

TITLE: Animal Welfare – Fixed Penalty Notices

Committee: Licensing Committee

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1.0 ISSUE

1.1 To update 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 to seek authority from Members to consider the use of fixed penalty notices.

2.0 RECOMMENDATION(S)

2.1 Members are requested to:

- (i) Note the report; and
- (ii) Agree that officers may consider the 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.

3.0 BACKGROUND

3.1 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.

3.2 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

Statutory Guidance to provide a framework for enforcement agencies to have regard to when issuing fixed penalty notices.

- 3.3 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.
- 3.4 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**.

4.0 SUMMARY

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

Legislation	Offence
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

- 4.2 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.

- 4.3 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.
- 4.4 The 28 days has no effect on the permitted period to bring charges under the Magistrates' Court Act 1980
- 4.5 FPNs can be withdrawn at any time by the Licensing Authority.
- 4.6 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.
- 4.7 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.
- 4.8 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.
- 4.9 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.
- 4.10 There is no right to appeal the issuing of a FPN.
- 4.11 Costs incurred in the investigation of the offences that led to the issuing of the FPN, and the costs of issuing a FPN can be deducted from the FPN amount, but any residual sums must be paid into the Government's Consolidated Fund.

4.12 Annual reports must be provided showing the number of FPNs issued, the amounts specified in the FPN, and the offence(s) to which the FPN(s) relate.

5.0 CONCLUSION

5.1 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).

5.2 As pointed out in section 4.9 above, 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.

5.3 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.

6.0 FINANCIAL IMPLICATIONS

6.1 The Government has provided a small sum of money to Licensing Authorities to assist them with the implementation of the new powers, and the associated training required before a FPN is issued.

6.2 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.

6.3 There are no financial implications to the trade or public if the recommendation in this report is approved.

6.4 A small amount of Officer time will be required to update the website, amend the systems/procedures etc. These costs will come out of the Licensing Department's budget, and the small amount of funds mentioned in paragraph 6.1 above.

6.5 An Equality Impact Assessment (EIA) is not required.

7.0 APPENDICES

7.1 Appendix 1 Statutory Guidance

Background Documents:

[Animals \(Penalty Notices\) Act 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

[The Animals \(Penalty Notices\) \(England\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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Statutory guidance

Statutory guidance on the use of penalty notices for animal health and welfare offences

Updated 18 December 2023

Applies to England

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This publication is available at <https://www.gov.uk/government/publications/penalty-notice-for-animal-health-and-welfare-offences/statutory-guidance-on-the-use-of-penalty-notice-for-animal-health-and-welfare-offences>

Introduction

This guidance explains how you (the enforcement authority or constable) can use penalty notices for animal health and welfare offences under the Animals (Penalty Notices) Act 2022 ('the act').

A penalty notice under the act gives an individual or body corporate (such as a company or charity) the opportunity to avoid prosecution for a criminal offence by paying a fee. Payment of a penalty notice does not require an admission of guilt and will not result in a criminal record.

Penalty notices will add to and complement the current suite of enforcement and regulatory options, such as:

- advice and guidance
- warning letters or statutory notices
- movement restrictions
- cautions and prosecutions

This is to support early redirection through behaviour change, to promote compliance with animal health and welfare rules.

Penalty notices are not designed for serious offences or for minor breaches where advice and guidance in the first instance would be sufficient in rectifying the issue.

Advice and guidance should be your primary enforcement action to promote compliance in most cases followed by warning letters or statutory notices. Issuing a penalty notice could supplement these actions or be the next enforcement step if you think providing advice and guidance only would be insufficient in redirecting behaviour or previous advice and guidance has not been followed and the issue remains unresolved.

You should consider whether prosecution would be the most appropriate enforcement action in the first instance where there is evidence of:

- a serious animal welfare offence
- a significant threat to the human food chain or national biosecurity

You may only issue a penalty notice in relation to offences specified in regulations made under the act.

If you have an existing enforcement policy in place, this should be considered alongside this guidance. However, you must use this guidance when exercising powers under the act.

When to issue a penalty notice

Check which offences you can issue a penalty notice for

If someone has committed an offence, you may issue them with a penalty notice if:

- the offence has been committed in England
- the offence is specified in regulations made under the act
- you are listed in those regulations as the enforcement authority for the relevant offence, or you are a constable and the offence falls under section 2 of the act

Collecting evidence and standards of proof

To issue a penalty notice, you must be satisfied beyond reasonable doubt that a person has committed an offence.

You must gather evidence lawfully having regard to the Criminal Procedure and Investigations Act (CPIA) 1996. [The CPIA Code of Practice](https://www.gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice) (<https://www.gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice>) ('the code') made under Section 23(1) of the CPIA governs the regulatory aspects of the CPIA.

Decide when to issue a penalty notice

You must consider the following factors set out in section 4(2) of the act:

- the seriousness of the conduct to which the proposed notice relates (the 'relevant conduct')
- the duration of the relevant conduct
- any evidence of intention behind the relevant conduct
- any evidence of previous acts or omissions by the person similar to the relevant conduct
- any action taken by the person to eliminate or reduce any risk of harm resulting from the relevant conduct

- any action taken by the person to remedy or mitigate any harm resulting from the relevant conduct
- whether the person reported the relevant conduct to the enforcement authority or constable
- the conduct of the person after the relevant conduct is drawn to their attention by the enforcement authority or constable

You may decide that other forms of sanctions, or advice and guidance in the first instance, may be more effective and proportionate.

Time restrictions to consider

There is no time limit for you to issue a penalty notice when an offence has been identified. However, you should consider the time limits on prosecution of criminal offences which must be brought:

- within 6 months of the date of the offence
- within 6 months of the date the prosecutor has sufficient evidence to proceed under the Animal Health Act 1981 (and within 3 years of the date of the offence)

Issuing multiple penalty notices and when to consider alternative enforcement approaches

A penalty notice should relate to a single offence. If, after a penalty notice has been issued, an individual continues or repeats the offending conduct, you may issue a further penalty notice.

There is no limit on the number of penalty notices that an individual can receive in any given period. Where an individual has already received one or more penalty notices for any offence in the last 3 years, you should consider whether to adopt a different enforcement approach, such as prosecution.

In addition to section 4(2) of the act and this guidance, you should consider the following (non-exhaustive) matters when making a decision:

- the number of penalty notices received within the last 3 years
- what offences the previous notices were received for
- the nature and seriousness of the offence(s) being considered
- the nature and seriousness of the previous offences

- the offender's circumstances and whether there is an explanation for the repeat offending

Financial objectives

Raising revenue should never be an objective of enforcement.

You must pay sums received from penalty notices into the Consolidated Fund, the government's general bank account at the Bank of England,

Before paying sums into the Consolidated Fund, you can deduct the costs of investigating the offence and issuing the penalty notice.

Setting the penalty notice amount

The maximum penalty notice amount will be whichever is the lower of:

- £5,000
- the maximum fine the offender could be liable to pay if convicted for the same offence

The factors set out in section 4(2) of the act must be considered in every case. This guidance sets out how to consider those factors, and other relevant factors.

Step 1: Assess culpability and harm

Assess the offender's culpability and the harm caused by the offence. Use the list of 'harm' factors to consider the seriousness of the offence for the purpose of section 4(2)(a). Use the list of 'culpability' factors to consider intention for the purpose of section 4(2)(c).

Factors indicating low culpability:

- well-intentioned but incompetent care
- momentary or brief lapse in judgement
- involved through coercion, intimidation or exploitation
- mental health disorder or learning disability

Factors indicating low to medium culpability:

- failure to follow good practice to ensure the needs of an animal has been met
- not followed statutory guidance to ensure that animal health rules have been met
- disregard for rules regarding responsible ownership
- not sought veterinary advice
- unaware of up-to-date statutory guidance
- operating without a licence

Factors indicating medium to high culpability:

- deliberate disregard for welfare of the animal (including by failure to seek treatment)
- deliberate attempt to avoid duty of care of animals
- deliberate breach of animal health rules
- deliberately avoiding operating under a licensing scheme
- prolonged or repeated incidents of animal health (breaches)
- deliberate disregard for the disease control principles including standstill requirements
- deliberately ignored requirements regarding responsible ownership and keepership of kept animals
- ignoring previously issued advice or guidance
- obstructive behaviour
- obstructing an inspector or investigator
- role in organised illegal activity
- level of planning
- involvement of others through coercion, intimidation or exploitation

Factors indicating greater harm:

- greater detriment to the physical or mental wellbeing of animals
- greater detriment to the health of the animals
- greater detriment to consumer
- greater impact to the food chain
- greater impact to public health
- greater impact to local or national biosecurity
- greater risk of spreading disease
- greater risk to public health
- greater risk to public safety
- no animal traceability or significant period lack of traceability

- prolonged period without microchipping

Factors indicating lesser harm:

- lesser detriment to the physical or mental wellbeing of animals
- lesser detriment to the health of the animals
- lesser detriment to consumer
- lesser impact to the food chain
- lesser impact to public health
- lesser impact to local or national biosecurity
- lesser risk of spreading disease
- lesser impact to public health
- lesser impact to public safety
- shorter period of lack of animal traceability
- shorter period without microchipping

Where an offence does not fall into a harm or culpability category, you may consider other factors, but you must provide justification for this decision.

When you have identified the culpability and harm levels, find the relevant starting point and range for the penalty amount.

If the maximum fine the offender could be liable to pay if convicted for the same offence is **£5,000 or more**, you should use these tables to determine the starting point and range of the penalty notice amount.

Low culpability

Harm factor	Starting point	Minimum amount	Maximum amount
Lesser harm	£400	£350	£1,000
Greater harm	£750	£600	£1,250

Low to medium culpability

Harm factor	Starting point	Minimum amount	Maximum amount
Lesser harm	£1,500	£1,250	£2,000
Greater harm	£2,000	£1,500	£3,000

Medium to high culpability

Harm factor	Starting point	Minimum amount	Maximum amount
Lesser harm	£2,500	£2,000	£4,000
Greater harm	£3,500	£3,000	£5,000

If the maximum fine the offender could be liable to pay if convicted for the same offence is **less than £5,000**, you should use these tables to determine the starting point and range of the penalty notice amount. You can identify the starting point and range by calculating the stated percentage of the maximum fine on conviction.

Low culpability

Harm factor	Starting point	Minimum amount	Maximum amount
Lesser harm	8%	7%	20%
Greater harm	15%	12%	25%

Low to medium culpability

Harm factor	Starting point	Minimum amount	Maximum amount
Lesser harm	30%	25%	40%
Greater harm	40%	30%	60%

Medium to high culpability

Harm factor	Starting point	Minimum amount	Maximum amount
Lesser harm	50%	40%	80%
Greater harm	70%	60%	100%

Step 2: Assess aggravating and mitigating factors

You may take any aggravating or mitigating factors into account to adjust the penalty notice amount from the relevant starting point. The amount must not go beyond the minimum or maximum for the range as set out in the relevant table. This will give the final penalty amount.

This list of aggravating and mitigating factors incorporates the factors in section 4(2)(b), (d), (e), (f), (g), (h) of the act:

Aggravating factors

- evidence of previous acts or omissions by the person similar to the relevant conduct
- distress caused to others
- failure to comply with current court orders
- offence committed on licence or post sentence supervision
- publicised or promoted animal cruelty including via the use of technology
- ignored warning or professional advice on current offence
- declines to obtain professional advice
- animal required intervention to bring under control
- financial gain from the offence committed
- number of animals involved
- duration of the relevant conduct
- poor conduct by the person after the relevant conduct is drawn to their attention by the enforcement authority or constable
- threatening or abusive to staff or inspectors and investigators
- poor record keeping

Mitigating factors

- no evidence of previous acts or omissions by the person similar to the relevant conduct
- action taken to eliminate or reduce any risk of harm resulting from the relevant conduct
- action taken to remedy or mitigate any harm resulting from the relevant conduct
- offender reported relevant conduct to the enforcement authority or constable
- good conduct by the person after the relevant conduct is drawn to their attention by the enforcement authority or constable
- inability to pay
- offender has a mental health disorder or learning disability

- offender has been given an inappropriate level of trust or responsibility
- offender sought and implemented professional advice

What to include in a penalty notice

A penalty notice must state the offence it relates to, and explain:

- the penalty amount for the offence
- that the enforcement authority or constable issuing the notice is satisfied that the person has committed the offence, and why
- when and how to make a payment
- that 'the relevant period' is the period of 28 days starting on the date the penalty notice is issued
- no proceedings will be taken for the offence until after the relevant period has expired
- that the person who committed the offence may not be convicted of the offence if they pay the full amount of the penalty notice before the end the relevant period
- that the person who committed the offence may not be convicted of the offence if they pay 50% of the penalty notice amount before the end of the period of 14 days beginning with the date on which the relevant period starts
- that a penalty notice is considered paid if the person pays 50% of the penalty notice within 14 days beginning with the date on which the relevant period starts

Payment of penalty notices

The offender must pay the penalty notice within the period of 28 days beginning with the date on which the penalty notice is issued.

They should not pay a penalty notice in instalments.

Non-payment of penalty notices

Penalty notices are issued as an alternative to prosecution. If an individual, or body corporate, issued with a penalty notice does not accept their liability for the offence, there is no requirement on them to pay the penalty notice.

Should a penalty notice go unpaid, you should consider whether a prosecution for the original offence is necessary and appropriate.

Time limits for prosecution

In general, a prosecution of a summary offence in the magistrate's court must be brought within 6 months of the date of the offence.

The 28-day period (the period starting on the date the penalty notice was issued) is not included in the 6-month prosecution time limit.

Offences under the Animal Health Act 1981 may be prosecuted within 3 years of the date of the offence (though, prosecution must be brought within 6 months of the date the prosecutor has sufficient evidence to proceed).

Withdrawing a penalty notice

You may withdraw a penalty notice at any point before payment.

Record keeping and reporting

Under Section 6 of the act, you must submit an annual report to the Defra Secretary of State after the end of each financial year. The report must include:

- the number of penalty notices issued
- the penalty amounts in the notices issued
- the offence for each penalty notice

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