

Isle of Wight Council's Enforcement Policy on the Use of Fixed Penalty Notices for Environmental Offences

Introduction

The quality of the local environment affects and reflects the well-being of the people living there. Whether it's a town centre, local park or street where we live, we all want to feel that these are attractive and safe places to be. The Isle of Wight Council and its partners are committed to providing and maintaining a cleaner, safer and visually more appealing environment for all Island residents and visitors.

In order to support this commitment the Council, Town and Parish Councils and the Hampshire and Isle of Wight Constabulary recognise the key role that "good" enforcement practice has in promoting, encouraging and regulating the behaviour of businesses and individuals to secure of a clean and safe environment.

The Government actively encourages the use of fixed penalty notices by local authorities and other agencies for offences where they can be served. Experience has shown that the public generally welcomes the use of fixed penalties, provided that they are issued sensibly, enforced even-handedly and are seen as a response to genuine problems.

This policy should ensure an effective, consistent and targeted approach to environmental enforcement across the entire Council.

The introduction of fixed penalty notices for the offences outlined in this document will enhance the prospect of effective enforcement of environmental offences. This approach will mean that costly court cases should be avoided, however ensure that court action is taken where appropriate to do so.

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1. Objectives

1. There are many environmental offences for which fixed penalty notices can be issued. This policy seeks to identify the general approach and types of offences where the Council and its partners will apply this form of sanction.
2. Effective local environment management relies upon 3 main factors:
 - quality services and facilities for waste collection, street and public area cleansing
 - suitable methods of communication with the public and businesses to raise awareness of the impact of environmental offences
 - effective, economic targeted and proportionate enforcement to reinforce positive behaviour
3. The enforcement responsibilities for environmental offences detailed in this policy are spread across different departments of the Council and shared with partners. This policy, in tandem with the Council's 'Isle of Wight Council's Operational Strategy on the Use of Fixed Penalty Notices for Environmental Offences' document, will provide a consistent approach to the use of fixed penalty notices.
4. This approach will ensure that:
 - Legal requirements relating to environmental offences are clearly communicated to businesses, residents and visitors,
 - Enforcement is carried out in a fair and equitable way, with proportionate action being taken.
5. Any decision to issue a fixed penalty notice should be in accordance with the relevant enforcement policy document.

2. Scope

2a. Littering

1. The Environmental Protection Act 1990 (Section 87) states If a person “throws down, drops or otherwise deposits in any place to which this section applies, and leaves it, he shall be guilty of an offence”.
2. Enforcement action may also be taken against any person who throws litter from a moving or stationary car.
3. The Council and its partners support the issuing of a fixed penalty notice where this offence has been committed.
4. Enforcing Directorate – Environment and Neighbourhoods
Service Areas: Safer Neighbourhoods Partnership
Engineering Services.

2. Scope

2b. Dog Fouling

1. The Dogs (Fouling of Land) Act 1996 (section 3) states “if a dog defecates at any time on designated land and a person who is in charge of the dog at the 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”.
2. The Council has designated all land in the open air, including covered land which is open to the air on at least one side, and to which the public have access with or without payment.
3. The Council and its partners support the issuing of fixed penalty notices to anyone who commits this offence.
4. Enforcing Directorate – Environment and Neighbourhoods
Service Areas: Safer Neighbourhoods Partnership Engineering Services.

2. Scope

2c. Smoke Free

1. The Health Act 2006 makes provisions for the prohibition of smoking in certain premises, places and vehicles.
2. Section 6 (1) of the Health Act 2006 states "It is the duty of any person who occupies or is concerned in the management of smoke-free premises to make sure that no-smoking signs complying with the requirements of this section are displayed in those premises in accordance with the requirements of this section".
3. Section 7 (2) of the Health Act 2006 states "A person who smokes in a smoke-free place commits an offence".
4. Section 9 (1) provides the powers for authorised officers to issue fixed penalty notices for these offences.
5. The Council and its partners support the issuing of fixed penalty notices to people who commit either of these Offences.
6. Enforcing Directorate – Environment and Neighbourhoods
Service Area: Consumer Protection – Environmental Health.

2. Scope

2d. Graffiti

1. The offence relating to Graffiti is covered by Section 1(1) of the Criminal Damage Act 1971 (c. 48) (damaging property etc) which involves only the painting or writing on, or the soiling, marking or other defacing of, any property by whatever means.
2. Section 43(1) of Anti Social Behaviour Act 2003 provides powers to Local Authorities to issue fixed penalty notices this offence.
4. The Council and its partners support the issuing of fixed penalty notices for minor graffiti offences. However serious offences will be dealt with by Hampshire and Isle of Wight Constabulary. The 'Isle of Wight Council's Operational Strategy on the Use of Fixed Penalty Notices for Environmental Offences' outlines what is deemed to be a serious offence.
5. Enforcing Directorate – Environment and Neighbourhoods
Service Areas: Safer Neighbourhoods Partnership
Engineering Services
Enforcing Agency – Hampshire and Isle of Wight Constabulary

2. Scope

2e. Fly Posting

1. Fly posting is covered by the Town and Country Planning Act 1990 section 224(3) and The Town and Country Planning (Control of Advertisements) Regulations 1992.
2. Section 43(1) of Anti Social Behaviour Act 2003 provides powers to Local Authorities to issue fixed penalty notices for fly posting offences.
4. The Council and its partners support the service of a fixed penalty notice to any person who commits this offence.
5. Enforcing Directorate – Environment and Neighbourhoods
Service Areas: Safer Neighbourhoods Partnership
Engineering services.

2. Scope

2f. Parking

1. The Isle Of Wight Council (Parking Places) Order No 2 2007 has been made under Sections 32(1), 35(1) & (3), and 45(1) & (2) and Part IV of Schedule 9 of the Road Traffic Regulation Act 1984, as amended (hereinafter referred to as "the Act of 1984") the Road Traffic Act 1991 (the Act of 1991") and under Section 13 of the Isle of Wight Act. This order details all parking offences both on and off road on the Isle of Wight.
2. A number of Traffic Regulation Orders made under Road Traffic Regulation Act 1984 and the Road Traffic Act 1991 have been approved. These Orders provide the powers to the Council to enforce various parking/traffic offences.
2. It should be noted that the offences detailed in this section are not criminal. Fixed penalty notices issued in respect of parking offences shall be known as 'Fixed Charge Notices'. If the notice is not paid, the charge together with any costs which have been incurred can be recovered through the County Court as a debt.
3. The Council is committed to enforcing this order and will issue Fixed Charge Notices for appropriate offences detailed in this Order.
5. Enforcing Directorate – Environment and Neighbourhoods
Service Area: Engineering Services

2. Scope

2g. Refuse (Domestic)

1. The Environmental Protection Act 1990 section 46 provides powers to local authorities to prevent domestic refuse being placed out for collection early.
2. Section 46(1) states “where a waste collection authority has a duty by virtue of section 45(1)(a) above to arrange for the collection of household waste from any premises, the authority may, by notice served on him, require the occupier to place the waste for collection in receptacles of a kind and number specified”.
3. Section 46(4) states “In making requirements as respects receptacles under subsection (1) above, the authority may, by the notice under that subsection, make provision with respect to-
 - a) the size, construction and maintenance of the receptacles;
 - (b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;
 - (c) the placing of the receptacles for that purpose on highways or, in Scotland, roads;
 - (d) the substances or articles which may or may not be put into the receptacles or compartments of receptacles of any description and the precautions to be taken where particular substances or articles are put into them; and
 - e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles”.
4. Section 46(6) A person who fails, without reasonable excuse, to comply with any requirements imposed under subsection (1), (3)(c) or (d) or (4) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

5. Section 48 of the Clean Neighbourhoods and Environment Act 2005 inserts Section 47ZA (2) in to the Environmental Protection Act 1990. This section provides local authorities with powers to issue Fixed Penalty Notices to people who commit an offence under section 46 of Environmental Protection Act.

6. The Council and its partners support the issuing of fixed penalty where a notice served under section 46 of The Environmental Protection Act 1990 has not been complied with.

7. Enforcing Directorate – Environment and Neighbourhoods
Service Areas: Safer Neighbourhoods Partnership
Engineering Services

2. Scope

2h. Refuse (Commercial)

1. The Environmental Protection Act 1990 section 47 provides powers to local authorities to prevent commercial refuse being placed out to early.
2. Section 47(2) states "If it appears to a waste collection authority that there is likely to be situated, on any premises in its area, commercial waste or industrial waste of a kind which, if the waste is not stored in receptacles of a particular kind, is likely to cause a nuisance or to be detrimental to the amenities of the locality, the authority may, by notice served on him, require the occupier of the premises to provide at the premises receptacles for the storage of such waste of a kind and number specified".
3. Section 47(4) states "In making requirements as respects receptacles under subsection (2) above, the authority may, by the notice under that subsection, make provision with respect to—
 - (a) the size, construction and maintenance of the receptacles;
 - (b) the placing of the receptacles for the purpose of facilitating the emptying of them, and access to the receptacles for that purpose;
 - (c) the placing of the receptacles for that purpose on highways or, in Scotland, roads;
 - (d) the substances or articles which may or may not be put into the receptacles and the precautions to be taken where particular substances or articles are put into them; and
 - (e) the steps to be taken by occupiers of premises to facilitate the collection of waste from the receptacles".

4. Section 47(6) states "A person who fails, without reasonable excuse, to comply with any requirements imposed under subsection (2) or (4) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
5. Section 48 of the Clean Neighbourhoods and Environment Act 2005 inserts Section 47ZA (2) in to the Environmental Protection Act 1990. This section provides local authorities with powers to issue Fixed Penalty Notices to people who commit an offence under section 47 of Environmental Protection Act.
6. The Council and its partners support the issuing of fixed penalty where a notice served under section 47 of The Environmental Protection Act 1990 has not been complied with.
7. Enforcing Directorate – Environment and Neighbourhoods
Service Areas: Safer Neighbourhoods Partnership
Engineering Services – Waste Management

2. Scope

2i. Waste (Documentation)

1. The Environmental Protection Act 1990 section 34(1) provides powers to local authorities to require businesses to have a duty of care on the waste they produce.
2. Section 34 (1) states “Subject to subsection (2) below, it shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances—
 - (a) to prevent any contravention by any other person of section 33 above;
 - (aa) to prevent any contravention of regulation 9 of the Pollution Prevention and Control (England and Wales) Regulations 2000 or of a condition of a permit granted under Regulation 10 of those Regulations;
 - (b) to prevent the escape of the waste from his control or that of any other person; and
 - (c) on the transfer of the waste, to secure—
 - (i) that the transfer is only to an authorised person or to a person for authorised transport purposes; and
 - (ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that section (or any condition of a permit granted under Regulation 10 of those Regulations) and to comply with the duty under this subsection as respects the escape of waste”.
3. Section 34(2) states “the duty imposed by subsection (1) above does not apply to an occupier of domestic property as respects the household waste produced on the property”. However, subsection 2a states “It shall be the duty of the occupier of any domestic property in England [or Wales] to take all such measures available

to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.

4. Section 45 of the Clean Neighbourhoods and Environment Act 2005 inserts Section 34A in to the Environmental Protection Act 1990. This section provides local authorities with powers to issue Fixed Penalty Notices to people who commit an offence under section 34(6) of Environmental Protection Act 1990.
5. Fixed penalty notices can not be issued to those who commit an offence under subsection 2a in respect to domestic waste. The maximum penalty for this offence is on summary conviction, to a fine not exceeding the statutory maximum and on conviction on indictment, an unlimited fine.
6. The Council and its partners support the issuing of fixed penalty when an offence is committed under section 34 of The Environmental Protection Act 1990.
7. Enforcing Directorate – Environment and Neighbourhoods
Service Area: Engineering Services

2. Scope

2j. Abandoned Vehicles

1. The Refuse Disposal (amenity) Act 1978 section 2 provides powers to local authorities to deal with a person who abandons motor vehicles or any part of one on the high way.
2. Section 2(1) states “any person who, without lawful authority,—
 - (a) abandons on any land in the open air, or on any other land forming part of a highway, a motor vehicle or anything which formed part of a motor vehicle and was removed from it in the course of dismantling the vehicle on the land;
 - or
 - (b) abandons on any such land any thing other than a motor vehicle, being a thing which he has brought to the land for the purpose of abandoning it there,shall be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding [level 4 on the standard scale or imprisonment for a term not exceeding three months [51 weeks] or both]”.
3. Section 2(2) states “For the purposes of subsection (1) above, a person who leaves any thing on any land in such circumstances or for such a period that he may reasonably be assumed to have abandoned it or to have brought it to the land for the purpose of abandoning it there shall be deemed to have abandoned it there or, as the case may be, to have brought it to the land for that purpose unless the contrary is shown”.
4. Section 10 of the Clean Neighbourhoods and Environment Act 2005 inserts Section 2A in to the Refuse Disposal (amenity) Act 1978. This section provides local authorities with powers to issue Fixed Penalty Notices to people who commit an offence under section 2 of The Refuse Disposal (amenity) Act 1978.

5. The Council and its partners support the issuing of fixed penalty when an offence is committed under section 2 of The Refuse Disposal (amenity) Act 1978.

6. Enforcing Directorate – Environment and Neighbourhoods
Service Area: Engineering Services

3. Under 18s

- 1 For any of the offences detailed in this document a fixed Penalty Notices can be issued to anyone over the age of 10, if it appears that an offence has been committed.
- 2 Children's service authorities, including local authorities and police, have a duty under the Children Act 2004 to discharge their functions having regard to the need to safeguard and uphold the welfare of children.
3. Fixed penalty notices for youths aged between 16 and 18 can be issued on the spot as per each procedure. If the officer has reason to believe that the offender may be younger then they should follow the guidance in section 4 below.
4. If the an officer has reason to believe that the offender is less than 16 years old they should obtain the persons name and address and explain that an appointment with their parent or guardian will be arranged to discuss the offence. Two officers will attend and in consultation with the youth's parent/guardian decide whether a fixed penalty notice should be served or a written warning given.
5. Under 16's offending for a second offence will be issued a fixed penalty notice. However a meeting shall still be arranged with the youth's parent/guardian.
6. A person under 17 is to be treated as a juvenile for the purposes of the Police & Criminal Evidence Act Codes of Practice and should not be interviewed without the presence of an 'appropriate adult'. An appropriate adult is the young person's parent or legal guardian, or if the young person is in care, an adult from the care authority.

7. If an under 16 is caught committing a similar offence more than once, contact shall be made with the Youth Offending Team, informing them of the circumstances.

8. Any alternative enforcement action for youths under 16 shall only be undertaken in consultation with the Youth offending Team.

4. Enforcing Officers

1. The Council will authorise officers who are deemed qualified to issue fixed penalty notices. These may include Highways Area Superintendents, Dog Wardens, Parking Attendants, Town Centre Managers and Community Support Officers.
2. The power to issue fixed penalty notices is complementary to an officer's community engagement role. The Council believes that it is vital for officers to have the necessary power to take enforcement action when appropriate.
3. Police Community Support Officers will be authorised to issue fixed penalty notices on behalf of the Isle of Wight Council for littering, dog fouling and fly posting offences.
4. Some environmental offences will be restricted to certain officers/departments. These are:
 - Parking Fixed Charge Notices– Parking Services
 - Smoke Free Notices – Environmental Health
 - Abandoned Vehicle Notices – Engineering Services

5. Training

1. The Council and its partners understand the need for training to be provided to those officers tasked with the issuing of fixed penalty notices.
2. The Council will provide suitable training for all staff (internal or external) that are authorised to issue fixed penalty notices for the offences detailed in this Policy.
3. All training will be carried out by competent trainers, either supplied internally or externally. The detail of the training provided is specified in the 'Isle of Wight Council's Operational Strategy on the Use of Fixed Penalty Notices for Environmental Offences'.

6. Reporting

Locally and Nationally

1. The Council and its partners are committed to providing statistical information relating to the number and type of fixed penalty notices served.
2. National reports detailing the nature and type of fixed penalty notices served are required to be made by a number of governmental organisations annually. The Council is committed to ensuring all returns are completed as required.
3. In addition, reports shall be made in Council publications and the local press every 6 months detailing the number of fixed penalty notices served, the type, the percentage which have been paid and the number of cases which have been referred to court.
4. The result of court cases will be published as soon as soon as practicably possible after each hearing.
5. All reports shall be made in accordance with the Council Communications Policy.
6. The Council is committed to the use of technology to facilitate the efficient processing of fixed penalty notices in terms of service, payment and referral for further action.

7. Fixed Penalty Notice Values

1. The Environmental Offences (Fixed Penalties) Miscellaneous Provisions) Regulations 2006 (with the exception of dog fouling and smoke free) allows for Local Authorities to set the value of each fixed penalty notice within a stipulated maxima and minima. These regulations also allow for a reduced level for early payment to be set by each local authority.

2. The Council and its partners have determined that the levels for each offence will be set as:

Littering	£50	within 10 days
	or £75	within 14 days
Dog Fouling	£50	within 14 days
Graffiti	£50	within 10 days
	or £75	within 14 days
Fly Posting	£50	within 10 days
	or £75	within 14 days
Smoke Free (signage)	£150	within 15 days
	or £200	within 29 days
Smoke free (smoking)	£30	within 15 days
	or £50	within 29 days
Parking Offences	£30	within 14days
	or £60	within 28 days
Refuse (Domestic)	£75	within 10 days
	or £100	within 14 days
Refuse (Commercial)	£75	within 10 days
	or £100	within 14 days
Waste (Documentation)	£200	within 10 days
	or £300	within 14 days
Abandoned Vehicles	£120	within 14days
	or £300	within 14 days

3. The level of fixed penalty notice for each offence will be reviewed annually to ensure that the level remains appropriate.

8. Challenges

1. Each person who is issued with a fixed penalty notice will have the opportunity to challenge the notice.
2. Challenges against notices (with the exception of parking notices) shall be dealt with in accordance with section 5 of 'Isle of Wight Council's Operational Strategy on the Use of Fixed Penalty Notices for Environmental Offences'.
3. In relation to Fixed Charge Notices for parking offences, all challenges will be dealt with in accordance with Car Parking Services document titled Penalty Charge Notices: Challenges, Representations and Appeals.

9. Un-Paid Fixed Penalty/Charge Notices

1. If a fixed penalty notice is not paid within the time periods specified in section 7 above, the offender will receive written notification that the fixed penalty notice remains un-paid.
2. The written notification will:
 1. detail the offence,
 2. detail the date, time and the location of the offence.
 3. detail the fixed penalty reference number
 4. offer the offender a further fourteen days to pay
 5. detail how and where the notice can be paid
 6. inform the offender that if notice remains un-paid action may be taken through the courts for the original offence.
 7. court action may result in a fine and a criminal record.
 8. detail the maximum penalty for the offence.
3. If the notice remains un-paid after an additional fourteen days the Council, where appropriate will take legal action through the Courts for the original offence in accordance with the enforcing department/partners enforcement policy.
4. Parking Fixed Penalty Charges will be monitored and any enforcement action shall be taken in accordance with the Parking Department's 'Penalty Charge Notice Recovery System Flow Chart'.

10. Repeat Offenders

1. Should the same person commit the same offence more than once in any twelve month period, consideration shall be given to prosecuting the individual rather than issuing a further fixed penalty notice.
2. All legal action shall be carried out in accordance with the enforcing department/partners enforcement policy.
3. This Section does not apply to Parking Offences.

11. Use of Receipts

1. The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 stipulate how each local authority may use the revenue collected from the issue of fixed penalty notices. Local authorities, who have been assessed as "excellent" or "good" in their Comprehensive Performance Assessment inspection, may use the revenue collected as they wish. Other authorities may only use the revenue to support the relevant enforcement function.
2. Fixed penalty notice receipts will therefore be held in separate cost centres and allocated to each service area at the beginning of each financial year.
3. The Council does not view and will not use the issuing of fixed penalty notices as a means of developing an income stream.

12. Review Process

1. The Council will review its commitment to issuing fixed penalty notices for various offences where that enforcement option exists. Additional offences may be added to this Policy when appropriate after any necessary consultation and relevant adoption processes have been undertaken. When new offences are added, the 'Isle of Wight Council's Operational Strategy on the Use of Fixed Penalty Notices for Environmental Offences' will be amended accordingly.
2. Each Council department or partner with responsibility for enforcing the offences contained in this policy will be required to annually assess effectiveness of this enforcement option. A report collating these comments shall be published by the Director of Environment and Neighbourhoods.