilst it may appear desirable to increase the amount of various fixed penalties substantially, a balance needs to be struck between providing an adequate deterrent to offences being committed 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</p>

<p>there is evidence to suggest that even in court cases where the council has lost, the result has still been increased compliance with legislation.</p>		<p>higher than the likely fine in the event of non-payment.</p>
<p>NILGA believes that consistency in application of the fines across the 26 councils in Northern Ireland is important, to assist in communication to the public and in building public understanding of the legislation. We will therefore work to encourage councils to work together to develop a strong message in relation to fines that may be imposed</p>	<p>NILGA Armagh CDC</p>	<p>The Department feels it is important to give councils some flexibility in setting the rates for certain offences depending on whether those offences are a particular problem in that council's area and welcomes the idea of councils working together to develop a strong message to the public.</p>
<p>The Council believes that the discretion to vary the fines within defined ranges will lead to some confusion for the public, particularly if the twenty six Councils throughout Northern Ireland lack consistency in the amounts of fines imposed for the various offences. Belfast City Council has run advertising campaigns over the last seven years as part of its anti-litter campaign which makes reference to the £50 fines that are imposed for littering. The Council is aware through research, following our advertising campaigns that most people remember the amount of fine that is imposed for littering. This may impact on any future advertising campaigns, particularly where an advertisement campaign is launched on a province wide basis as the key message may be weakened if the monetary fine cannot be mentioned.</p>	<p>Belfast CC</p>	
<p>Seriously concerned that what has to date been a simple clear message about littering (albeit one that has not been adequately promoted or enforced) is set to become one of 26 fragmented voices. Different approaches, levels of fines and early payment discounts will all confuse the public. In addition this will open up possibilities of negative "postcode lottery" type headlines for councils that want to make the biggest impact on this behaviour, particularly where neighbouring councils are enforcing more leniently with regard to the level of fines or discounts on early payment. We believe that Northern Ireland is simply too small to offer this level of variation/confusion. A joined up approach to implementing this legislation</p>	<p>Tidy NI</p>	

is therefore required.		
<p>Previous experience has demonstrated that the Department has been slow to raise the level of fixed penalties (for instance the level of fixed penalty for a dog straying is £10 and has not been raised since the relevant legislation's introduction in 1983) and a broader range of fees may be appropriate to allow the Council to ensure that the level of penalty remains a suitable deterrent.</p>	Ards BC	<p>The fixed penalty for a dog straying is a matter for the Department of Agriculture and Rural Development. The majority of those who responded to the consultation exercise are content or have made no comment on the ranges proposed. The Department is therefore of the view that these ranges should be introduced at this stage. However, the situation will be monitored and should the ranges prove to be inappropriate, they can be amended in the future by way of subordinate legislation.</p>
<p>The legislation should provide more flexibility for longer periods to pay for those who may be classified as vulnerable members of society, e.g. those on benefits.</p>	Cookstown DC	<p>Payment of fixed penalties by those on benefits or on low income will be a matter for individual councils to consider based on circumstances.</p>
<p>Further reductions for low income households should be considered and exemptions made for cases involving people with physical or mobility disabilities.</p>	Kennel Club	<p>This is dealt with in Section 5E of the guidance – Alternative Payment Options.</p> <p>Exemptions from committing certain offences have been provided in other parts of the Clean Neighbourhoods legislation for people with physical or mobility disabilities. However, when</p>

		such a person commits an offence for which there is no exemption, the Department does not consider that they should be exempt from paying the fixed penalty for that offence.
2. Do you have any views on minimum amounts for the early payments of fixed penalties?		
The proposed ranges for dog control orders are fairly priced but would suggest £40 as the early payment amount.	Kennel Club	The Department acknowledges that under the proposals, for fixed penalties in the range £50 - £80, those councils who choose to set the level of penalty at £50, will not have the option of offering an early payment discount. In order to rectify this situation, the Regulations will be amended to provide that the minimum amount for early payment is £40.
The discounted penalties are set at the current rate of fixed penalty, where penalties exist. There is no current early discounted period, the fact that this has been introduced is welcomed as it is hoped this will encourage high payment rates.	Coleraine BC Ballymena BC	
It is recognised that discount for early payment is a commonly used tool to encourage payment of fines in other fields of enforcement. For district councils wishing to offer discounts for early payment, we would agree that the proposed rates of discount are appropriate.	Antrim BC	
Belfast City Council welcomes the opportunity to offer a discount for early payment of fines. It is unclear whether the discretion to offer discounts will prove to be worthwhile in terms of increased payment rates and this will only become more apparent as the powers are exercised and payment rates reviewed. The Council believes that it would be beneficial to have the lower range for discounted payment starting at £40 instead of £50 as it is more likely to act as an incentive resulting in early payment.	Belfast CC	
The minimum amounts are set too low. In essence the current suggestions mean no increase in fines for littering where discounts are offered; resulting in no	Tidy NI	

<p>increase in deterrent value of the Act. Minimum amounts should equate to the default values.</p>		
<p>The ability to offer discounted rates is welcomed as it would encourage early payment saving additional administration in the following up of unpaid notices. Instead of specifying the amount in monetary terms however it should, for the purposes of the legislation, specify the amount in percentages. The Council may wish to introduce a fixed penalty notice at a higher or lower rate from that set in the standard default rate. For instance the Council may want to set a fixed penalty of £50 for littering but would still wish to provide a discount for early payment. Under the present proposal this would not be possible.</p>	<p>Ards BC</p>	
<p>To simplify the payment process it would be Limavady Borough Council's view to choose the lower limit to avoid use of the discounted procedure.</p>	<p>Limavady BC</p>	<p>District councils are under no obligation to offer an early payment discount – this is just an option they can choose to use if they feel it would encourage payment of the fixed penalty.</p>
<p>Derry City Council is supportive of reduction in rates for minor offences but that these should not be offered for more serious environmental infringements as the reduction in rate for prompt payment may not deter habitual offenders.</p>	<p>Derry CC</p>	
<p>Concerned that 14 day (payment) and 10 day (discounted payment) timeframes are too short and should be increased to 28/14 days respectively. Discussions with the Department regarding this matter have confirmed that it would require primary legislation. It is disappointing to note that timeframe was given little consideration and by the Department's own admission, merely copied from the 2005 Act.</p>	<p>Ballymena BC</p>	<p>The 14 day timeframe is contained in the Clean Neighbourhoods and Environment Act (NI) 2011 which has been passed by the Assembly and is the same as for fixed penalties currently issued under the Litter (NI) Order 1994. This issue wasn't raised during consultation on the Bill and it is felt that it is important to allow the provisions of the Act to "bed in"</p>

		<p>before considering any changes to them.</p> <p>The timeframe for discounted payments (should the council choose to offer one) is a matter for an individual council to determine. However, it must obviously be less than 14 days and to avoid confusion, the Department recommends that it should not be more than 10 days.</p>
3. Do you have any comments on the draft guidance?		
<p>Many of the requirements of the CNEA 2011 will need clear and concise technical guidance to enable consistent and satisfactory implementation. NILGA will continue to encourage the Department to work with local government to produce appropriate new guidance or to revise existing guidance, and to allow sufficient time for this vital activity. Appropriate guidance is necessary both for councils and for the public, and NILGA would therefore welcome the provision of this guidance.</p>	<p>NILGA Armagh CDC</p>	<p>Noted</p>
<p>Belfast City Council believes that the information contained within this Guidance will contribute to an improved regulatory culture and will shape processes that are fundamental to enforcing fixed penalty notice provisions.</p> <p>The guidance document provides some very useful strategic and operational advice in relation to the various new offences many of which overlap with the Council's existing enforcement approaches and much of which can be incorporated into specific operational policies.</p>	<p>Belfast CC</p>	<p>Noted</p>
<p>Would encourage proactive initiatives such as holding 'Responsible Dog Day'</p>	<p>Kennel Club</p>	<p>The Dog Control Orders guidance is</p>

<p>events where officers can discuss the needs of dog owners and educate the public on responsible dog ownership. Such events can be run for a small incurred cost which is often deemed to be cheaper than setting up public display notices, running a public consultation on introducing dog control orders and acquiring signs displaying information about new orders. These have led to reduction in dog related problems in other local authority areas.</p>		<p>being amended to better reflect education and awareness issues.</p>
<p>The decision to issue fixed penalties should only be taken when other forms of intervention have been considered and exhausted. The strategy for such action should cross reference other council strategies such as community safety, etc. NIACRO provides a range of practical services in partnership with statutory agencies and while the primary purpose of these programmes is to address anti-social behaviour, they often address environmental issues such as those referenced in “Guidance on Fixed Penalty Notices”.</p>	<p>NIACRO</p>	<p>The issuing of fixed penalty notices is just one tool available to district councils to tackle low-level environmental crime. The Department acknowledges that other tactics such as awareness raising and education also have a vital role to play and is aware that many councils are already involved in educational activities and events.</p>
<p>Depriving someone of money can act as a deterrent as well as a punishment. However for some people, particularly those on low income, fines may not be the most appropriate way of dealing with offending behaviour: programmes similar to those mentioned above may have greater success in challenging and changing individuals behaviour</p>	<p>NIACRO</p>	
<p>Research indicates that 5% of people fined eventually go to prison in default of payment. In real terms, that means that 2,000 people each year end up in custody, and the average time spent in prison is four days. We believe that this represents a huge waste of public resource in court and prison costs</p>	<p>NIACRO</p>	<p>The Clean Neighbourhoods legislation seeks to tackle low-level environmental crime and extends the use of fixed penalties as an alternative to prosecution because they are an effective and visible way of dealing with this type of crime. If used properly, they can provide an effective deterrent and avoid court and prison costs.</p>

<p>For those councils who do decide to introduce fixed penalties, it is essential that the grounds upon which they are issued are robust and reliable. Information received from third parties, other than statutory agencies such as the NIHE or PSNI, should, therefore, only be acted upon if it is from an approved list of sources, such as Community Restorative Justice or Northern Ireland alternatives. NIACRO would be happy to engage with DOE to assist in compiling such a list, and further consideration should also be given to potential links with Community Safety Partnerships in council areas to ensure a local focus on issues of particular concern to communities</p>	<p>NIACRO</p>	<p>District councils must be satisfied that they have a strong evidence-based case before issuing a fixed penalty. The Department has no plans to introduce restrictions on the sources of information they can use to gather this evidence.</p>
<p>The Council notes that the Guidance refers to the setting of “Targets” (p.32) as part of any enforcement strategy and acknowledges that this is a complex area. Independent research undertaken by Belfast City Council has shown that there has been a reduction in littering behaviour by 14% over the past seven years. However, the amount of fixed penalties issued by Belfast City Council in respect of littering on a yearly basis has mostly increased and the Council believes that it will be necessary to continue with the issuing of fixed penalty notices in a sustained and incremental manner, in order to have any significant impact in the long-term on littering behaviour and to sustain a reduction in littering habits.</p>	<p>Belfast CC NILGA Armagh CDC</p>	<p>Noted</p>
<p>The draft guidance highlights the advantages and disadvantages of issuing fixed penalties on the spot and through the post (p.60). Many councils issue their fixed penalty notices through the post but it should be noted that there is an array of methods of postage used ranging from first class post to recorded delivery. This matter should be considered in more detail in this section.</p>	<p>Belfast CC NILGA Armagh CDC</p>	<p>The Clean Neighbourhoods and Environment Act (NI) 2011 does not direct that a fixed penalty notice should be issued in a particular manner. It is therefore a matter for the district council to decide the manner in which a fixed penalty notice should be issued.</p> <p>Section 24(2) of the Interpretation Act (Northern Ireland) 1954 (c.33)</p>

		explains how the service of a document <u>may</u> be effected where an enactment authorises or requires a document to be served on any person without directing it to be served in a particular manner. Councils should be aware of the content of section 24(2) in reaching decisions on their approach to issuing fixed penalty notices.
The draft guidance gives two examples of how litter from vehicles can be addressed with the view to gathering evidence to issue a fixed penalty notice (p.62). The normal route for investigation would in all cases start with the use of an Article 20 Information Notice contained within the Litter Order 1994, following the receipt of information from the DVA about the details of the registered keeper. Many councils have developed their processes around this method of investigation and through experience, it has been found to be the most expedient way of obtaining the information with a view to the issuing of a fixed penalty notice. Investigation by this method should be referenced in this part of the document under the heading of “Vehicle litter”.	Belfast CC NILGA Armagh CDC	The guidance will be amended to include reference to this method of investigation.
It is believed that the option to pay fixed penalty notices by instalments is an option that is difficult to manage and introduces an additional administrative burden, particularly if the payments cease prior to full payment of the fine. This would leave Councils in a difficult position to pursue the case through the Courts. The option to allow payment over a longer period of e.g. one to two months would be a lot easier to manage and is an option that is currently offered by various councils.	Belfast CC NILGA Armagh CDC	Noted. Payment by instalments is just one possible option for securing payment of a fixed penalty and councils are under no obligation to use this method.
Reminder letters have been found to help improve payment rates. It is also useful	Belfast CC	Noted.

<p>when bringing cases before the courts, that the council is able to show that the individual concerned was provided with a second opportunity to pay the fine before court proceedings were instigated. It does add another administrative layer to the process but it is cheaper to do this if the fine is paid, than to have to prepare the case for court and pay the additional expenses which are associated with processing cases for court.</p>	<p>NILGA Armagh CDC</p>	
<p>It is noted that the Department has not sought a view on the fixed penalty rate of £500 for noise offences from licensed premises. In view of the fact that this is a new power and there is no discretion available to district councils to set a level, we would recommend a review of this amount after a relevant period of time, to examine payment rates and level of fines issued by a Magistrate in the event of prosecution for non-payment.</p>	<p>Belfast CC NILGA Armagh CDC</p>	<p>The fixed penalty rate of £500 was consulted on as part of the consultation on the Clean Neighbourhoods and Environment Bill and is now contained in the Clean Neighbourhoods and Environment Act (NI) 2011 which has been passed by the Assembly.</p> <p>It is felt that it is important to allow the provisions of the Act to “bed in” before considering any changes to them but the situation will be monitored.</p>
<p>4. Are there any other sources other than the Driver and Vehicle Agency (DVA) which councils use for the purpose of information gathering?</p>		
<p>Access to the databases of NI Housing Executive, Electoral Office and Land and Property Services (Rating/Land Registers) would be useful to enable effective implementation of this legislation</p>	<p>Ballymoney BC</p>	<p>The guidance will be amended to include the additional sources of information used by councils. It is up to each district council to put its own arrangements in place for obtaining the information it requires but it is</p>
<p>District councils have a number of alternative sources of information that can be used, depending on the nature of the information required. Most commonly, information on the identity of the occupants of domestic premises can be sourced</p>	<p>Antrim BC</p>	

from NIHE, Land & Property Services and, in the case of private rental property, local letting agents.		expected that the information gathering powers contained in Article 20 of the Litter (NI) Order 1994 and sections 39 and 47 of the Clean Neighbourhoods and Environment Act (NI) 2011 will be particularly useful.
Council also seeks information from Land Registry and landlords such as NIHE.	Limavady BC	
The Council uses other agencies to gather information including Land Registers, NI Electricity, Rate Collection Agency, DRD Roads Service, the Companies Register, NI Housing Executive and the PSNI.	Belfast CC	
In the context of section 6 of the consultation document there is no other process for gathering of information other than through DVA and a subsequent Article 20 notice.	Coleraine BC Ballymena BC	
DVA remains the primary source for tracing potential offenders. It would be of practical benefit if agreed information sharing protocols could be established with other Government databases, e.g. social services, HMRC	Cookstown DC	
Derry City Council is of the view that other statutory agencies such as the PSNI, NIHE, housing associations, Land and Property Agency etc may be potential sources of information and that protocols should be put in place with these organisations to facilitate the exchange of relevant data.	Derry CC	
Councils may require access to information pertaining to ownership or occupation of housing and other premises, which may be available through housing associations or the NI Housing Executive.	Tidy NI	
It would be of assistance if officers could also check up to date electoral registers in order, for instance, to confirm the name and address of an offender prior to the initiation of legal proceedings.	Ards BC	
Councils should encourage the local community to report dog control order issues to them by phone, email or online form.	Kennel Club	

5. Resource Issues		
<p>It is the policy of NILGA that any new government policy or initiative which increases the cost of providing local authority services must be adequately resourced by government, in line with the New Burdens Doctrine in place in England and Wales. It is the NILGA view that much of the proposed CNEA 2011 is a new burden on local government in Northern Ireland, and we would disagree with the Department view that implementation of this legislation will be cost neutral across local government. It is noted with interest that on page 28 of the consultation paper, it is acknowledged that:</p> <p><i>“Using enforcement powers and issuing fixed penalty notices to penalise offenders will cost district councils money. Even though legislation allows councils to keep the receipts from any fixed penalty notices that are paid, receipts from these notices <u>will not cover</u> the full cost of running an enforcement service.”</i></p> <p>It is clear that funding arising from the fixed penalty notice system as proposed, will not be nearly enough to resource the powers included in the CNEA and subordinate legislation, and NILGA believes that the Department should agree to ‘under-write’ any additional expenditure incurred by the Councils to implement and enforce this Act.</p> <p>The implementation of this legislation will impose a considerable burden on local government which if not eased through support of central government may result in a lack of implementation of the legislation and therefore the benefits of same will not be realised.</p>	<p>NILGA Armagh CDC</p>	<p>The Department remains of the view that, taken as a whole, the Clean Neighbourhoods and Environment Act (NI) 2011 will be cost neutral to district councils and that, through time, they could well lead to overall savings in district council costs through increased efficiency and effective, well-publicised enforcement. With limited exceptions, the Act provides district councils with additional powers rather than duties. Councils will therefore only decide to use them where there is a net benefit in doing so in the local context.</p>
<p>There has been great expectation and anticipation around the introduction of the new powers in the Clean Neighbourhoods and Environment Act 2011. The onus now lies with the Council to ensure that the enforcement of it is adequately resourced. The resourcing and training of all staff that goes with the implementation of the Act and associated Guidance will result in significant</p>	<p>Belfast CC</p>	

<p>additional costs to the Council and the revenue raised by the new fixed penalty notices provisions will not be sufficient to meet these costs. The Council believes that the Department should agree to underwrite any additional expenditure incurred by the Councils to implement and enforce the Act.</p>		
<p>SWaMP2008 notes that the job of enforcing against environmental crimes requires a thorough understanding of the relevant legislation as well as an ability to follow certain guidelines when gathering evidence. It also requires an ability to deal with members of the public in circumstances which have the potential of becoming strained. Because of this and the requirement for enforcement work to be undertaken in a fair and consistent manner and to high standards, the need for the Department to provide additional funding to councils for full cost recovery cannot be emphasised enough.</p> <p>In conclusion, it must be remembered that any strategies that are developed around the use of fixed penalty notices are integral and complementary to wider strategies that are developed to improve local environmental quality. However the success of this policy is dependent on additional support from the Department</p>	<p>SwAMP2008</p>	
<p>NILGA is currently developing an evidence base to enable local government to begin lobbying for a review of The Magistrates' Courts (Costs in Criminal Cases) Rules (Northern Ireland) 1988, which prescribes orders for the payment of costs of prosecution or defence fees for solicitors or counsel, with an upper limit of £75. It is clear that court costs to councils for the majority of these cases amount to much more than £75.</p>	<p>NILGA</p>	<p>The Department notes this with interest and recognises that councils would wish to be in the same position regarding the claiming of costs as their local authority counterparts in England and Wales.</p>
<p>5. Issues related to under 18s (not covered in paragraph 5)</p>		
<p>As we have stated previously, it is our understanding that a precedent has been set under current legislation which makes the giving of fines to under 16 year olds against the law. Para 69 of the Criminal Justice (NI) Order 2008 states that: <i>“Where a person whose age is lower than 16 is given a notice, for a parent or</i></p>	<p>Include Youth</p>	<p>Article 69 of the 2008 Order refers to fixed penalty notices given under Article 68 (Alcohol consumption in designated public places).</p>

<p><i>guardian of that person to be notified of the giving of the notice and for that parent or guardian to be liable to pay the penalty under the notice”</i></p>		<p>It allows provision to be made to ensure that a parent/guardian is made aware of any notice given to a 10-16 year old in respect of the offence of consuming alcohol in a designated public place and to make the parent/guardian liable for the payment of the penalty – it does not make it “against the law” to give a notice.</p>
<p>It is worrying that information coming from the Department seems to suggest that the responsibility for paying the fine will be that of the child or young person. This raises all sorts of questions around how a 10 year old can be expected to pay a fine. Failure to pay could then result in prosecution and criminalisation of young children.</p>	<p>Include Youth</p>	<p>The relevant legislation does not make the parent/guardian liable for paying the penalty. The guidance recognises that there may be difficulties regarding a young person’s ability to pay and indicates that where, in exceptional circumstances, a fixed penalty notice to a young person is warranted, councils may wish to consider the use of alternative payment options. The guidance will also be amended to ensure that a young person’s ability to pay should be factored into any decision to issue a fixed penalty notice.</p>
<p>The use of FPNs we submit will neither clean up communities nor stop the problematic behaviour. Instead, it will undermine good work being done within local communities to provide effective interventions and diversionary work.</p>	<p>Include Youth</p>	<p>The Department does not agree that the use of Fixed Penalty Notices will undermine good work being done within local communities. Fixed</p>

		<p>penalty notices are simply one tool available to district councils to help them tackle low-level environmental crime and the guidance will be amended to emphasise that they should only be issued to juveniles in exceptional circumstances and as a last resort. The Department fully acknowledges the importance of other methods of intervention such as education, community clean-up projects etc. Many councils are already involved in these types of activity and the Department would strongly encourage them to continue to do so.</p>
<p>While the guidance does note that a different set of rules should be used when considering the use of FPNs on children and young people and provides recommendations for dealing with different age groups, we do not believe it goes far enough in recommending that they should not be used at all for any younger children. In fact at places in the guidance they are almost recommended. We strongly recommend that the following sentence be removed from the Guidance (p.66).</p> <p><i>“However, in other areas, given a degree of co-ordination, enforcement against young people can work, and should cases end in the courts, successful prosecutions can occur.”</i></p>	<p>Include Youth</p>	<p>This sentence is not a recommendation to take enforcement action against young people. However, to avoid it being interpreted as such, it will be removed from the guidance.</p>

<p>The Guidance refers to a situation where an offence is 'straightforward and clear cut' and suggests that in this case a formal interview is not required (p69). This is in direct contravention of Article 12 of the UNCRC on the child's right to be heard and listened to and Article 6 of the ECHR on the right to a fair trial.</p>	<p>Include Youth</p>	<p>The guidance will be amended to state that any fixed penalty notice issued to a juvenile should be issued in the presence of a parent/guardian.</p>
<p>The information provided in the screening analysis is wholly inadequate. No information is given to support the claim that there is no evidence of a higher intake by any group. We are confused as to why the Department, in question 2, states that there is no evidence that any of the section 75 categories have different needs ,experiences, issues and priorities in relation to this issue, but then has gone on to include a specific section on young people in the guidance. We believe that the guidance should have been screened and a full EQIA conducted.</p>	<p>Include Youth</p>	<p>As the guidance on fixed penalties does not contain any new or revised policies to those contained in the Clean Neighbourhoods and Environment Act (NI) 2011, it did not require to be screened. However, the Department has recognised that a different approach is required in relation to issuing fixed penalty notices to juveniles, hence the inclusion of a section in the guidance specifically on that subject.</p>

<p>We would be interested to know if the implementation of this guidance will be subject to inspection by Criminal Justice Inspection NI, given that it is criminalisation of children by the back door and appears to be using the criminal law to pursue what is low level problematic behaviour and negative attitudes to children and young people.</p>	<p>Include Youth</p>	<p>The Department rejects the assertion that it is seeking to criminalise children by the back door. The activities for which fixed penalties can be issued are offences under the NI environmental legislation and the clean-up costs resulting from these offences run into millions of pounds every year (£34 million in 2009/10). However, the issuing of fixed penalty notices is just one tool available to district councils to tackle low-level environmental crime. The Department acknowledges that other tactics such as awareness raising and education also have a vital role to play, particularly with young people, and is aware that many councils are already involved in educational activities and events. The guidance will make it clear that fixed penalty notices should only be issued to under 18s in exceptional circumstances and as a last resort.</p>
<p>As a public authority a district council is obliged to ensure that the Human Rights Act is upheld, so it must uphold a contractor to these standards.</p>	<p>Human Rights Commission</p>	<p>The guidance will be amended to reflect this point.</p>

<p>It is noted that the guidance states that there is “no obligation” for a district council to offer an appeals process but that it considers it to be “good practice” to offer one. Commission strongly endorses the view that clear and transparent appeal processes are put in place in each district councils, so as to allow individuals access to a process whereby grounds for contesting a fixed penalty notice can be fully considered.</p>	<p>Human Rights Commission</p>	<p>There is no legal requirement under the provisions of the Clean Neighbourhoods and Environment Act (NI) 2011 to offer an appeals process in relation to the issue of a fixed penalty notice. However, the Department notes the Commission’s view and will amend the guidance to reflect this point.</p>
<p>Net widening through an ‘over-enthusiastic’ application of the fixed penalty notice, or in pursuit of meeting targets, may run the risk of minor offending behaviour that may previously have been disregarded or dealt with informally, escalating to the use of a penalty. Clear guidance must be put in place to ensure that responses are proportionate, reasonable and fully accountable.</p>	<p>Human Rights Commission</p>	<p>The guidance makes it clear that fixed penalty notices should only be issued where there is sufficient evidence of an offence having been committed and emphasises the need for authorised officers to be adequately trained in when and how to issue fixed penalties. It also highlights alternatives to issuing a fixed penalty such as education and awareness initiatives, offering the person the opportunity to rectify the situation (e.g. by picking up litter they have dropped) and issuing a verbal or written warning without a penalty.</p>

Respondees: 25

Antrim Borough Council
Ards Borough Council
Armagh City and District Council
Ballymena Borough Council
Ballymoney Borough Council
Belfast City Council
Children in Northern Ireland
Children's Law Centre
Coleraine Borough Council
Cookstown District Council
Derry City Council
Down District Council
Disability Action
Human Rights Commission
Include Youth
Judicial Appointments Commission NI
Kennel Club
Limavady Borough Council
Newtownabbey Borough Council
NIACRO
NILGA
NI Ombudsman
North Down Borough Council
SwAMP2008
Tidy NI