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REPORT AUTHORISATION FORM 4.C.214***

**CITY OF CARDIFF COUNCIL  
CYNGOR DINAS CAERDYDD**

**CABINET MEETING DATE: 12<sup>th</sup> November 2015**

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**CITY OPERATIONS – BROADENING ENFORCEMENT POWERS  
TO IMPROVE THE PUBLIC REALM**

**REPORT OF DIRECTOR**

**AGENDA ITEM:**

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**PORTFOLIO: Environment**

**Reason for this Report**

1. To delegate the authority to the Director of City Operations, in consultation with the Cabinet Member for Environment and Cabinet Member for Transport, Planning and Sustainability as appropriate to make use of the new powers and set fine levels in order to tackle environmental crime in Cardiff.
2. To invite the Cabinet to endorse the consultation work for the introduction of wider enforcement powers in relation to controlling distribution of free literature (such as flyers and posters) and also the consideration of dog controls across Cardiff.
3. To provide policy and operational guidance on Fixed Penalty Notices for Highway and Environmental Offences and confirm a clear and transparent approach within Neighbourhood Services.
4. To delegate the authority to the Director of City Operations, in consultation with the Cabinet Member for Environment to explore a 12 month commission based trial with an external partner for the issuing of fixed penalties such as littering, highways and dog fouling fines, such that staff can focus on waste presentation and increasing recycling.

**Background**

5. City Operations is committed to delivering on the Councils Corporate Plan commitment to have green flag parks and open spaces, as well as delivering new ways of working across the Directorate. Designed to ensure that a high quality City environment includes an attractive public realm, having clean and well managed streets as well as challenging poor social responsibility in neighbourhoods.

6. The Council has powers to issue Fixed Penalty Notices (FPNs) via a wide range of environmental legislation which the Council use to ensure the streets and open spaces are kept clean and free from litter and nuisance.
7. The Directorate has undertaken a review of the existing and new legislation, plus the approaches that can be used to protect and enhance the street scene and open spaces. By adopting existing and new legislative powers and delivering alternative approaches to enforcement, this will help transform ways of working, so therefore improve controls on the environment and enable swifter action against those that offend.
8. The wider powers (detailed in Appendix 1,2 & 3) outlined in this paper can be used to improve the control over the following areas, but not limited too;
  - i. Dog fouling and control of dogs
  - ii. Litter and nuisance from litter
  - iii. Control of Printed literature (Fly posting and flyers)
  - iv. Skips on the highway, A-frames, Table and chairs
9. These are all issues that repeatedly appear as priorities in public consultation surveys. Dog fouling, fly posters and litter can quickly spoil an area. Additionally, street clutter and uncontrolled placement of items such as skips and A-frames can cause obstructions to pavements and roads.
10. Within City Operations there are a range of teams that are currently authorised to undertake enforcement activities around the city. These teams (Waste Enforcement, Park Rangers and Highways Enforcement Officers) will work closely together redefined as an integrated part of Neighbourhood Services to jointly deliver these new powers, as well as ensuring a efficient, fair and consistent approach to environmental crimes.
11. However, with the growing work demands for environmental crime enforcement, it should be noted that some activities such as littering and dog fouling fines can be undertaken by the Council or delegated to a third party. Often Councils delegate this work to third parties in order to tackle the problem of littering, while maintaining their own teams to manage more complex processes.

## Issues

12. The street scene and open spaces of Cardiff is impacted when certain activities are not controlled;
  - i. Skips on the highway can cause obstructions and waste issues;

- ii. A-frames advertising or table and chairs on the pavements and walkways can be a positive to local businesses, but if uncontrolled cause an obstruction to pedestrians;
  - iii. Flyers and posters can cause litter and make an area look untidy;
  - iv. Dog fouling and litter can be a health concern and spoil open spaces and the general environment.
13. The issue of dog fouling and litter, in particular smoking litter still remain a problem on Cardiff's streets. The percentage of dog fouling on the streets of Cardiff has increased since last year. In 2014-15 dog fouling was recorded on 8.1% of streets while a part year 2015-16 survey found dog fouling to be 11.6% present. Smoking litter was the most common litter problem identified (predominantly cigarette ends). This litter was encountered on 90.7% of the streets surveyed at that time.

#### Community Protection Notices

14. As a result of the adoption of new powers (Appendix 1), the Council will increase enforcement powers to tackle non-branded takeaway litter, poor control of properties and land that lead to fly tipping or litter and also waste accumulations on private land which can have a negative impact on the surrounding community.
15. Consultation will be undertaken with key stakeholders such as landlords; City Centre businesses, appropriate landowners and also the Chief of Police prior to implementation. Once in place, a breach of a notice would result in a £100 fine, or the Council can undertake remedial works and reclaim the costs from the offender.

#### Public Space Protection Orders (PSPO)

16. The Council does not currently have any dog controls in place across the City to control where dogs can go, whether they need to be on a lead or how many dogs a person can control at any one time. The Council does however enforce dog fouling on the public highway and Council land. This results in a fine of £80 for irresponsible dog owners that let their dogs foul without removing it. By adopting the order, the Council will have wider controls and any breach, including dog fouling, would result in a £100 fine.
17. It should be noted that there are growing concerns across the UK regarding attacks by dogs. As at September 2015, 31 people have been killed by dog attacks. The aim is to encourage responsible dog ownership and reduce other incidents involving dogs such as; straying, dog bites, attacks, dog fouling on sports pitches, streets and green spaces. Such controls in play areas could also prevent problems becoming more serious and thus reduce the number of dog bites. Warnings can also be given to individuals who allow their dogs to roam freely without control causing nuisance in the communities. The Council will also seek to provide suitable dog walking areas in the locality, where other restrictions are in place.

18. Prior to the introduction of these Orders, the Council will consult relevant representatives in the local community.

Control of Printed literature (Fly posting and flyers)

19. One area of growing environmental concern that impacts on Cardiff's street scene is the distribution of literature. When they are discarded, they; blight public spaces, have a negative visual impact on an area, increase litter in an area and contribute to antisocial behaviour. This also impacts on the cleansing services by requiring additional time, resources and money to remove the excess litter.
20. Particular areas of concern are the City Centre, student areas, including halls of residence and local community centres. Often businesses and community leaders raise their frustrations about the mess and litter that free literature can produce. By declaring control zones, any business or organisation wishing to distribute free materials must gain a licence. The cost of the license will cover;
- i. the administration and consent of the application fee
  - ii. contribute to cleansing costs of any potential litter created
  - iii. prescribe the rules they must follow and;
  - iv. how they will support the removal of any waste created from their activities.
21. The Enforcement Team has engaged with several of the commercial businesses whose flyers and leaflets (printed matter) have been regularly causing additional litter. There have been varying responses from these businesses on their responsibilities towards the litter they create and to date the problem is growing rather than reducing.
22. Following a consultation exercise the Council can designate zones. Anyone wishing to distribute free literature within designated zones in the City would have to first apply for a licence. Failure to adhere to, or not having appropriate approval, will result in a £100 fine. Further details can be found in Appendix 2.
23. There is no need to obtain consent to distribute leaflets by, or on behalf of a charity, for political or religious purposes. All other non-commercial organisations are required to obtain consent within the declared zones. Those failing to obtain or follow the terms of their license can be fined £100.

Issuing of Fixed Penalty Notices (FPNs) by Highways Services

24. The Highway Service issues a significant number of licenses for permissions relating to the highway and deal with approximately 1300 enquiries with regards to licensing and enforcement issues per year. The issuing of a Fixed Penalty Notice (£100) for failure to adhere to license conditions or not seeking the appropriate permissions will deliver a swift resolution to matters, therefore supporting a clean and tidy street scene.

25. The current requirements to obtain a license to place various items on the public highway remain unchanged, but any breach will be dealt with by a FPN rather than a prosecution. These changes will be communicated to the current license holders and all new applicants.
26. The process of issuing an FPN requires Policy and Operational Guidance to assist Officers (See Appendix 3). Training sessions will be undertaken to develop and train delegated Officers with regards to the Policy and Operational Guidance and to enable consistency with issuing of FPNs across City Operations.

#### Litter Enforcement support

27. The enforcement of littering and dog fouling can be time consuming and not always cost effective for Enforcement Officers and Park Rangers to undertake, yet remains a constant high priority in the annual Ask Cardiff Surveys. The Enforcement Officers and Park Rangers cover a wide range of activities to keep our public realm clean and attractive. Undertaking patrols for those dropping litter or dog fouling takes their time away from other core duties.
28. The number of fines issued for littering by pedestrians range from 550 to 700 fines per year and contributes to less than 5% of all the activity undertaken by Council teams. This is not a negative reflection on the teams, as they cover a far wider remit of enforcement duties. With the recent recycling collection changes and pressure to meet the statutory recycling target the priorities must remain on waste presentation issues, which prevents litter and recycling education.
29. It is proposed to deliver a 12 month trial, with a third party company to take on the aspects of littering, dog fouling and other FPN patrols in order to maximise the activity and control in these areas. This will then free up existing officer time and allow them to support the recent collection changes, litter prevention and provide recycling education support into Communities. The trial will be commission-only based with no set up costs for the Council. They will take a percentage of the income generated from fines, with the remainder of the income returning to the Council.
30. The use of private security firms to deliver these types of environment enforcement roles is common practice for Councils to adopt a cost neutral basis. They are fully licensed and controlled by strict guidance on vetting and data protection. UK Councils have seen increases in the number of littering FPNs as a result, some as much as ten fold increases. Cities such as Birmingham, Leeds and London have such arrangements in place, along with many other Councils. They are also used in Welsh Authorities such as Swansea, Blaenau Gwent and Denbighshire. Denbighshire Council secured over £300,000 of fines in just 15 months when they secured such an arrangement. At the same time Denbighshire was also rated as having the cleanest streets in Wales by the independent assessments conducted by Keep Wales Tidy and their litter survey.

31. The third party would be trialled on a 12 month basis to deploy a team of trained, licensed and uniformed Enforcement Officers into Cardiff. They could operate seven days a week and evenings, hence covering times when it is less cost effective for staff to cover, for example; supporting the night time economy. A partner would be required to be committed to the living wage and be encouraged to seek the employment of local people. This will not replace existing enforcement staff, but complement existing work and bolster the Councils resources to jointly tackle environmental crime on Cardiff's streets and open spaces.
32. The benefits that such an approach could take will include;
- i. Increased activity and coverage against those dropping litter, breaching licence conditions and letting their dogs foul.
  - ii. No additional costs to the Council.
  - iii. Operate seven days a week and evenings.
  - iv. Provide local jobs, committed to the living wage
  - v. It is expected that the fines income will increase and this can be reinvested back into other enforcement activity.
  - vi. By removing littering patrols from the team's work load this will free up existing enforcement officer time to focus on recycling education and correct waste presentation, other key community issues.
33. This approach is widely used by other Authorities to bolster their littering enforcement activities. It will also assist the Council in developing a detailed business case of the best future option to tackling littering. The current size of the enforcement team and work demand levels prohibit the ability to allocate officers to full time littering patrols and therefore have been unable to determine if the in house approach can be self-financed. This approach will supplement, not replace existing enforcement work and will form an integrated approach to Neighbourhood Services.
34. A trial of this nature is expected to yield a net minimum of £50,000 to the authority next year as part of Neighbourhood Services activities, with any surplus being reinvested back into the enforcement activities that the Council undertake. The other new policies will be resourced and supported from the fines recovered by the Council's enforcement activities and third party commission contributions.

#### Local Member consultation (where appropriate)

35. All local Members will be provided with opportunity to provide their feedback through the consultation exercises. Where draft zones and proposals impact on specific wards, they will be provided with the initial information to provide comment.

#### **Reason for Recommendations**

36. To seek approval for consultation of the various enforcement activities in accordance with the relevant legislation before formal adoption by the Council.
37. To increase the environmental controls in order to tackle issues such as waste accumulations; littering; dog fouling; skips and the licensed street scene within Neighbourhood Services.
38. Seek new opportunities to reduce the Council's expenditure and increase income opportunities to keep Cardiff's streets and open realm clean and controlled to prevent irresponsible approaches to litter and dog fouling.

### **Financial Implications**

39. This report outlines proposals for the extension of enforcement powers including associated fixed penalty notice fine income which will be ring fenced for that specific enforcement area. A trial involving an external third party is proposed for littering and dog fouling enforcement. The report assumption is that this trial will be undertaken at no additional cost to the council with the potential for upside gain-share for additional income. This arrangement has not been marked tested and the procurement of the third party operator will confirm if this assumption is achievable.
47. Set-up costs including consultation will be funded from existing resources. If expenditure is to be funded from FPN fine income then timing / matching implications will need to be considered with expenditure likely to be incurred in advance of income being received.
48. Any Third Party operator selected by the Council will need to have adequate insurance arrangements in place. A minimum indemnity limit of £5m is suggested to cover the risk of claims caused by the action of the third party operator including claims if fines have been inappropriately issued as a result of procedures not being followed correctly

### **Legal Implications (including Equality Impact Assessment where appropriate)**

49. The Legal Implications are set out in detail in the body of this report.
50. The procedures (including consultation) for making Public Spaces Protection Orders and designating land for the free distribution of printed matter zones must be followed fully as set out in the legislation.
51. With respect to the proposed 12 months trial, for any procurement the council should comply with its contract procedure rules, EU procurement regulations (as applicable) and the EU treaty principles of transparency, equal treatment and non-discrimination. As to the process and contractual arrangements further advice should be sought from legal and procurement before commencement.

52. The relevant authorisations must be given to the successful company and its staff for issuing FPNs on behalf of the Council, or they will be invalid.
53. Data Protection implications (proposed 12 months trial with external partner) – The Council would be the data controller in that it is the body with the enforcement powers. The external partner, as a data processor operating on behalf of the Council would be required to comply with the principles of the Data Protection Act and would have to act on the authority of the Council. These requirements would either be set out in the contractual terms and conditions (there are currently data protection provisions in the council's standard contracts) or via a separate data processing agreement. Any processing of this nature with a third party would also need to undergo a Privacy Impact Assessment before operational to assess any privacy risks.
54. Enforcement of the various legislation must be in line with the Council's Enforcement Policy.

### **HR Implications**

55. It is not envisaged that these changes will impact on the number of employees required. This additional work may provide protection from future financial cuts through additional income from third parties. The proposals which are included in this report have been initially discussed with the Trade Unions and employees concerned and further consultation will take place following a Cabinet decision, however the basic principles are in line with the work the employees already carry out.

### **RECOMMENDATIONS**

56. To support and delegate the authority to the Director of City Operations, in consultation with the Cabinet Member for Environment and Cabinet Member for Transport, Planning and Sustainability in the development and undertaking of these new wider powers to deliver a cleaner environment across Cardiff, in particular to begin the consultation proposals on the Public Space Protection Order and Distribution of Free Literature controls in accordance with the relevant legislation before presenting for formal adoption by the Council.
57. To agree to set the fixed penalty amount at £100 for failure to comply with a components of the Anti-social Behaviour, Crime and Policing Act and Highways Act.
58. To endorse and delegate the authority to the Director of City Operations, in consultation with the Cabinet Member for Environment to explore a 12 month commission based trial, at no additional cost to the council. The third party will undertake a range of fixed penalty notice activity to supplement existing enforcement activities and pay the Council a proportion of the fines income obtained.

**NAME OF DIRECTOR:**  
**Andrew Gregory**

**Date**

*The following appendices are attached:*

*The following background papers have been taken into account*

Appendix 1 – Wider enforcement Powers

Appendix 2 – Distribution of Free Literature Policy

Appendix 3 - Fixed Penalty Notices for Highway Offences – Policy and Operational Guidance

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## Appendix 1 – Wider enforcement powers

### Summary of the Anti-social Behaviour, Crime and Policing Act 2014

This act came in to force recently, can help deliver greener and safer communities across Cardiff. This new act was passed in March 2014, with most of the powers under the act coming into force in October 2014. However, some elements of the act relating to prevention of nuisance and annoyance have been delayed until 2015, which has meant the Council is only now in a position to consider these regulations. Details of what these powers can provide are listed in this appendix

#### Community Protection Notices

- i. These are designed to stop a person aged 16 or over, a business, or an organisation committing anti-social behaviour which spoils the community's quality of life. The CPN will broaden the Councils powers in tackling accumulations of litter and waste in gardens and also enable enforcement of all litter outside businesses, where previously only branded litter could be enforced.
- ii. Section 43(6) of the Act requires any person issuing a notice, before doing so, to inform any individual or body that is felt to be appropriate. Therefore the Council will undertake consultation exercises with the targeted communities such as landlords; city centre business, appropriate landowners and also the Chief of Police.
- iii. The notice can only be issued if the individual or body has been given a written warning to cease the conduct and provided with enough time to deal with the matter. However, failure to take action will result in a formal notice. Failure to comply with this notice will result in prosecution, or the option of a Fixed Penalty Notice that cannot exceed £100. Alternatively, the Council also has the option of carrying out remedial work where the requirements of a CPN are not carried out provided that the land is open to the air. The local authority can then reclaim the costs from the "defaulter".

#### Public Space Protection Orders (PSPO).

- iv. A Public Space Protection Order (PSPO) could potentially be used, for example, to restrict parking on grass verges, prevent businesses erecting A-Boards in certain areas, control of problematical behaviour in parks etc. The Authority is currently considering the benefits for dog controls to make Cardiff a safer and cleaner city that supports responsible dog owners.
- v. Once in place an order can last for up to 3 years but can be extended (and more than once). It is also good practice to put up signage in the controlled areas.
- vi. The issues of Fixed Penalty Notices for the offences of littering under the Environmental Protection Act 1990 and failure to comply with a Dog Control Order as introduced under the Clean

Neighbourhoods and Environment Act 2005, will continue until the new notice is in effect.

- vii. These types of orders are designed to stop individuals or groups committing anti-social behaviour in a public space. The PSPO replaces dog control orders and allows the authority to designate public places for restrictions. Prohibition notices can be used for specific areas and/ or times, for example stopping dogs from entering playgrounds, schools grounds or restricting how many dogs could be taken through a public area by one person.

In addition to the above act, the Council could make wider use of existing powers that are utilised under the Highways Act and Environmental Protection Act. The Highways Act use this Act to control skips on highways, A- frames and Table and chairs etc. to ensure they are correctly placed and don't cause a negative impact on the pavement or roads. To date the service has only tackled breaches through prosecutions. This process can be resource intensive and slow to resolve issues. Whilst the Environmental Protection Act can be used to control the issue of free distributed literature, such as fly posters and flyers. If uncontrolled these can cause litter and have a negative impact on the street scene.

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## **Appendix 2 – Distribution of Free Literature Policy**

### **1. The Aim**

Cardiff Council has developed a new policy to remedy the problem of additional litter on the highway from free printed matter which is having an increasing impact upon our local environment. The distribution of flyers and leaflets can make an area look run down; contribute to littering arising from such activities and antisocial behaviour.

With this policy, Cardiff Council aims to ensure that consent is required to distribute free printed matter on designated land which it owns or which is part of the highway for commercial purposes where owners/consent holders take greater ownership, take steps to reduce the number of flyers/leaflets in a designated area which will improve the visual appearance of an area, reduce waste and litter and associated anti social behaviour.

### **2. Scope**

The policy applies to all areas and commercial businesses that will be distributing flyers within the Cardiff Council boundaries.

There is no need to obtain consent to distribute leaflets by or on behalf of a charity or which are political or for religious purposes. All other non-commercial organisations are required to obtain consent.

### **3. The Law**

Section 94B and Schedule 3A of The Environmental Protection Act 1990 as amended by the Clean Neighbourhood and Environment Act 2005 allows a Local Authority to:

Make a charge on the business who appears to be the owner an amount to cover the administration and consent of the application fee and an additional fee for the number of distributors per day for limited period consents;

Every distributor will wear a dated authorisation badge issued by the council; This badge would show the consent number, the date, time and point at which the printed matter may only be distributed (within 100 metres);

The printed matter will show the name and address of the consent holder;

No free printed matter will be unattended by any distributor or the consent holder at any time;

**If the Local Authority grants permission, they can make several conditions:-**

Make a charge on the business who appears to be the owner an amount to cover the administration and consent of the application fee and an additional fee for the number of distributors per day for limited period consents;

The consent holder to keep a register of those employed to distribute leaflets on his behalf. This will be made available on request to an authorised officer. This register to be kept for a period of six months;

Every distributor will wear a dated authorisation badge issued by the council; This badge would show the consent number, the date, time and point at which the printed matter may only be distributed (within 100 metres);

The printed matter will show the name and address of the consent holder; No free printed matter will be unattended by any distributor or the consent holder at any time;

All unused leaflets/flyers collected as litter and all associated packaging and any other materials arising from the distribution process shall be removed from site and disposed of at the distributors own personal or trade waste facilities.

Free leaflets or flyers shall not encourage illegal or irresponsible behaviour nor advertise illegal events or activities.

**Offences**

Any person who distributes free printed matter in a designated place without the consent of the Council is liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2500 maximum). An offence is also committed if someone causes another person to distribute free printed matter in a designated area without consent.

Offenders may be issued with a Fixed Penalty Notice as an alternative to prosecution; the default sum has been set at £80. An authorised officer of the Council may also seize any supply of free printed matter which is being distributed without consent. The material may be reclaimed by the owner by way of application to a Magistrates Court.

The County Council may refuse to issue or revoke consent:-

**Refuse**

The Council may refuse to grant consent if it is not satisfied that conditions have not been met;

Granting consent would be likely to lead to the defacement by Litter of designated land;

If proposed distributor has previously been issued with a fixed penalty notice or has been convicted of, distributing printed matter without consent within the previous five years.

### **Revoke**

Consent may be revoked in writing either following conviction or paying a fixed penalty. It may also be revoked where the consent holder has failed to comply with any condition on the consent form.

### **Appeals**

Any person aggrieved by a decision of the Council to refuse or revoke any consent or to any conditions attached to the consent may appeal to the Magistrates court.

## **4. Procedure to Implement Schedule 3A**

Prior to the commencement date, Cardiff Council must:

- 1) Select designated land for Schedule 3a.
- 2) Issue a notice setting out its proposals. The notice must specify the land proposed to be designated (A map showing the boundary will be included).
- 3) The date on which it is proposed that the order will come into force (Must be at least 28 days from the date of notice)
- 4) Those objections can be made regarding the proposal, how they can do that and the time they can be made. (Must be at least 14 from the date of the notice).
- 5) All objections should be written to explaining the decision.
- 6) The notice to be published in at least one newspaper circulating in an area which includes the land. Post the notice on the land and publish the notice on the council internet.
- 7) If the notice goes ahead the Local Authority must issue a notice announcing the decision.
- 8) Again must circulate it in at least one newspaper
- 9) Place up notice directly on the land
- 10) Publish notice on council internet.
- 11) Resolve to adopt Schedule 3A of the Environmental Protection Act 1990 on a date now less than six weeks from the date of the Resolution.
- 12) Publish details of the policy in at least one local newspaper, indicating the general effect of the adoption of the schedule.
- 13) Review the schedule at least every year and monitor the number of consents and distributors to see if adequate steps are being taken to reduce litter.

### **4.1 Additional Information**

The charges set are required to be sufficient to cover the cost of processing application and numbers of distributors, monitoring compliance. A standard charge within the terms of legislation based on average costs. Including:

- Administrative costs arising from notification requirements(application fee and number of distributors)
- Staff Time-Monitoring compliance;
- Legal support.

The charge that Cardiff Council applies is £250 per consent application and £25 applies per distributor per day for limited period consents.

There is no need to obtain consent to distribute leaflets by or on behalf of a charity or which are political or for religious purposes. All other non-commercial organisations are required to obtain consent.

The appropriate reuse, recycling and disposal conditions are in place to ensure that additional litter discarded is dealt with appropriately and in the most sustainable manner.

All activities involved in the removal of any free printed matter is fully Health and Safety compliant

## **5. Reporting System**

Illegal distribution of flyers can be reported to the Waste Education and Enforcement Team via a number of different channels:

**PCSO's** –Can send a photograph of the distributors, together with the GPS coordinates (a system which is already in place) to the Waste Education Enforcement Team for action.

**Member of the Public/Councillors** – Can email/report flyer problems to C2C, specifying the location and quantity.

**Waste Education Enforcement Officers** – Can GPS/photo the location and log on Enforcer.

**Other Council Officers** – Can email the location, together with a map (CMAPS) and GIS location where possible.

*NB. Where possible, all reports will need to identify if there has been a consent issued to the consent holder responsible. This can be established through our database.*

## **6. Inspection of site/land**

Authorised officers will interact with distributors and monitor compliance and take action where appropriate.

## **7. Flyer Income**

The income received from the consent application and distributor's fee will be ring fenced for local enforcement.

## **Appendix 3 - Fixed Penalty Notices for Highway and Environmental Offences – Policy and Operational Guidance**

### **1. INTRODUCTION**

While prosecution remains a last resort, we continue to strive to uphold the law and deal with individuals and businesses as appropriate, in an even-handed way. The expansion of powers to issue FPNs, will give the Service wider scope to stop environmental crime, ensure licensing is in place and maintain clean and safe streets.

The fines do not replace existing methods of dealing with offences but instead, offer an alternative to the prosecution process which can often be costly and time consuming.

If Officers are unable to convince offenders to desist from committing whatever violation of the code they are committing on the spot, Enforcement Officers will be able to deal with problems immediately by issuing a FPN which may in itself, act as a deterrent to would-be offenders.

The full range of highway offences for which fixed penalty notices may be issued are listed below:

#### **Part IX Lawful and Unlawful Interference with Highways and Streets Protection of public rights**

- 130. Protection of public rights.
- 130A. Notices to enforce duty regarding public paths.
- 130B. Orders following notice under section 130A.
- 130C. Section 130B: procedure.
- 130D. Section 130B: costs.

Damage to highways, streets etc.

- 131. Penalty for damaging highway etc.
- 131A. Disturbance of surface of certain highways.
- 132. Unauthorised marks on highways.
- 133. Damage to footways of streets by excavations.
- 134. Ploughing etc. of footpath or bridleway.
- 135. Authorisation of other works disturbing footpath or bridleway.
- 135A. Temporary diversion for dangerous works.
- 135B. Temporary diversion for dangerous works: supplementary.
- 136. Damage to highway consequent on exclusion of sun and wind.

Obstruction of highways and streets

- 137. Penalty for willful obstruction.
- 137ZA. Power to order offender to remove obstruction.
- 137A. Interference by crops.
- 138. Penalty for erecting building, etc., in highway.
- 139. Control of builders' skips.
- 140. Removal of builders' skips.
- 140A. Builder's skips: charge for occupation of highway.

- 140B. Builders' skips: charge determined by reference to duration of occupation of highway
- 140C. Regulations under sections 140A and 140B
- 141. Restriction on planting of trees etc. in or near carriageway.
- 142. Licence to plant trees, shrubs, etc., in a highway.
- 143. Power to remove structures from highways.
- 144. Power to erect flagpoles etc. on highways.
- 145. Powers as to gates across highways.
- 146. Duty to maintain stiles etc. on footpaths and bridleways.
- 147. Power to authorise erection of stiles etc. on footpath or bridleway.
- 147ZA. Agreements relating to improvements for benefit of persons with mobility problems.
- 147A. Road-side sales.
- 148. Penalty for depositing things or pitching booths etc. on highway.
- 149. Removal of things so deposited on highways as to be a nuisance etc.
- 150. Duty to remove snow soil etc. from highway.
- 151. Prevention of soil etc. being washed on to street.
- 152. Powers as to removal of projections from buildings.
- 153. Doors etc. in streets not to open outwards.
- 154. Cutting or felling etc. trees etc. that overhang or are a danger to roads or footpaths.
- 155. Penalties in connection with straying animals.
- 156. Restriction on breaking up by undertakers of maintainable highways recently closed or re-surfaced.
- 157—159. . . . .
- 160. Powers as respects certain unnecessary obstructions of highways in Greater London.
- 160A. Further powers of highway authorities and district council in relation to highways.

Danger or annoyance to users of highways and streets

- 161. Penalties for causing certain kinds of danger or annoyance.
  - 161A. Danger or annoyance caused by fires lit otherwise than on highways.
  - 162. Penalty for placing rope, etc. across highway.
  - 163. Prevention of water falling on or flowing on to highway.
  - 164. Power to require removal of barbed wire.
  - 165. Dangerous land adjoining street.
  - 166. Forecourt abutting on streets.
  - 167. Powers relating to retaining walls near streets.
- Precautions to be taken in doing certain works in or near streets or highways
- 168. Building operations affecting public safety.
  - 169. Control of scaffolding on highways.
  - 170. Control of mixing of mortar etc. on highways.
  - 171. Control of deposit of building materials and making of excavations in streets.
  - 171A. Works under s. 169 or s. 171: charge for occupation of the highway.
  - 171B. Scaffolding, building materials and excavations: charge determined by reference to duration of occupation of highway
  - 171C. Regulations under sections 171A and 171B
  - 172. Hoardings to be set up during building etc.
  - 173. Hoardings to be securely erected.
  - 174. Precautions to be taken by persons executing works in streets.

- 175. Liability of certain persons in respect of materials left on highway.
- 175A. Duty to have regard to needs of disabled and blind in executing works, etc.

Miscellaneous

- 176. Restriction on construction of bridges over highways.
- 177. Restriction on construction of buildings over highways.
- 178. Restriction on placing rails, beams etc. over highways.
- 179. Control of construction of cellars etc. under street.
- 180. Control of openings into cellars etc. under streets, and pavement lights and ventilators.
- 181. Provisions relating to placing, etc. of certain apparatus in or under a highway.
- 182. Supplementary provisions as to licences under section 181.
- 183. Appeal against certain decisions of local highway authority under section 181.
- 184. Vehicle crossings over footways and verges.
- 185. Power to install refuse or storage bins in streets.

Notices of opportunity to pay a fixed penalty / fixed penalty notices (referred to as FPNs) can be issued by local authority officers for certain offences where the legislation permits and where the officer is authorised to do so. These notices provide a quick, visible and effective way of dealing with low-level straightforward environmental crimes, and an alternative to prosecution.

The process of controlling and managing Fixed Penalty Notices will utilise the ChipSide system that is currently utilised to issue Penalty Charge Notices relating to Parking and Moving Traffic Offences. This system is a process and document management system that allows the process of issuing FPN's to be defined and all information to be documented and stored.

The purpose of this guidance is to establish standardised fixed penalty procedures to be followed by all those with powers to issue fixed penalties, with guidance on the circumstances in which a fixed notice should be issued.

A fixed penalty is not a fine. Payment of the penalty by the recipient discharges their liability to conviction for the offence for which the FPN was issued. It does not constitute an admission of guilt, but removes the possibility of the creation of a record of criminal conviction.

## **2. GROUNDS FOR ISSUING A FPN**

A FPN may only be issued where an officer has reason to believe a person has committed a penalty offence and there is sufficient evidence to support a successful prosecution.

An officer may issue a FPN where the offence is of a nature suitable for being dealt with by a FPN. FPNs are designed to deal with low-level offending.

When considering a case, officers should consider the nature and seriousness of the offence. For example, the use of a FPN is appropriate for most type's offences, but, in the case of graffiti and flyposting, a FPN is only going to be appropriate at the minor end of the scale. The specific offences and the

circumstances in which an FPN is appropriate are discussed at Section 9 of this document.

Normally offences resulting in a FPN will be witnessed directly by the officer. However, an officer may consider it appropriate to issue a FPN to a suspect if they have not directly witnessed the offence, but have reliable witness testimony.

Any interview and questioning must be consistent with the practice and procedures by the Police and Criminal Evidence Act 1984, Code C.

### **3. THE OFFENDER**

A FPN should be issued only where,

- the alleged offender is compliant and able to understand what is going on, and
- there is sufficient evidence as to his/her identity and place of residence.

A FPN will be appropriate for first-time offenders and 'one-off' incidents as it is a low-level disposal and the recipient can avoid obtaining a conviction. Issuing a FPN will also be appropriate because of the extreme improbability that a person once seen committing an offence would be seen on a subsequent occasion, and in such an event, that there would be any accessible record of a previous warning which may have been given by another agency. A FPN is a means of changing offending behaviour and may be an appropriate response where a warning or a caution might have been considered.

Where a suspect is not cooperative, consideration should be given to an alternative disposal (e.g. prosecution and/or police involvement). FPNs must be issued to *and* received by the suspect. If an intended recipient of a FPN refuses, after being warned, to give a correct name and address, and identity can be established through other means, i.e. by the police, (s)he should be reported for prosecution, rather than given a FPN. It is a specific offence for a person to whom an officer proposes to issue a litter or fly-posting FPN, to fail to provide the officer with their name and address, or to give false details (see Section 10 for guidance).

A FPN *will not* be appropriate:

- where a suspect appears to be unable to understand what is being offered to them (for example, where the suspect is deaf), or there is doubt about their ability to understand English. Where such circumstances arise every effort should be made to solicit / impart the required information.
- where the suspect's behaviour suggests they have learning disabilities or mental disorder, or where the suspect is under the influence of drugs. The officer should question whether issuing a FPN and (as it will probably go unpaid) prosecution is in the public interest.
- where no satisfactory address exists for enforcement purposes. This may be where the officer has reason to believe that the suspect is homeless or sleeping rough, or where the suspect is a non-resident foreign national (i.e. not British or Northern Irish).

- where a penalty offence is known to have been committed in association with another non-fixed penalty offence.
- where an offender is **threatening, abusive or violent** to the officer. Where an alleged offender becomes aggressive or violent, the officer should ensure their own safety and seek help from the police. The offender would be dealt with by way of prosecution, either by the police or the Authority. (The officer should refer to corporate guidance on dealing with difficult situations).

A FPN *may not* be appropriate where it is known that the suspect has a previous relevant conviction or caution, or has previously been issued with an FPN (for the offence), particularly if they have not paid. The officer should inform the offender that (s)he will be reported with a view to prosecution.

#### **4. ISSUING THE FPN**

The officer will approach the alleged offender, identify him/herself and tell the person, in simple terms, which they have been seen committing an offence. The person will then be spoken with to obtain their name, address and date of birth. These details will be verified as far as practicable, and the FPN will then be issued. Documentary evidence of identity and place of residence will be requested, but not demanded, and will be preferable to non-physical checks such as the electoral register. Failure to identify a suspect prior to issue could invalidate enforcement. Police assistance will be sought where necessary. The officer must record the suspect's forename, surname, address, post-code and date of birth on the FPN. These are required for processing purposes.

When the FPN is issued, the officer should explain that it provides an opportunity to avoid liability to prosecution, and will draw the person's attention to the relevant points about making payment. The officer will advise the recipient of the FPN that in the event of non-payment, they will be prosecuted for the offence.

A person who refuses to accept a FPN from the officer must be informed that (s)he will be reported for the offence in question.

Officers will not accept payment of a fixed penalty anywhere other than the designated Council buildings.

#### **5. DISPUTES ABOUT ENFORCEMENT**

Once a FPN has been issued the recipient may decide to phone or write in pleading mitigation or contesting the fact that a FPN was issued. An alleged offender contesting a FPN should be advised that there is no obligation to pay a fixed penalty and there is no formal appeal procedure.

Whilst the Authority should review the facts of a particular case when invited, the opportunity to challenge the allegation and plead not guilty to the alleged offence at an independent hearing is open to the recipient of the FPN. This will be by way of prosecution, on summons, and trial in a magistrates' court. Any person wishing to complain about the FPN should do so in writing. Such letters may help identify any issues that need resolving or investigating before a case

comes to court. Arguments over the law, the amount of the fixed penalty, etc. will not be relevant, but claims that a defence applies will. Only in occasional circumstances will it be appropriate to withdraw a FPN or not proceed to summons on non-payment. This may be when information that was not available at the time the FPN was issued becomes available and it is determined that the offence to which the notice relates was not committed, that it would not be in the public interest to prosecute, or that the notice should not have been issued to the person who is named in the notice.

Payment of a fixed penalty by instalments will be accepted through formal payment plans.

## **6. ISSUING FIXED PENALTY NOTICES TO YOUNG PERSONS AGED 10 TO 17**

In law a local authority FPN can be issued to anyone over the age of 10. Parents and guardians are not responsible in law for paying fixed penalties issued to young offenders (in this respect FPNs differ from police issued penalty notices for disorder (PNDs)). However, a court before which a young person appears can order the parent/guardian to pay any fine it may impose.

Children's service authorities, including local authorities and police, are under a duty under the Children Act 2004 to discharge their functions having regard to the need to safeguard and uphold the welfare of children. In the youth justice system, prosecution is a measure of last resort, and usually follows a reprimand and final warning.

A FPN *will not* be appropriate where a young person's behaviour suggests they have learning disabilities, or they suffer from a vulnerability that impairs his or her understanding of what goes on. In such cases the matter should be referred to Children's Services. Any action in respect of the alleged offence can be decided on later.

The following guidance (6.5 to 6.9) does not extend to criminal damage offences committed by young persons. The disposal in those cases should be determined in conjunction with the police. The following paragraphs do apply to littering, fly-posting, noise and dog fouling/control offences.

The officer will establish the identity of the alleged offender and details of the offender's home and parents or guardians, etc. On further enquiry it will be decided whether to issue a FPN or refer the youth to a Youth Offending Team. The latter may be suitable where the youth and his family have limited means of income and the youth is at risk of getting involved in further anti-social behaviour. A FPN must not be issued to anyone who is under 10 years of age.

If the 10 to 17 year old is a first-time offender a warning letter will be sent to him/her and his/her parent/guardian. If the offence is the youth's second offence, a FPN will be issued.

Sometimes the behaviour of someone under 18 years of age may warrant more than a mere warning. Examples may include being abusive or antagonistic to the authorised officer, smashing a bottle into road, drinking alcohol and

discarding cans into a river, or throwing cans at traffic. Alternatively, the alleged offender may be known (for example following an address check by police) to be involved in other criminal activity and a letter would not effectively challenge their conduct. A FPN, or with police involvement, a Police Reprimand or Final Warning, should be considered instead. Where a FPN is issued and the matter is not referred to the police, the officer should a confidential report to be attached to the FPN explaining why (s)he came to the decision to issue a FPN. This may include details based on local knowledge or aggravating factors, or knowledge of previous offending by an individual.

In the case of a 16 or 17 year old, the FPN may be issued at the scene where it would be in accordance with this policy. FPNs issued to under 16s will be sent to the alleged offender under cover of a letter, which will also be copied to the parent/guardian. FPNs for under 16s will not be issued in the street.

6.9. Only on non-payment of a FPN, on a further occasion being caught littering, etc., or where the offender is identified as a persistent offender, would prosecution of a youth under 18 years of age be considered.

## **7. UNPAID OR CHALLENGED FIXED PENALTY NOTICES**

If the person either refuses to accept a FPN or, having accepted such a notice, does not pay before the end of suspended enforcement period (14 days), a final reminder letter will be issued giving a further seven days' notice. If the fixed penalty remains unpaid, the matter will result in prosecution (unless there is good reason otherwise). To ensure the credibility of a FPN scheme, the assumption will be that all cases involving non-payment will be referred to court.

Where a fixed penalty is refused, not paid, or challenged, the process defaults to a standard prosecution and the officer who issued the FPN will be notified.

It is the responsibility of the officer who issued the FPN to ensure that all witness statements and exhibits, including any record of interview, are sent to the relevant administration officer. This should be done within two weeks of notification.

Each case will be reviewed by senior officers, and if necessary solicitors, applying the evidential and public interest tests before a prosecution is commenced.

## **8. AMOUNT OF FIXED PENALTY**

The FPN for highways offenses will be set at £100 and cannot exceed £200 as listed for level 1 fines, under the Criminal Justice Act 1982.

## **9. CONDUCT**

Dealing with offenders who refuse to give details or who give false details  
Offences involving obstruction of officers are normally dealt with by way of prosecution. In terms of fixed penalty offences, officers should note the following guidance:

1. Offender refuses to give details or gives false details, but provides correct details after being warned, or before police arrive – it is considered appropriate to offer and issue an FPN.
2. Offender gives correct details only after being required to do so by a police officer report for summons for the original offence and for the offence of failing to give details or giving false details.
3. Offender gives false/inaccurate details, FPN is issued at time, and is subsequently paid – no further action in respect of giving false details as the offender has not pursued the objective of the offence.
4. Offender gives false/inaccurate details, FPN is issued at time and not paid, and enquiries identify the offender – report for summons for the original offence and for the offence of giving false details.

#### Rules for Issuing Fixed Penalties

1. Ensure you have all the proof necessary for the offence.
2. Be presentable, in full uniform with name badge (where appropriate).
3. Be alert, active and prepared (i.e. carry a tape measure, black ballpoint pen, camera, etc).
4. Be fair, equitable, courteous and cooperative.
5. Be firm and self confident but not over-officious.
6. Be consistent.
7. Be accurate, ensure your writing is legible and that the notice is complete.
8. Be tactful whilst maintaining a respectful and pleasant attitude.
9. Use discretion and approach each situation on its merits.
10. If you can't resolve any doubts through discussion with a senior officer or lawyer, don't issue a notice.
11. All formal interviews should be in line with the PACE code of guidance.