



Llywodraeth Cymru  
Welsh Government

# Guidance on the use of Fixed Penalty Notices for Environmental Offences

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## Fixed penalties and enforcement

1. Fixed penalties can provide enforcement agencies with an effective and visible way of responding to low-level environmental crimes such as littering, dog fouling, fly-tipping, graffiti, fly-posting and abandoned/nuisance vehicles. They can offer an alternative enforcement option to prosecuting offenders through the courts. If enforced correctly they can act as an effective deterrent and change behaviour, all of which can help land-owners deliver their statutory duties to keep relevant land clear of litter and refuse. The Welsh Government, therefore, supports the use of such financial penalties and experience has shown the public generally welcomes their use provided they are issued sensibly, enforced even-handedly and are seen as a response to genuine problems.
2. There is no obligation on an enforcing authority to offer an alleged offender the option of paying a fixed penalty. Equally an alleged offender may choose not to accept or pay a fixed penalty, and choose instead to defend the case in court (at the risk of being liable for a potentially higher penalty and costs on conviction). Since issuing a Fixed Penalty Notice (FPN) is an alternative to prosecution, if an alleged offender does not pay a fixed penalty, the enforcing authority must be prepared to prosecute them for the original offence. Failure to follow up on unpaid fixed penalty notices will undermine their effectiveness as an enforcement tool. Therefore, the authority must ensure it collects enough evidence which can be used in court that is reliable and credible.
3. FPNs should only be used for the offence for which they were created. Failing to abide by this rule may make prosecution for the original offence problematic as, if a FPN goes unpaid, it could be open to challenge in the court. This in turn could create further problems for an authority if it had employed such practice over a period of time.
4. The main legislation and regulations providing for fixed penalties for the environmental offences covered by this guidance can be found in Annex A of this document.

## Policy context

5. In Wales, the Well-being of Future Generations Act 2015 requires public bodies to think about the long-term impact of their decisions, to work better with people, communities and each other and to prevent persistent problems. This is particularly relevant when it comes to protecting our local environment, as its quality can impact everyone's wellbeing, irrespective of age, gender, disability, race or religion. Maintaining and improving the local environment is one of our most important public facing services that government, whether national or local, can deliver to citizens. It is also one of the main areas which influences how people perceive their public services and the effectiveness of the agencies who work together to ensure our public spaces are clean, safe and tidy. How public areas look is important not only to those who live and work around them, but also to those who visit and move through them.
6. When anti-social behaviour such as littering is left unchallenged, the signal given is that nobody cares. The problem can escalate, leading to more anti-social behaviour and possibly to serious crime. Equally, a local environment which is well maintained and valued as distinctive and special by its community, will be cared for and less prone to damage and anti-social behaviour and can improve the well being of local residents. An effective regulatory regime can, therefore, have an important contributory impact across the well-being goals included in the Well-being of Future Generations Act 2015.
7. However, whilst important, enforcement action should not operate in isolation and instead should form part of a more holistic approach that integrates prevention, collaboration and partnership working.

## Publication of enforcement strategy

8. Local authorities must make their enforcement strategy publically available and include details of:
- offences included in the FPN scheme;
  - how much the authority will fine people for each offence;
  - details of any early payment discounts;
  - how FPNs are issued;
  - how the authority deals with juvenile offenders;
  - what the authority will do if the offender does not pay;
  - how to appeal (if option is available);
  - how the money received from FPNs will be spent;
  - how records are kept.

## Use of fixed penalties for litter and waste offences

9. The availability and level of fixed penalties for environmental crimes reflect the severity of the offences and it is important the correct fixed penalty is used for an offence. The following provides guidance on when each should be used:
- Litter fixed penalties should be used for smaller items of litter and rubbish up to an amount that can fit into a hand sweeping barrow, a single full bin bag would constitute fly-tipping. Similarly several carrier bags full of rubbish dumped together would also constitute a single fly-tip. However, given the potential variability in the amounts involved in such offences, it is ultimately at the discretion of the enforcement officer to decide which powers are deemed most appropriate for the offence.
  - Fly-tipping fixed penalties should be used for small scale incidents of non-hazardous waste up to a car boot load, up to eight black bags or one or two bulky items. Due to the amount and severity, those responsible for all other incidents of fly-tipping should be prosecuted.
  - Fixed penalties for waste receptacle offences should be used where a business or householder has failed to meet the requirements of a local authority notice in relation to the placement of waste.
  - Specific guidance on the use of FPNs to deal with breaches of Public Spaces Protection Orders (such as for dog fouling), and Community Protection Notices can be found in the statutory guidance which accompanies the Anti-social Behaviour, Crime and Policy Act 2014.<sup>1</sup>
  - Reference should be made to the specific guidance produced by the Welsh Government when issuing FPNs to deal with household waste duty of care offences.<sup>2</sup>

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1 Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour power – Statutory guidance for frontline professionals.

2 Guidance for Welsh Local Authorities on Household Waste Duty of Care Fixed Penalty Notices, February 2019.

## Who can issue fixed penalty notices?

10. Different authorities have the power to issue FPNs for specific offences and the table 1 below provides an overview:

**Table 1: Overview of the offences each authority in Wales can issue a FPN for**

Authority	Offence
Local Authority	Littering, dog fouling, fly-tipping, graffiti, fly-posting, alarm noise (no nominated key holder), Noise Act offences, nuisance parking, unauthorised distribution of free literature on designated land, abandoning a vehicle, waste receptacle offences, failure to produce a waste transfer note or waste carrier's license, household waste duty of care offences.
Community and Town Councils	Litter, graffiti, fly-posting.
Natural Resources Wales	Failure to produce a waste transfer note or waste carrier's license, household duty of care offences.
National Parks Authority	Littering, abandoning a vehicle (in areas where the National Park authority is also the planning authority).
Police Community Support Officers (PCSOs), and persons accredited under community safety accreditation schemes	<b>Littering</b> Only if authorised: graffiti, fly-posting see separate guidance on the Anti-Social Behaviour Act 2014 with regard to Community Protection Notices (CPN) and breaches of Public Space Protection Orders (PSPO). <sup>3</sup>

### Local authorities/Councils

11. An employee of a local authority can issue a FPN as long as they have been authorised by the local authority to do so. An authorised officer should be familiar with the authority's:
- powers;
  - strategy for issuing and enforcing FPNs;
  - penalty levels;
  - areas where FPNs are used.

### Use of third-party enforcement services

12. In addition to employees of a local authority, an authority can also enter into arrangements (and their employees) with contractors who are not directly employed by the local authority. Should this be the case the person/employee must be individually authorised in writing by the local authority to issue fixed penalties on its behalf.

<sup>3</sup> Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour power – Statutory guidance for frontline professionals.

13. Where local authorities authorise contractors they should:
  - ensure background checks are carried out to determine their suitability and capability;
  - ensure contractors meet the same standards as would be expected of the authority itself and have a full understanding of any locally set procedures or policies before they begin issuing fixed penalties, for example the use of Welsh Language as appropriate.
14. It is also recommended guidance is provided to contractors to ensure the use of FPNs are reasonable and proportionate to the circumstances.
15. Whilst the arrangements between local authority and contract are a matter for individual authorities, consideration should also be given to the following principles to enable contractors to operate in a fair and reasonable manner:
  - private enforcement officers should be clearly identifiable unless it can be demonstrated that the nature of their conduct on that occasion requires that they should not be immediately identifiable as someone engaging in such conduct;
  - consideration should be given to how education and awareness raising can be used to complement or support any enforcement action undertaken by the third-party contractor. For example, the local authority may wish to establish an agreement with the contractor that allows for discretion to be used where the circumstances are appropriate;
  - care should be taken not to target specific socio-economic groups which could lead to the perception that enforcement is being focussed on those deemed “easy targets”;
  - the authority may wish to consider greater use of explanatory material on littering to help inform offenders about the consequences of their actions.

### **National Parks Authority**

16. National Park Authorities have the power of ‘litter authorities’ in respect of their area (under Schedule 9 to the Environment Act 1995) and can authorise officers to issue fixed penalties for litter offences on the same basis as authorities defined as litter authorities under section 88(9) of the EPA 1990. The fixed penalty amount may be specified by the ‘principal litter authority/ies’ in that area (which do not include National Park authorities), though the National Park may decide what amount the discount for early payment shall be.

### **Community Councils**

17. Employees of community councils and other persons (including their employees) authorised by a community council can issue fixed penalties for litter, graffiti and fly-posting. However, the Clean Neighbourhoods and Environment Act 2005 requires the National Assembly for Wales to prescribe conditions to be satisfied by such a person before he or she can be authorised by a community council to issue fixed penalty notices.<sup>4</sup>
18. It is also important background checks are carried out and anyone authorised to issue fixed penalties on behalf of community and town councils is made aware of policies and procedures. Community councillors should not be authorised under this provision.

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<sup>4</sup> The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008.

## **Police Community Support Officers (PCSOs)/Community Support Officers (CSOs)**

19. Under the Police Reform Act 2002, Chief Police officers may confer on PCSOs/CSOs, and persons accredited under community safety accreditation schemes, a range of powers; these are set out in Schedules 4 & 5 to that Act (for PCSOs and accredited persons respectively). This list includes the powers of an authorised officer to issue FPNs for environmental offences including litter (N.B. for the section 87 offence only), graffiti, fly-posting and breach of a PSPO in relation to dog fouling. These powers may be exercised on behalf of local authorities, community and town councils and, in respect of litter offences only, National Park Authorities.
20. Receipts for fixed penalty notices issued by PCSOs/CSOs and accredited persons are retained by the authority on whose behalf FPNs were issued i.e. the amount paid will go back to the local authority.
21. Authorities interested in making use of the potential extra resource provided by PCSOs/CSOs and accredited persons should contact the Chief Police Officer for their area to discuss the matter further. The decision on which powers to confer is currently an operational one for the Chief Police Officer although there are plans to standardise in the near future the powers available to PCSOs/CSOs to include all their environmental powers. If PCSOs/CSOs and/or accredited persons are made available, authorities must:
  - process any fixed penalties issued, including prosecuting unpaid fixed penalties;
  - inform PCSOs/CSOs and accredited persons what the fixed penalty amount is in the local authority's area for each of the offences for which they have powers and make available appropriate fixed penalty notices;
  - liaise with the police force to ensure PCSOs/CSOs and accredited persons' training ensures full understanding of the authority's boundary area, enforcement policies and procedures, including any set out in enforcement strategies etc.

## **Training and professionalism**

22. If the service is to command public confidence and respect, it is essential to give enforcement staff at all levels the skills and training to do their jobs effectively, whether they are employed directly by the enforcing authority, or by a contractor.
23. The office processes involved are important and staff carrying them out need similar levels of skill, training and professionalism as the more visible on-street enforcement officers. Enforcement authorities should provide enough staff for the volume of work. They should also make sure that those staff (whether employed directly by the authority or by a contractor) have the skills, training, accountability, authority and resources to give the public a high-quality, professional, efficient, timely and user-friendly service.

## **Penalty levels**

24. Raising revenue should never be an objective of enforcement.
25. When a local authority decides to set its own fixed penalty amounts, these must fall within the ranges set out in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008 (regulation 2). The ranges are from £75 to £150 for those offences with a default amount of £75 and from £100 to £150 for offences with a default amount of £100 (see Table 2 below).

26. It is very important the level for a fixed penalty is appropriate for local circumstances. Fixed penalties that are too high for local conditions and lead to substantial non-payment rates, will be counter-productive, as will penalties higher than the likely fine in the event of non-payment.

**Table 2: Overview of fixed penalty amounts available in Wales**

Offence	Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty
Littering	£75	£75	£150	£50
Dog Fouling	£75	£75	£150	£50
Graffiti	£75	£75	£150	£50
Fly-posting	£75	£75	£150	£50
Fly-tipping	£200	£150	£400	£120
Household waste duty of care	£300	£300	£300	£150
Abandoning a vehicle	£200	£200	£200	£120
Nuisance parking	£100	£100	£100	£60
Failure to comply with a Community Protection Notice	–	–	£100	Set by Authority
Failure to comply with Public Spaces Protection Order	–	–	£100	Set by Authority
Unauthorised distribution of literature on designated land	£75	£75	£150	£50
Failure to produce a waste transfer note	£300	£300	£300	£180
Failure to furnish documentation (waste carrier's licence)	£300	£300	£300	£180
Domestic waste receptacle offences	£100	£100	£150	£60
Noise from dwellings	£100	£100	£150	£60
Noise from licensed premises	£500	£500	£500	No discount allowed



## Destination of receipts

27. The various Acts under which fixed penalties are issued enable local authorities to use their fixed penalty receipts only to help meet the cost of certain specified functions and these are listed below in Table 3.
28. Although under the legislation the National Assembly for Wales has the power to make regulations which may specify what other functions an authority may use its fixed penalty notice receipts for, or that it may use its fixed penalty notice receipts for the purposes of any of its functions, it does not intend to make use of this power at the present time.
29. Table 3 below outlines where Local Authorities can spend income from fixed penalties issued for various environmental offences. In relation to littering this income could for example be spent on communications and education to abate littering or on the provision of bins and other street litter disposal infrastructure.

**Table 3: Use of fixed penalty receipts and specified functions**

Offence	Functions for which receipts may be used
Litter, graffiti, fly-posting, unauthorised distribution of free printed material on designated land <a href="http://www.legislation.gov.uk/ukpga/2005/16/section/96">www.legislation.gov.uk/ukpga/2005/16/section/96</a>	Litter and refuse (including keeping land and highways clear of litter and refuse, and enforcement against littering and littering from vehicles). Graffiti and fly-posting. Controlling and enforcing against the unauthorised distribution of free literature.
Nuisance parking <a href="http://www.legislation.gov.uk/ukpga/2005/16/section/8">www.legislation.gov.uk/ukpga/2005/16/section/8</a>	Road traffic, litter and refuse.
Abandoning a vehicle <a href="http://www.legislation.gov.uk/ukpga/2005/16/section/10">www.legislation.gov.uk/ukpga/2005/16/section/10</a>	Road traffic, litter and refuse.
Fly-tipping <a href="http://www.legislation.gov.uk/wsi/2017/1024/regulation/2/made">www.legislation.gov.uk/wsi/2017/1024/regulation/2/made</a>	There are no restrictions on how councils can use this income.
Household waste duty of care <a href="http://www.legislation.gov.uk/wsi/2019/331/contents/made">www.legislation.gov.uk/wsi/2019/331/contents/made</a>	There are no restrictions on how councils can use this income.
Public space protection orders (dogs) <a href="http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/enacted">www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/enacted</a>	There are no restrictions on how councils can use this income.
Noise exceeding permitted levels – domestic premises <a href="http://www.legislation.gov.uk/ukpga/2005/16/section/83">www.legislation.gov.uk/ukpga/2005/16/section/83</a>	Statutory noise nuisance, noise at night and audible intruder alarms.
Noise exceeding permitted levels – licensed premises <a href="http://www.legislation.gov.uk/ukpga/2005/16/section/83">www.legislation.gov.uk/ukpga/2005/16/section/83</a>	Statutory noise nuisance, noise at night and audible intruder alarms.

Offence	Functions for which receipts may be used
Alarm noise – no keyholder <a href="http://www.legislation.gov.uk/ukpga/2005/16/section/75">www.legislation.gov.uk/ukpga/2005/16/section/75</a>	Statutory noise nuisance, noise at night and audible intruder alarms.
Failing to show waste documents <a href="http://www.legislation.gov.uk/ukpga/1990/43/section/73A">www.legislation.gov.uk/ukpga/1990/43/section/73A</a>	Waste on land.

### Other authorities

30. National Park Authorities can use fixed penalty notice receipts for their own litter enforcement.
31. Natural Resources Wales must pay its fixed penalty notices to the Welsh Consolidated Fund.
32. The police must pay receipts from fixed penalty notices issued by PCSOs to their local authority.

### Collecting evidence

33. In the case of criminal offences such as littering, a successful prosecution will require evidence sufficient to prove the offender's guilt beyond reasonable doubt. While a fixed penalty may be issued where the authorised officer has "reason to believe" the offence has been committed, it will still be necessary to submit evidence proving the offence beyond reasonable doubt in order to prosecute the offender if the fixed penalty is unpaid. Failure to pursue unpaid penalties will undermine the threat of enforcement, and their effectiveness as a deterrent.
34. Authorised officers are expected to take evidence in their PACE notebook (or electronic equivalent) and this will include a description of all of the following:
  - the offence (for example the type of litter dropped or the nature of graffiti);
  - the date and time;
  - the location;
  - the name, gender and address of the offender;
  - the age of the offender;
  - the offender's appearance;
  - the weather and light conditions at the time;
  - the enforcement officer's identification number;
  - the FPN number.
35. Enforcing authorities may take enforcement action on the basis of CCTV evidence, or evidence supplied by members of the public provided that, in the enforcing authority's opinion, the evidence is sufficient to meet the standards of proof relevant to the offence or contravention in question.
36. Any photographs, video footage and notes by the enforcement officer about the circumstances should be kept as further evidence that the offence took place and to help resolve any disputes.
37. Enforcing authorities should provide their staff with the appropriate equipment, training and guidance to collect such evidence in the circumstances that the authority has prescribed.
38. Enforcing authorities should disclose their evidence at the earliest possible opportunity.

## Keeping Records

39. Enforcement authorities must keep records of both FPNs issued and any evidence in case the FPN goes to court. This will include:
- All FPNs issued and decisions taken at each stage from issue through to payment or prosecution;
  - Any representations received against each FPN;
  - The evidence on which each FPN is based, in case the case goes to court.

## Issuing fixed penalty notices instead of prosecution

40. An authorised officer should consider the following before deciding whether or not to prosecute and issue a FPN instead:
- an offence has been committed;
  - it is considered a proportionate response (see below for circumstances under which a FPN should not be issued);
  - there is sufficient evidence of the offender's guilt to support prosecution if the offender does not pay the fixed penalty;
  - the offender understands why the FPN is being issued;
  - it is believed the name and address offered by the offender are correct (further details on this can be found later in this document).
41. A FPN instead of prosecution must be issued to the person who has committed the offence. Where possible a FPN should be issued on the spot and alleged offenders should be made aware of an offence at the time. If necessary, a FPN can also be issued by post.
42. A FPN instead of prosecution must state all of the following:
- how the FPN was issued (in person or by post);
  - the alleged offence, for example, littering or graffiti;
  - details about the offence, for example, what sort of litter was dropped;
  - where and when the offence took place;
  - the amount of the penalty to be paid (and if there is a discount for early payment);
  - how the penalty can be paid;
  - when the penalty must be paid by (this must be at least 14 days from the date of issue) in order to discharge the alleged offender's liability to be prosecuted.
43. A FPN instead of prosecution should not conflate the amount of the fixed penalty (which for littering may be up to £150) with the potential fine that could be imposed by a court on conviction for the offence (which for littering could be up to £2,500).
44. If the enforcing authority operates a process for alleged offenders to dispute their liability for the offence to which the fixed penalty relates, the FPN should also include instructions on how to use that process, including:
- how, when, and where to send any relevant information;
  - what happens if the dispute is successful (i.e. no further action will be taken and the fixed penalty notice will be cancelled);

- what happens if the dispute is rejected and the offender does not pay (the offender should be prosecuted, unless the enforcing authority has other compelling reasons to cancel the FPN);
- how to complain.

## When not to issue a fixed penalty notice instead of prosecution

45. If any of the following applies then an authorised officer should give consideration as to whether a FPN is appropriate:
- there is no criminal liability** – for example the person in question is exempt e.g. the offender is a child under the age of 10 (the child’s parent or guardian should be informed instead);
  - enforcement action is inappropriate or would be disproportionate for the offence** – for example if the offender is vulnerable or the offence is trivial and it would not be in the public interest to prosecute;
  - prosecution is considered more suitable** – for example if:
    - the offence is major e.g. racist or other forms of abusive graffiti or fly-posting; deliberate smashing of glass; or the scale and effect of the offence merits prosecution;
    - the offence constitutes racially or religiously aggravated criminal damage under section 30 of the Crime and Disorder Act 1998;
    - the offence is committed for reward e.g. the offender is a registered waste carrier;
    - the offender is violent or aggressive;
    - the offence is committed by a persistent/repeat offender (a person can be classed as such if there are two or more recorded offences by the individual).
46. With regards to the final bullet point, the Welsh Government believes it is beneficial if data on FPNs issued for fly-tipping are kept centrally so it is accessible to local authorities and Natural Resources Wales. When officers are at the stage in their investigation where they are considering what enforcement action to take, they should first check any potential offending history.
- any littering offence considered by an officer to have been committed accidentally** – for example if something falls from someone’s pocket without the person being aware this is the case. Only issue FPNs where there is clear evidence the individual intended to drop and leave the litter. It is not in the public interest to take enforcement action if there is not clear evidence the individual intended to cause litter;
  - if the behaviour in question does not fall within the terms of the offence for which the fixed penalty is to be issued** – for example littering fixed penalties should not be issued for fly-tipping offences or waste receptacle breaches (for which other specific fixed penalty powers are available), or to try to sidestep or circumvent the “harm to local amenity” test in the legislation for household waste receptacle breaches.

## Issuing FPNs on private land

47. It is an offence to drop litter on any land within the area of a local authority which is open to the air on at least one side and to which the public have access (with or without payment). This includes private land to which the public have access, however it is not an offence to drop litter with the landowner's consent.<sup>5</sup>
48. There are no explicit powers of entry associated with enforcement against littering, however under section 108 of the Environment Act local authorities can, in certain circumstances, enter private land without permission when investigating fly-tipping incidents.
49. To avoid any question over an enforcement officer's right to carry out their function in relation to littering offences on private land and any suggestion of trespass, they should, where practicably possible, engage and consult landowners/occupiers prior to entering the land to obtain their consent. This will also help to establish whether the landowner/occupier has given permission for litter to be dropped on their land (in which case no offence is committed). Enforcing authorities may wish to discuss their approach to enforcement with the owners of large areas of private land to which the public routinely have access (e.g. shopping centres, retail parks, transport hubs etc) in advance of any enforcement activity being undertaken there.
50. If a landowner/occupier seeks to prevent access to their land by authorised enforcement officers but has not given explicit consent to littering on their land, enforcing authorities should consider whether enforcement against offences committed on that land is in the public interest, particularly if the land owner/occupier is unwilling to support the enforcement activity taking place. Any enforcement officer that remains on or re-enters land once the landowner/occupier has asked them to leave may be committing trespass.
51. The validity of any enforcement action against the offender (either prosecution, or issue of an FPN) is not affected by whether either the offender or the enforcement officer has a legal right to access or enter onto the land on which the offence was committed.

## Obtaining offenders details

52. Most fixed penalty provisions for environmental offences provide those authorised to issue fixed penalties with the power to require the name and address of an offender. Failing to supply these details, or giving a false name and address to an authorised officer, is an offence for which a maximum fine of level 3 on the standard scale may be given upon conviction.<sup>6</sup> It is recommended authorities agree a working protocol with their police authority so that police officers or Police Community Support Officers may assist in situations where an alleged offender refuses to supply details.
53. If designated with the power to detain, a PCSO can detain the offender for up to 30 minutes before a police constable arrives.

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5 Consent may only be given in relation to depositing litter in a watercourse, lake or pond if the same person owns all the surrounding land (section 87(4B) EPA 1990).

6 It is not an offence to fail to provide name and address details to an enforcement officer in connection with enforcement under a Public Space Protection Order (Anti-social Behaviour, Crime and Policing Act 2014, section 68).

## Using the DVLA's database

54. An authorised officer can use the Driver and Vehicle Licensing Agency (DVLA) vehicle keeper database to find out the owners of vehicles used in connection with the following offences:
- littering;
  - fly-tipping;
  - dog fouling;
  - fly-posting;
  - abandoned/nuisance vehicles;
  - noise nuisance.

## Enforcement against young people

55. Enforcing authorities should determine a consistent policy on whether enforcement action will be taken in respect of offences committed by people aged younger than 18 and how such enforcement will be carried out. They should work with both the youth offending team and children's services in designing this policy.
56. FPNs cannot be issued to children under 10, as they are below the age of criminal responsibility. Consideration can be given as to whether it is appropriate to advise their parents or those caring for them to make them aware of their behaviour.
57. When dealing with any child or young person aged up to 17 years, you should:
- always be in uniform;
  - never touch a young person;
  - approach from the front, not behind;
  - identify yourselves and offer formal identification;
  - ideally work in pairs.

## Juveniles aged 10 to 15

58. Fixed penalties should only be issued on-the-spot to 10 to 15-year-olds, if:
- the alleged offender is known to the enforcement officer; and
  - the alleged offender's school has agreed to the use of fixed penalties.
59. Enforcement authorities should notify the alleged offender's parents or legal guardian as soon as possible.
60. If the enforcement officer does not know the alleged offender, or the school has not agreed to the use of fixed penalties, officers should obtain the young person's details and details of their parents or legal guardian in order to make further enquiries. If it is subsequently decided that a fixed penalty is suitable, it should be issued to the alleged offender in person with a parent or legal guardian present. If the fixed penalty must be issued by post, the alleged offender's parent or legal guardian should be notified at the same time.

## Juveniles aged 16 to 17

61. Enforcement officers should obtain all of the following details from the alleged offender:
  - name;
  - address;
  - age;
  - date of birth.
62. They should also obtain the name and address of a parent or legal guardian of the alleged offender.
63. The young offender should be informed this information will be shared with their local youth offending team.
64. If it is necessary to interview a young person under 17 under caution, an appropriate adult must be present.

## Payment of FPNs

65. Enforcement authorities should offer people a range of facilities for paying penalty notices. Where they provide payment centres these should be safe and accessible. Enforcement authorities should ensure any payment facility (particularly telephone and online payments) can confirm any amount outstanding if part payment only has been received. The imposition of surcharges for payment by personal credit or debit card is not permissible<sup>7</sup>.
66. If there are unusual delays with the postal system, authorities should make allowances for late payments made by post when considering whether a payment was received within the statutory period. Enforcement authorities may wish to keep the envelope the payments came in, as the franking can be used as evidence of the date of posting.
67. A FPN is deemed 'paid' as soon as it is received by the enforcement authority. The enforcement authority should promptly close the case. An authority's systems should accurately record the day on which it receives payments so no further enforcement action is taken.
68. There is a standard period for payment of fixed penalties, set in the legislation at 14 days. Once a fixed penalty notice has been issued, an authority cannot prosecute for the alleged offence if the fixed penalty is paid within this period and this must be stated on the notice itself. Payments can be accepted in instalments if the person is unable to pay the full amount.
69. A payment reminder letter can be sent, however this should be at least seven days from when the FPN is issued. The letter should tell the recipient all of the following:
  - how much they must pay;
  - when they must pay by;
  - what happens if they do not pay;
  - how they can appeal (if they can appeal).

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<sup>7</sup> Payment Service Regulations 2017.

## Discounts for Early Payment

70. To encourage prompt payment, enforcing authorities may offer recipients a reduction in the penalty if paid before this deadline. The period during which a discount for early payment is offered must be no more than 14 days and to avoid confusion, it is recommended it should not be less than 10 days.
71. In addition, the Environmental Offences (Fixed Penalty) (Miscellaneous Provisions) (Wales) Regulations 2008 (regulation 3) specify amounts below which the discounted penalties may not fall. The amounts are:

**Table 4: Discount amounts for early payment**

Default rate	Minimum Discount Penalty
£75	£50
£100	£60
£200	£120
£300	£180

## The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017

72. The FPN fines for small-scale fly-tipping can range between £150 and £400. If no amount is specified by the waste collection authority, the amount of the fixed penalty is £200. Provision can be made by the waste collection authority for a discount for early payment of a fixed penalty of no less than £120.

## The Household Waste Duty Of care (Fixed Penalties) (Wales) Regulations 2019

73. Under the waste duty of care occupiers of a domestic property are required to take all measures available to them, as are reasonable in the circumstances, to ensure that any transfer by them of household waste produced on their property is to an authorised person. If found to be in breach of this duty, a householder can be issued with a FPN, the amount of £300 is set across Wales. Authorities have the ability to offer a discounted early payment option, the amount payable of which should be £150 if paid within 10 days of the issue of the FPN.

## Considering challenges/representations and appeals

74. It is considered good practice for enforcement authorities to establish an internal mechanism or internal review panel to consider challenges, representations and appeals. The enforcing authority should ensure the process is efficient, effective and impartial.
75. If such a system is in place the following information should be made available:
- how, when and where to challenge;
  - what happens if the challenge/representation is successful (no further action will be taken and the FPN will be cancelled);
  - what happens if the challenge/representation is rejected and the offender does not pay;
  - how to complain.



## **Taking offenders to court for non-payment**

76. Enforcement authorities should take offenders to court if penalties are not paid. However, legal action can only take place 14 days after issuing the FPN and proceedings must begin within 6 months of the offence.
77. Failure to pursue unpaid notices will discredit the use of FPNs in the locality and will lead to declining rates of payment. The need to pursue unpaid FPNs must be considered in the development of an enforcement strategy and the necessary resources made available. It is not acceptable for an authority to decide after a fixed penalty notice has been issued that it does not have the resources to prosecute if the notice is unpaid.

## **Annex A: Relevant Legislation – Fixed Penalties**

### **Fixed Penalties – Index of Legislation**

78. The main legislation and regulations providing for fixed penalties for the environmental offences is as follows:

Environmental Protection Act 1990

[www.legislation.gov.uk/ukpga/1990/43/contents](http://www.legislation.gov.uk/ukpga/1990/43/contents)

Clean Neighbourhoods and Environment Act 2005

[www.legislation.gov.uk/ukpga/2005/16/contents](http://www.legislation.gov.uk/ukpga/2005/16/contents)

Anti-social Behaviour Act 2003

[www.legislation.gov.uk/ukpga/2003/38/contents](http://www.legislation.gov.uk/ukpga/2003/38/contents)

Refuse Disposal (Amenity) Act 1978

[www.legislation.gov.uk/ukpga/1978/3/contents](http://www.legislation.gov.uk/ukpga/1978/3/contents)

The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008 [www.legislation.gov.uk/wsi/2008/663/contents/made](http://www.legislation.gov.uk/wsi/2008/663/contents/made)

The Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017

[www.legislation.gov.uk/wsi/2017/1024/regulation/2/made](http://www.legislation.gov.uk/wsi/2017/1024/regulation/2/made)

The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019

[www.legislation.gov.uk/wsi/2019/331/contents/made](http://www.legislation.gov.uk/wsi/2019/331/contents/made)

Anti-social Behaviour, Crime and Policing Act 2014

[www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/enacted](http://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/enacted)

## Annex B: Welsh Government Return Template



Llywodraeth Cymru  
Welsh Government

Environment Quality and Regulation Branch  
Welsh Government  
Cathays Park 2  
Cardiff, CF10 3NQ

### **Litter, Dog Control, Graffiti, Fly-Posting And Noise Offences Fixed Penalty Returns for the Period 1 April Xxxx to 31 March Xxxx**

#### **Request for Information relating to fixed penalties**

##### **Local Authority details**

Local Authority	
Postal Address	
Contact name and post title	
Contact email address	
Contact telephone number	

N.B. Figures below should include fixed penalties issued by any authorised officers, including Police Community Support Officers and persons accredited into community safety accreditation schemes.

	Litter	Dog Fouling	Graffiti	Fly-posting	Noise	Small scale fly-tipping	Householder duty of care	Smoking related litter
1. No. of fixed penalties issued								
2. No. of fixed penalties paid								
3. No. of cases of non-payment taken to court								
4. No. of cases of non-payment awaiting court action								
5. No. of cases not paid where no further court action is being taken								
6. Amount Collected (£)								
7. No. of warning letters issued (optional)								

1. In this row enter the total number of fixed penalties issued against the relevant offence for the period 1 April XXXX to 31 March XXXX.
2. In this row enter the total number of fixed penalties paid against the number issued in row 1.
3. In this row enter the number of cases that have been taken to court to pursue the non-payment of fixed penalties issued in row 1.
4. In this row enter the number of cases awaiting court action against non-payment of fixed penalties issued in row 1.
5. In this row enter the number of cases where no further action is to be taken against fixed penalties issued in row 1, where the fixed penalty has not been paid.
6. In this row enter the total amount of fixed penalty income generated from fixed penalties issued in row 1. This should only include fixed penalty income and not any court costs. **If the number of fixed penalty notices (row 1) issued is not accounted for by the other rows (2, 3, 4 or 5) please provide us with reasons why this is so in the space provided below the table.**
7. This is optional – some Local Authorities have requested that this is added to the return as an indicator of action taken.

**Please Return Forms by 31 August Xxxx to:**

in the subject line: (the name of your Local Authority) Fixed Penalty Return 20XX/XX