



# FIXED PENALTY NOTICE POLICY

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## **I. Introduction**

- 1.1 The Environmental Protection Act 1990 provides that local authorities can issue a fixed penalty notice (FPN) to a person believed to have committed specified environmental offences.
- 1.2 Fixed penalties can be an effective and visible way of responding to environmental crimes and provide a quicker and proportionate alternative to prosecution through the courts. They allow the person believed to have committed an offence the opportunity to discharge their liability to conviction for that offence by the payment of a fixed penalty. However, if an alleged offender does not pay a FPN fine then the matter would be put forward for prosecution for the original offence.
- 1.2 This policy sets out Cotswold District Councils FPN procedures and compliments Cotswold District Council Corporate Enforcement policy.

## **2. Scope of Policy**

- 2.1 This policy covers waste and local environmental quality issues experienced across the district as follows: -
  - Duty of Care
  - Failure to produce a Waste Transfer Note or Duty of Care Certificate
  - Fly Tipping
  - Littering
  - Dog Fouling
  - Abandoned vehicles
  - Fly Posting
  - Commercial waste receptacle offences
- 2.2 Enforcement action to deal with these offences is essential in maintaining a clean and safe environment.

## **3. Duty of Care**

- 3.1 Cotswold District Council provides a comprehensive waste collection service through Ubico, including recycling materials from residents, non-recyclable waste, commercial waste, bulky goods, green waste, and white goods. These services enable residents and businesses to dispose of their waste safely and legally.
- 3.2 The duty of care applies to all controlled waste as follows:
  - Household waste
  - Industrial/commercial waste, including any commercial activity run from a household.
- 3.3 Households (occupiers of domestic property). Section 34 of the Environmental Protection Act 1990 requires all occupiers of domestic properties to take reasonable measures to ensure that waste produced on their property is only transferred to an authorised person for disposal.

- 3.4 In all investigations of breaches of household waste duty of care, individuals will be given the opportunity to demonstrate they took reasonable steps to determine the person that took their waste was authorised to do so. If fly-tipped waste is traced to an individual, and they are unable to identify who took their waste, or the carrier that they identified is unauthorised, then it is reasonable to believe they have not met their duty of care.
- 3.5 Bulky Waste. Householders have a duty to ensure that only a registered waste carrier removes households, garden, or construction waste from their property. They should also be able to provide documentary evidence of a waste transfer note, upon request.
- 3.6 Waste Producers (Businesses). The duty of care applies to all businesses whose activities produce waste. This includes private sector businesses such as shops, offices, factories, and tradespersons such as builders or glaziers, and public sector services such as schools and hospitals, as well as charities and voluntary and community groups. It also includes permitted operations or exempt facilities that produce waste as part of their activities. If, in carrying out a waste operation, the nature or composition of the waste changes, the business will be regarded as a producer of waste.
- 3.7 Section 34 of the Environmental Protection Act 1990 places a duty on businesses to take all reasonable and applicable measures to ensure that:
- Waste is not stored, transported, treated or disposed of illegally or in a way that causes pollution or harm
  - Waste is safely and securely stored so that it cannot escape
  - Waste is transferred to an authorised person or for authorised transport
  - When waste is transferred, it is accompanied by a full written description of the waste and a completed Waste Transfer Note enabling others to avoid contravention of the duty of care
- 3.8 Businesses must be sure that their waste is transferred to a company licensed by the Environmental Agency to take it and transport, recycle, or dispose of it safely.

## **4. Fly-Tipping**

- 4.1 Fly-tipping is an offence under section 33(1)(a) of the Environmental Protection Act 1990. The Act does not provide a comprehensive definition of litter or refuse; however, it is considered that a single plastic sack of rubbish should normally be considered fly tipping rather than litter.
- 4.1 FPN's for fly-tipping offences can be served on any identified perpetrator, including homeowners/occupiers, business owners and registered keepers of vehicles witnessed depositing larger amounts of waste from a vehicle.

## **5. Littering**

- 5.1 Section 87 of The Environmental Protection Act 1990 states than an offence is committed if anything is dropped, thrown, left, or deposited that causes defacement, in any place open to the air that the public have access to with or without payment.

- 5.2 Litter includes cigarette ends, chewing gum, bags of dogs' faeces and waste/litter found to have come from commercial or household premises.
- 5.3 Section 98(5a) of the Environmental Protection Act 1990 states that certain smoking-related materials, such as cigarette ends, and discarded chewing gum and the remains of other products designed for chewing, are specifically items of litter, when dropped. These items are problematic and expensive to clean up and do a lot of damage to the environment and waters. Placing a cigarette end down a drain or in a stream is also an offence and will result in the issuing of an FPN.
- 5.4 Cotswold District Council provides litterbins in High Streets and other locations across the district, including parks and open spaces. Litterbins are also provided by many retail and commercial premises, especially those selling food and drink. If there isn't a bin available, it is the responsibility of the person(s) to take their rubbish with them either to another bin or to dispose of at home.
- 5.2 Littering from vehicles is an offence under section 89(1) of the Environmental Protection Act 1990, and as such the council has powers to issue FPNs to the owner of a vehicle where an officer is able to show that litter was thrown from a vehicle in the council's district. Cotswold District Council, as a local authority has a duty to keep land in its authority, including the highway and roads clean, so far as practicable.

## **6. Dog Fouling**

- 6.1 The introduction of a Public Space Protection Order in November 2017 introduced orders relating to:
- Dog fouling and the failure to clear up of the faeces on all public and open land in the district
  - Failing to produce a receptacle for picking up faeces when asked to do so by an authorised officer
- 6.2 If a person fails to meet these requirements of the Order or comply with a request from an authorised officer of the council, they could be issued with the FPN.

## **7. Abandoned Vehicles and Nuisance Vehicles and Repair of Vehicles on the Road**

- 7.1 Section 2 of The Refuse Disposal (Amenity) Act 1978 (RDA Act 1978) makes it an offence to abandon a motor vehicle. Part 2, clause 10 of the Clean Neighbourhoods and Environmental Bill inserts two new sections in the RDA Act 1978, 2A and 2B.
- 7.2 Section 2A gives an authorised officer of a local authority the power to issue a fixed penalty notice in respect of an offence of abandoning a vehicle, offering the offender the opportunity to discharge any liability for the offence.
- 7.3 Section 2B enables an authorised officer of a local authority to require the name and address of the person to whom he proposes to issue a fixed penalty notice. A person commits an offence if he gives false or inaccurate details.
- 7.4 Under Section 3 of the Clean Neighbourhoods Act 2005 it is an offence to expose vehicles for sale on a road.

A person is guilty of an offence if at any time—

- he leaves two or more motor vehicles parked within 500 metres of each other on a road or roads where they are exposed or advertised for sale, or
- he causes two or more motor vehicles to be so left.

7.5 Under Section 4 of the Clean Neighbourhoods Act 2005 a person who carries out restricted work on a motor vehicle on a road is guilty of an offence, subject as follows.

For the purposes of this section “restricted works” means—

- (a) works for the repair, maintenance, servicing, improvement or dismantling of a motor vehicle or of any part of or accessory to a motor vehicle.
- (b) works for the installation, replacement or renewal of any such part or accessory.

## **8 Fly Posting**

8.1 FPN’s for fly posting are used under section 43 of the Anti-Social Behaviour Act 2023.

8.2 Maintaining and improving the physical appearance and condition of the local environment enhances the quality of life of the community. Flyposting undermines this objective and can be a blight on an area.

8.3 Fly posting is putting up without consent from the owner, posters or stickers on properties, lamp posts or other structures on the street such as:

- Sticking posters onto boarded up shop advertising an event
- Attaching a poster to a lamp post advertising a business

## **9 Household and Commercial Waste Receptables**

9.1 FPN’s for receptable offences are issued under section 46 and 47 of the Environmental Protection Act 1990.

9.2 Businesses have a duty to ensure that their waste is stored, presented and disposed of in accordance with the waste Duty of Care. FPN’s will be used after a notice has been issued and when the waste is likely to cause a nuisance or be detrimental to the amenities of the locality. This includes:

- Bins left on the pavement outside of agreed collection days and times
- Bins blocking the highway
- Bins with size, construction or maintenance issues

9.3 Households have a duty to comply with the requirements of the Council for the collection and removal of the waste receptacles in accordance with Section 9.2.

## **10 Dealing with non-compliance**

- 10.1 The Council will take a firm and fair approach in the implementation of its enforcement procedures and will take a robust stance towards offences. Negotiation, education, advice, and support will also be used where appropriate.
- 10.2 The Council reserves the right to resort to enforcement action in the first instance, if the circumstances warrant this, rather than following a policy of education, advice and support.
- 10.3 Enforcement procedures will always follow statutory requirement. The Council will seek to deal with offences expeditiously by the use of FPN's, using prosecutions only when these options are not available or in the case of persistent offenders and serious environmental crime offences.
- 10.4 Investigations into fly tipping are resource intensive and can be lengthy and complex. Therefore, the maximum legislative FPN amount will be imposed for any person(s) found to have committed an offence under section 33(1)(a).

## **11 Levels of Enforcement Action**

- 11.1 Enforcement is any formal or informal enforcement action to prevent or rectify infringements of legislation. Whilst the enforcement options may differ depending on the legislation applied, the principles of application remain consistent. The council will engage with individuals, businesses or the community to educate and enable compliance when and where it is appropriate.

Enforcement tools include:

- Visits
- inspections for the purpose of checking compliance with the law
- verbal and written advice on legal requirements and good practise
- written warnings
- simple cautions
- issuing FPN's
- prosecution
- liaison and co-operation with other enforcement authorities and organisations where appropriate, such as the Police or the Environmental Agency

## **12 Issuing of FPNs**

- 12.1 A FPN will only be issued when all of the following apply:

- evidence of an offence has been committed
- a FPN is a proportionate response
- there is evidence to support prosecution if the offender does not pay the FPN
- the offender understands why the FPN is being issued

- 12.2 An FPN will not be issued if any of the following apply:

There is no criminal liability:

- the person in question is exempt; for example, a blind person whose dog has fouled in an area where a PSO applies

- the offender is under the age of 18, when the child's parent or guardian may be informed

If enforcement action is inappropriate or would be disproportionate for the offence:

- it is not in the public interest to do so
- the offender is vulnerable; for example, someone who suffers from a mental impediment

If prosecution is more suitable:

- the offence is major; for example, where an extensive quantity of waste is fly tipped or where the content of the waste is hazardous
- the offence is committed by a persistent offender
- the offender is violent or aggressive

### **13 Issuing Fines**

13.1 FPN's will be issued when an Authorised Officer observes or has evidence that an offence has been committed. The FPN gives the alleged offender an opportunity to avoid prosecution by payment of the penalty. A FPN is therefore only issued where there is adequate evidence to support a prosecution. The efficient use of FPNs will improve the effectiveness of the enforcement process, resulting in officers being able to focus on more complex and serious cases.

13.2 Payment of FPN: The FPN must be paid within 28 days of it being served, with a reduction of the fine, if it is paid within 14 days. If the FPN is not paid, a reminder letter will be issued, requesting payment, and setting out what action the Council will take to recover the outstanding payment. If after such time the FPN still remains unpaid, a 'letter before action' will be sent setting out what action the Council will take.

13.3 A FPN provides the alleged offender with the opportunity to discharge liability for prosecution by paying the penalty but there is no obligation to pay an FPN. In the event of non-payment, the case will be referred to the Council's Legal Team for the matter to be referred to the Magistrates Court for prosecution.

### **14 Appeals**

14.1 There is no statutory right of appeal against a FPN, but the Council will give consideration to representations put forward by an alleged offender. Appeals must be made in writing. A FPN may be cancelled following the review of the information; where this is so the recipient of the FPN will be notified in writing. Should the FPN remain payable, payment will be due within 14 days of the letter notifying the decision to the recipient.