

Animal Welfare – Fixed Penalty Notices (ADE)

1 Summary

- 1.1 This report updates Members on the new powers conveyed by The Animals (Penalty Notices) (England) Regulations 2023 and the accompanying Statutory Guidance which officers must consider when using these powers and seeks authority from Members to consider and as appropriate make use of fixed penalty notices.

Details

- 1.2 In 2022, the Animals (Penalty Notices) Act gained Royal Assent and became law. As a result of this the Government ran a consultation exercise to seek opinions on whether the use of fixed penalty notices would be a useful enforcement tool. The result of this consultation led the Government to announce that more than 85% of respondents supported the view that penalty notices could be a proportionate tool to ensure compliance with animal health and welfare regulations, and they also supported the use of penalty notices to enforce regulations across different areas of animal health and welfare legislation
- 1.3 To facilitate the implementation of fixed penalty notices, The Animals (Penalty Notices) (England) Regulations 2023 were introduced, and in December 2023 the Department for Environment Food and Rural Affairs (Defra) released Agenda Item 6 Statutory Guidance to provide a framework for enforcement agencies to have regard to when issuing fixed penalty notices.
- 1.4 Fixed penalty notices (FPNs) cannot be used for all animal related offences, the 2023 Regulations contain a list of relevant offences that may be disposed of by way of a fixed penalty notice, and this list also states which authority may issue a notice for that offence.
- 1.5 Of specific relevance to this Council the Act and associate guidance allows local authorities to issue FPNs for incidents (mainly section 9 AWA Duty of care) and sec 2 of the Dangerous Dogs Act in circumstances where something should be done but not necessarily prosecution. It also applies to Breeding without a licence under the Licensing of Activities Involving Animals Regulations.
- 1.6 The Statutory Guidance is not a substantial document, but it does provide more detail around the areas covered by the 2022 Act and the 2023 Regulations. See Appendix 1
- 1.7 The legislation does not require an authority to adopt the provisions of the Act before a FPN can be issued. The legislation is written in such a way that it enables an authority to consider issuing a FPN as an alternative to issuing a simple caution

or initiating a formal prosecution from the moment the provisions were commenced by Parliament (1 January 2024).

- 1.8 A Council cannot prosecute for a failure to pay a FPN. They are essentially an option for the person or corporate body to absolve their guilt of an offence without receiving a formal conviction that may come from the Council pursuing a formal prosecution.
- 1.9 Officers consider the use of FPNs could be helpful in dealing with low level infringements, and would recommend Members to authorise them to be able to consider the use of FPNs, but would point out to Members that the inability to prosecute for a failure to pay the FPN, seriously limits the effectiveness of the powers provided by this legislation

2 Policy/Budget Reference and Implications

- 2.1 The recommendations within this report are in line with the Councils [animal welfare enforcement and animal welfare licencing policies](#) both of which will be updated to incorporate the new FPN delegation is approved.

Financial Implications

- 2.2 The maximum fine level that can be imposed is £5,000 or the maximum the accused could be fined if summarily convicted for that offence
- 2.3 The potential income from the issuing of FPNs will be cost neutral given the way the legislation is worded. Any proceeds after costs must be forwarded to the Government's Consolidated Fund
- 2.4 A small amount of Officer time will be required to update the website, amend the systems/procedures etc. These costs will come out existing resources.

3 Legal Implications

- 3.1 The 2023 Regulations permit a number of offences to be issued FPNs, but the offences in the table below are the offences particularly applicable to this Council.

Dangerous Wild Animals Act 1976	(a)section 2(5) (keeping a dangerous wild animal without a licence) or (6) (contravention of or non-compliance with licence condition); (b)section 3(4) (obstructing or delaying inspection by local authority).
Animal Health Act 1981	Failing to use a collar on a dog in a public place
Animal Welfare Act 2006	a) section 9 (duty of a person responsible for animal to ensure welfare); (b) section 11 (transfer of animals by way of sale or prize to persons

	under 16); (c) section 13 (licensing or registration of activities involving animals).
Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018	7) Failing to provide assistance with taking samples from animals 19) Obstruction of an officer 20)(a) breaching a licence condition

3.2 A FPN must contain prescribed information:

- i. A statement that the responsible person for the authority is satisfied that the person has committed the offence, and why
- ii. The amount to be paid
- iii. Information detailing no action will be taken before the 28th day following the giving of the notice
- iv. Information explaining the person may not be convicted of the offence if they pay the full amount by the 28th day, or 50% by the 14th day v. Information explaining where, when and how payment can be made

3.3 The 28 days has no effect on the permitted period to bring charges under the Magistrates' Court Act 1980

3.4 FPNs can be withdrawn at any time by the Licensing Authority.

3.5 When considering whether to issue a FPN officers must take into account:

- i. the seriousness of the conduct to which the proposed notice relates (the "relevant conduct");
- ii. the duration of the relevant conduct;
- iii. any evidence of intention behind the relevant conduct;
- iv. any evidence of previous acts or omissions by the person similar to the relevant conduct;
- v. any action taken by the person to eliminate or reduce any risk of harm resulting from the relevant conduct;
- vi. any action taken by the person to remedy or mitigate any harm resulting from the relevant conduct;
- vii. whether the person reported the relevant conduct to the enforcement authority or constable;
- viii. the conduct of the person after the relevant conduct is drawn to their attention by the enforcement authority or constable.

- 3.6 The Statutory Guidance provides additional information to officers on how to determine whether to issue a FPN or not, and how to set the FPN amount, as well as covering other minor procedural matters.
- 3.7 FPNs cannot be issued unless an officer is satisfied beyond reasonable doubt that the person or body corporate has committed an offence. The same evidential and public interest tests required for a prosecution must be met.
- 3.8 Councils are not permitted to prosecute for a failure to pay the FPN within 28 days. Councils must consider whether formal prosecution for the offence is necessary and appropriate in such cases.
- 3.9 There is no right to appeal the issuing of a FPN.

4 Risk and Health & Safety Implications

- 4.1 The subject of this report is covered by the Environmental Protection service plan. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this plan.

5 Recommendation

- 5.1 That the Committee:

Agree delegation to officers to consider and, as appropriate, make use of fixed penalty notices when determining the appropriate level of enforcement action to be taken against any person/body corporate who they are satisfied has committed a relevant offence as listed in the schedules of the Animals (Penalty Notices) Act 2022.

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Background Papers

[Statutory Guidance on the use of penalty notices for animal health and welfare offences \(DEFRA\)](#)

[Animals \(Penalty Notices\) Act 2022 \(legislation.gov.uk\)](#)

[The Animals \(Penalty Notices\) \(England\) Regulations 2023 \(legislation.gov.uk\)](#)