

APPENDIX 1 - FPN OFFENCES

Nuisance Parking - Section 3 (1) and 4 (1) Clean Neighbourhoods and Environment Act 2005

Section 3 - Exposing vehicles for sale on a road

A person is guilty of the offence if at any time if –

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

This offence is aimed at businesses and garages and therefore would not apply to an individual selling a vehicle privately and not as part of his business.

Section 4 - Repairing vehicles on a road

A person is guilty of an offence who carries out restricted works on a motor vehicle on a road. This offence is aimed at people who repair vehicles on the street and cause a nuisance, for example by taking up valuable car parking space or by allowing oil to leak onto the road. There are two exceptions. Firstly where the person proves he was not repairing the vehicle in the course of a business. This is only available where the works did not give “reasonable cause for annoyance to persons in the vicinity”. Therefore a private individual could commit the offence if the works gave cause for annoyance. The second exception is where the repairs arose from a breakdown or accident and repairs were carried out promptly.

Fixed penalty fine

Set at £100, can be discounted to £60 if paid within 10 days.

Power to require name and address

Section 7 (1) gives an authorised officer of a local authority the power to **require** name and address of the offender if the officer proposes to issue a fixed penalty notice. **Section 7 (2)** makes it an offence to fail to provide the information asked for or to give inaccurate information.

Abandoning a Vehicle – Refuse Disposal (Amenity) Act 1978 – Section 2

It is an offence to abandon a motor vehicle or anything that has formed part of a motor vehicle on any land in the open air or on any other land forming part of a highway.

Fixed penalty fine

Set at £200, can be discounted to £120 if paid within 10 days.

Power to require name and address

Section 2B gives an authorised officer of the local authority the power to **require** the name and address of the person he proposes to issue a fixed penalty notice. It is an offence to give false or inaccurate details.

Definitions

A road is as defined in section 142 of the Road Traffic Regulation Act 1984 – any length of highway or other road to which the public has access. The main feature of a road is that it is a means of getting from A to B; it could include roads through estates that are owned by organisations such as Housing Associations or by the actual residents. It would not normally include a car park. It includes both the carriageway and footpath.

A motor vehicle has the same meaning as in the Refuse Disposal (Amenity) Act 1978, “a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of the vehicle or trailer and anything attached to such vehicle or trailer”.

Restricted works means repairing, maintaining, servicing, improvement or dismantling of a motor vehicle or any part or accessory of a vehicle, or installing, replacing or renewing any such part or accessory.

Litter – Environmental Protection Act 1990 – Section 87(1)

It is an offence to throw down, drop or otherwise deposit, and then leave litter. This applies to all places that are open to the air, including private land and land covered by water. There is no definition of litter, it is therefore very wide. Subsection 98(5A) of the 1990 Act now makes it clear that the term specifically includes smoking related litter such as cigarette ends and cigars, and discarded chewing gum and bubble gum.

A covered place is ‘open to the air’ if it is open to the air on at least one side (e.g. a bus shelter). The legislation only applies then, however, if the public have access to the covered place, with or without payment. The question of public access is no longer relevant for any other place in the open air.

Fixed Penalty Fine

Can be set locally at between £50 and £80, default £75, can be discounted to £50 if paid within 10 days.

Power to require name and address

Section 88 (8A-8C) gives an authorised officer of the local authority the power to **require** the name and address of the person of whom he proposes to give a fixed penalty notice. It is an offence to provide these details or give false or inaccurate details.

Fly tipping – Environmental Protection Act 1990 – Section 33(1)

It is an offence to fly tip waste where no waste management licence is in force. This applies to all places that are open to the air, including private land and land covered by water. A covered place is 'open to the air' if it is open to the air on at least one side (e.g. a bus shelter). The legislation only applies then, however, if the public have access to the covered place, with or without payment. The question of public access is no longer relevant for any other place in the open air.

Fixed Penalty Fine

Can be set locally at between £150 and £400, default £200, can be discounted to £120 if paid within 10 days. Set at one payment of £400 (LBH)

Power to require name and address

Section 88 (8A-8C) gives an authorised officer of the local authority the power to **require** the name and address of the person of whom he proposes to give a fixed penalty notice. It is an offence to provide these details or give false or inaccurate details.

Street Litter Control Notices and Litter Clearing Notices – Environmental Protection Act 1990 - Section 94(8)

A local authority can require the owners of certain types of commercial premises to prevent or remove accumulations of litter to the detriment of the amenity of the area. Where a litter problem can clearly be traced to certain types of business, e.g. takeaways or mobile vendors, a local authority can issue a Street Litter Control Notice. This requires the occupier or owner of a business or retail premises to clear up litter and or implement measures to prevent land becoming defaced again.

It is an offence to fail to comply with the Street Litter Control Notice. The Cleaner Neighbourhoods and Environment Act 2005 has amended sections 93 and 94 of the 1990 Act to make it an immediate offence not to comply with the specifications of the notice. There is no requirement on the authority to first seek an order from the magistrate's court. A fixed penalty notice may be issued for the failure to comply.

Fixed Penalty Fine

Can be set locally between £75 and £110, default £75. Can be discounted to £60 if paid within 10 days.

Unauthorised Distribution of Literature on Designated Land – Environmental Protection Act 1990 – Schedule 3A (1), para 1(1) & (2)

A local authority can designate areas by Order, where it is an offence to distribute free printed materials, such as leaflets or flyers. It is an offence to distribute such leaflets or flyers, or to ask another person to do so, without the consent of the authority, on any land that the authority has designated under this Schedule.

Authorised officers have the power to seize any materials that are being distributed in contravention of the Order and can issue a fixed penalty notice.

Fixed Penalty Fine

This can be set locally between £50 and £80, default £75. Can be discounted to £50 if paid within 10 days.

Power to require name and address

Schedule 3A, para 7(7)-(9) gives an authorised officer of the local authority the power to **require** the name and address of the person of whom he proposes to give a fixed penalty notice. It is an offence not to provide these details or give false or inaccurate details.

Waste Offences

Section 34 of the Act sets out the waste duty of care, which applies to anyone who is the holder of controlled waste. Subject to certain exemptions, this includes everyone who produces waste (in the course of their business for example); everyone who transports waste; everyone who stores waste; and everyone who recycles, incinerates, landfills or otherwise recovers or disposes of waste. The duty of care for waste is the duty to take all such measures as are reasonable in the circumstances to:

- prevent the waste from escaping (i.e. to ensure it is properly contained);
- ensure that, when the waste is transferred, it is only transferred to an authorised person (e.g. a council waste collector; a registered waste carrier; a holder of a waste management licence); and
- ensure that, when the waste is transferred, a written description of the waste goes with it.

It is also necessary to complete a Waste Transfer Note when waste is transferred from one person to another. This must contain certain information, including about the nature and quantity of the waste; the address and status of the transferring and receiving parties; and the time and place of the transfer. The written description of the waste and the transfer note may be contained in the same document. Both parties must keep their copy of these. The breach of any of these duty of care requirements constitutes a criminal offence; there are two specific offences that local authorities can deal with by way of fixed penalty notice as follows:

Failure to Produce a Waste Transfer Note – Environmental Protection Act 1990 – Section 34A (2)

It is an offence to fail to produce a waste transfer note to a local authority officer.

Failure to Produce Waste Carrier Registration Documents – Control of Pollution (Amendment) Act 1989 – Section 5B

Section 5 gives powers to police, the Environment Agency and waste collection authorities to stop, search and seize any vehicle believed to be used for the transportation of controlled waste without being registered. Only a constable in uniform has the power to stop a vehicle on a road. Local authority officers have the power to issue a fixed penalty notice for failing to produce authority for transporting controlled waste. It is an offence to fail to assist or to otherwise obstruct an officer, including giving false or incorrect information.

Fixed Penalty Fine for both offences

This is set at £300, it can be reduced to £180 if paid within 10 days.

Definitions

Controlled waste encompasses household, industrial and commercial waste.

Household waste is that which arises from dwellings of various types including houses, caravans, houseboats, campsites, prisons and wastes from schools, colleges and universities.

Commercial waste comes from premises used wholly or mainly for trade, business, sport, recreation or entertainment; excludes household and industrial waste.

Industrial waste is waste from a factory or industrial process; it excludes wastes from mines and quarries and agricultural wastes.

Exempt waste types

- Waste producers carrying **only** their own waste, except building or demolition waste.
- Persons transporting waste which comprises **only** animal by-products.
- Persons transporting **only** mines and quarries waste or **only** agricultural waste.

This exemption from registration applies if these are the **only** types of waste being transported. If there is a mix of these types of waste with other waste, the transporter will need to be a registered carrier.

Waste Receptacles – Environmental Protection Act 1990- Section 46 and 47

Sections 46 and 47 deal with receptacles for household, commercial and industrial waste. Local authorities can serve notice on owners or occupiers specifying certain conditions, e.g. that they must put their waste in a certain place to facilitate waste collection. A fixed penalty can be issued to people who fail to comply with this notice.

Fixed Penalty Fines

This can be set locally between £75 and £110, default £100. Can be discounted to £60 if paid within 10 days.

Public Spaces Protection Orders

These orders can be created by the council under Section 59 of the Anti-social Behaviour Crime and Policing Act 2014, in order to tackle any antisocial behaviour

in an area. This can include issues such as dog control, alcohol control. See specific Public Spaces Protection Order for detail.

Fixed Penalty Fine

This set amount is £100, but an order can specify a discount if paid within 10 days.

Dogs (Fouling of Land) Act 1996

(1) If a dog defecates at any time on designated land and a person who is in charge of the dog at that time fails to remove the faeces from the land forthwith, that person shall be guilty of an offence unless—

(a) he has a reasonable excuse for failing to do so; or

(b) the owner, occupier or other person or authority having control of the land has consented (generally or specifically) to his failing to do so.

Fixed Penalty Fine

Set at £50.

Graffiti and Fly posting – Anti-Social Behaviour Act 2003 – Section 43

The Act gives local authorities the power to deal with graffiti and fly-posting offences. These powers should only be used for minor offences of graffiti and fly posting that would not be in the public interest to pursue through the courts. Repeated ‘tagging’ of property or multiple incidents of illegal displays of promotional posters should be prosecuted under the appropriate legislation, i.e. the Criminal Damage Act 1971 or the Town and Country Planning Act 1990.

Graffiti

A person is guilty of graffiti if they deface with graffiti any property that is not their own or that that do not have permission of the owner to deface. The offence is made out in the Criminal Damage Act 1971, section 1(1) as intentionally or recklessly damaging any property belonging to another. This offence is restricted for the purposes of issues fixed penalty notices under the Anti-Social Behaviour Act 2003, to an offence “which involves only the painting or writing on, or the soiling, marking or other defacing of, any property by whatever means”. ‘Etching’ which is the etching of glass or Perspex with a sharp implement should not be dealt with by way of fixed penalty as the affected surface has to be removed and replaced, it is therefore not minor.

Fly-posting

Fly-posting is basically the display of advertising material on buildings or street furniture without the consent of the owner and without the required planning consent, both of which are required. Offences can range from small stickers to large posters advertising music events. A fixed penalty notice should only be given for the most

minor of offences, for example where the cost of removal is low or where the advert has not been posted in many locations.

Fixed penalty fine for graffiti and fly-posting

This can be set locally between £50 and £80, default £75. Can be discounted to £50 paid within 10 days.

Power to require name and address

Section 43B gives an authorised officer of the local authority the power to **require** the name and address of the person of whom he proposes to give a fixed penalty notice. It is an offence to fail to provide these details or give false or inaccurate details.