

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL OFFENCES (FIXED PENALTIES)
(MISCELLANEOUS PROVISIONS) REGULATIONS 2007

2007 No. 175

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command.

2. Description

2.1 These regulations revoke and remake, within England, the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (no.2) Regulations 2006, adding categories “4 stars”, “3 stars” and “2 stars” to the categories “excellent” or “good” (regulations 4 and 5)

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 An authority (other than a parish council) can issue fixed penalty notices for certain local environmental offences, in lieu of prosecution, and retain the receipts. These offences (other than those stated in the Environmental Offences (Use of Fixed Penalty Receipts) (No.2) Regulations 2006) are :-

- Abandoned vehicle offence under section 2A of the Refuse Disposal (Amenity) Act 1978,
- Waste offences under section 5C of the Control of Pollution (Amendment) Act 1989, and under sections 34A and 47ZA of the Environmental Protection Act 1990
- Noise Offence under section 9(4) of the Noise Act 1996
- Offence in relation to nomination of alarm key holders under section 71 of the Clean Neighbourhoods and Environment Act 2005.
- Nuisance parking offence under section 8 of the Clean Neighbourhoods and Environment Act 2005

4.2 An authority, for as long as it is categorised as “excellent”, “good”, “4 stars”, “3 stars” or “2 stars” in a categorisation Order made by the Secretary of State under section 99(4) of the Local Government Act 2003, may use receipts of fixed penalty notices under these sections for any functions of that authority.

4.3 Should an authority cease to be categorised as “excellent”, “good”, “4 stars”, “3 stars” or “2 stars” in a categorisation order, it may continue to use its fixed penalty receipts for any of its functions for one year. If at the end of that

year the authority is still not categorised as “excellent”, “good”, “4 stars”, “3 stars” or “2 stars” then it may thereafter only use such receipts for certain “qualifying functions” that are specified in the legislation for each offence.

4.4 The Local Authorities (Categorisation) (England) Order 2006 was made by the Department for Communities and Local Government on the 24th November 2006. It is the fifth use of the power under Section 99(4) of the Local Government Act 2003 to make an order categorising English local authorities and, following the report of the Audit Commission on 31st August 2006, this order uses the categorisation ‘4 stars’, ‘3 stars’, ‘2 stars’, ‘1 star’, ‘0 stars’ for single tier authorities and county councils.. This Order revokes and replaces the Local Authorities (Categorisation) (England) (No.2) Order 2005.

5. Extent

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Fixed penalty notices may be issued under section 2B of the Refuse Disposal (Amenity Act) 1978 for abandoned vehicle offences; under section 5C of the Control of Pollution (Amendment) Act 1989 and sections 34A and 47ZA of the Environmental Protection Act 1990 for waste offences; under section 9(4) of the Noise Act 1996 for noise offences; and under section 71 of the Clean Neighbourhoods and Environment Act 2005 in relation to the offence relating to key holders for domestic burglar alarms

7.2 The Clean Neighbourhoods and Environment Act 2005 contains many new enforcement provisions, including powers for local authorities to set the amount of fixed penalty at a local level, and to offer “discounts” for early payment. The powers are available for a range of environmental offences.

7.3 The Clean Neighbourhoods and Environment Act 2005 has given powers to Parish Councils to issue fixed penalty notices under Part 3 (Litter), Part 4 (Graffiti and other Defacement) and part 6 (Dog Control Orders). The regulations also provide that fixed penalty notices can only be issued by officers authorised by a parish council after they have attended a Government approved training course.

7.4 In 2005 the Audit Commission published a new Corporate Performance Assessment framework for England’s 150 single tier and county councils. This introduced the Harder Test framework under which councils receive an overall performance category ranging from 0-4 stars, with 4 stars

being the highest. A “4 star“ or “3 star” rating is equivalent to “excellent”, while a “2 star” is equivalent to a “good” rating. The scoring system also assesses the direction of travel, with the following labels: improving strongly; improving well; improving adequately; and not improving adequately (or not improving).

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for these regulations as they have no impact on the costs of business.

9. Contact

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