

**EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL OFFENCES (USE OF FIXED PENALTY RECEIPTS)
REGULATIONS 2006**

2006 No. 1334

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

2.1 The Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006, permit local authorities (not including parish councils) which are categorised in an Order made by the Secretary of State under section 99(4) of the Local Government Act 2003 as ‘excellent’ or ‘good’ authorities to spend their fixed penalty receipts from litter, graffiti and flyposting, and dog control order offences on any of their functions. The Regulations do this by specifying that all such functions of an authority so categorised are to be “qualifying functions” of that authority, in addition to the qualifying functions expressly specified for such receipts in section 96(4)(a)-(c) of the Clean Neighbourhoods and Environment Act 2005.

2.2 The Regulations also provide that a parish council may use any fixed penalty receipts it receives in respect of litter, graffiti and flyposting, and dog control order offences for the purposes of the provisions under which it issued those notices. In addition they further provide that a parish council that is currently approved by the Secretary of State as a “Quality” parish council may also spend its fixed penalty receipts on any other of its functions as well.

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

3.1 Although there are already powers for local authorities to retain fixed penalty receipts from environmental offences and spend them on related functions, this is the first time that provision has been made to permit high-performing local authorities to spend such fixed penalty receipts to discharge any of their functions. The offences for which receipts may be used are set out in section 96 Clean Neighbourhoods and Environment Act 2005, and include four different litter offences, as well as graffiti and flyposting, and dog control order offences. As a transitional arrangement in the event of re-categorisation of authorities, it is also provided that those local authorities which lose their “excellent” or “good” categorisation will have one year from the date on which that loss of categorisation takes effect in which they will still be able to use any of their fixed penalty receipts as though they were still an “excellent” or “good” authority.

3.2 Also for the first time, parish councils have powers to issue fixed penalty notices for environmental offences and to retain the receipts. The Clean Neighbourhoods and Environment Act 2005 provides powers to issue fixed penalty notices for litter (only the specific offence of dropping litter), graffiti and flyposting and dog control order offences. The Regulations provide that any fixed penalty receipts may be used only for functions related to the provisions under which notices may be issued, while (in addition) parish councils awarded “Quality” status, (the parish council equivalent of “good” or “excellent” local authorities), will be allowed to spend fixed their penalty receipts on any of their functions.

4. Legislative Background

4.1 Section 96 of the Clean Neighbourhoods and Environment Act 2005, provides local authorities with the power to spend their fixed penalty receipts for litter-related (4 different offences), graffiti and flyposting, and dog control order offences on their functions relating to any of those matters. There is also a power, under section 96(4)(d), for the Secretary of State to specify in regulations other qualifying functions for which fixed penalty notice receipts may be used. These Regulations now provide that fixed penalty receipts can be spent by local authorities, should they be categorised as ‘excellent’ or ‘good’ in a categorisation order, on any function. Also, any local authorities who lose their “excellent” or “good” categorisation will have one year from the date on which they lost their respective categorisation in which they will retain their freedoms and flexibilities.

4.2 Under the Clean Neighbourhoods and Environment Act 2005 parish councils may, for the first time, issue fixed penalty notices for certain environmental offences: the offence of dropping litter (section 87 Environmental Protection Act 1990); as well as graffiti and flyposting, and dog control order offences. Under section 97 of that Act, the Secretary of State must make Regulations concerning the use of those fixed penalty receipts; accordingly, these Regulations now provide that they may be used for the functions relating to the provisions under which fixed penalty notices may be issued, including litter functions under section 88 of the Environmental Protection Act 1990, graffiti and flyposting functions under section 43 of the Anti-social Behaviour Act 2003 and dog control order functions under the Clean Neighbourhoods and Environment Act 2005. In addition, “Quality” parish councils may spend receipts on any other of their functions. Any parish councils who lose their “Quality” status will have one year from the date on which they lost their status in which they will retain their freedoms and flexibilities.

5. Extent

5.1 This instrument applies in England only.

6. European Convention on Human Rights

Ben Bradshaw has made the following statement regarding Human Rights:

In my view the provisions of the Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 The 2001 White Paper “Strong Local Leadership – Quality Public Services” set out the strategy of the then Department of Transport and Local Regions to give high performing local authorities greater freedoms and flexibilities. The overall performance of local authorities in England is evaluated through the Comprehensive Performance Assessment, undertaken by the Audit Commission. Local authorities are according to their performance then given a category from one of the following: excellent, good, fair, weak or poor.

7.2 The mechanism for giving high performing local authorities their freedoms and flexibilities is provided by section 100(1) of the Local Government Act 2003, exercised by reference to Orders made by the Secretary of State under section 99(4) of that Act categorising local authorities according to their score in the Comprehensive Performance Assessment.

7.3 There are already in place many powers allowing freedoms and flexibilities to high-performing local authorities across a wide range of their services. The Office of the Deputy Prime Minister are keen to see the freedoms and flexibilities extended to the use of fixed penalty receipts to act as an incentive to increase enforcement. High performing local authorities have been given the power to spend fixed penalty notice receipts on any of their functions. Any local authorities that lose their high-performing categorisation will retain their freedoms and flexibilities for one year from the date on which that loss of categorisation took effect, so that they may have a year in which to regain it without losing their freedoms. Non-high performing authorities must continue to spend their fixed penalty notice receipts on prescribed qualifying functions, which relate directly to the offence or similar functions.

7.4 The Prime Minister announced on 28 October 2004, regarding anti-social behaviour, that the Government would change the law as soon as possible to allow parish councils to issue fixed penalty notices to deal with low level anti-social behaviour. Under powers provided by the Clean Neighbourhoods and Environment Act 2005, parish councils will, for the first time, be able to issue fixed penalty notices for litter, graffiti and flyposting, and dog control order offences and, as provided for by these Regulations, spend the receipts on discharging those functions. Additionally “Quality” parish councils may spend receipts on any other of their functions.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is neutral.

9. Contact

Grant McPhee at the Department of Environment, Food and Rural Affairs, tel: 020 7082 8754 or e-mail: grant.mcphee@defra.gsi.gov.uk can answer any queries regarding the instrument.