EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL OFFENCES (USE OF FIXED PENALTY

RECEIPTS) REGULATIONS 2007

2007 No.

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command.

2. Description

2.1 These regulations revoke and remake within England the Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2006, adding categories "4 stars", "3 stars" and "2 stars" to the categories "excellent" or "good" (regulations 2 and 3).

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

3.1 None.

4. Legislative Background

4.1 Local authorities and parish councils can issue fixed penalty notices for certain local environmental offences, in lieu of prosecution, and retain the receipts. These offences are :-

- Littering offence under section 88 of the Environmental Protection Act 1990
- Graffiti and Fly-Posting offences under section 43(1) of the Anti-Social Behaviour Act 2003
- Offence in breach of a Dog Control Order under section 59 of the Clean Neighbourhoods and Environment Act

4.2 An authority, for as long as it is categorised as "excellent", "good", "4 stars", "3 stars" or "2 stars" in a categorisation Order made by the Secretary of State under section 99(4) of the Local Government Act 2003, may use receipts of fixed penalty notices under these sections for any functions of that authority.

4.3 A parish council may use any amounts it receives in pursuance of fixed penalty notices under section 88 of the 1990 Act, section 43(1) of the 2003 Act or section 59 of the 2005 Act only on its functions under the relevant sections of those acts, unless it is approved as a "Quality Parish Council" by the Secretary of State in which case it may spend the receipts on any of its functions.

4.4 Should an authority cease to be categorised as "excellent", "good", "4 stars", "3 stars" or "2 stars" in a categorisation order, or a parish council cease to be categorised as a "quality parish council", it may continue to use its fixed penalty receipts for any of its functions for one year. If at the end of that year the authority is still not categorised as "excellent", "good", "4 stars", "3 stars" or "2 stars", or in the case of a parish council is not categorised as a "quality parish council" then it may thereafter only use such receipts for the "qualifying functions" specified in section 96(a)-(c) of the 2005 Act.

4.5 The Local Authorities (Categorisation) (England) Order 2006 was made by the Department for Communities and Local Government on the 24th November 2006. It is the fifth use of the power under Section 99(4) of the Local Government Act 2003 to make an order categorising English local authorities and, following the report of the Audit Commission on 31st August 2006, this order uses the categorisation of '4 stars', '3 stars', '2 stars', '1 star, '0 stars' for single tier authorities and county councils. The Order revokes and replaces the Local Authorities (Categorisation) (England) (No.2) Order 2005.

5. Extent

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 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 2007 are compatible with the convention rights.

7. Policy background

7.1 Fixed penalty notices, currently set locally within a range of £50 to £80, may be issued under section 88(1) Environmental Protection Act 1990 for litter offences; under section 43(1) Anti-Social Behaviour Act 2003 for graffiti and fly-posting offences; and under section 59 of the Clean neighbourhoods and Environment Act 2005 for offences in breach of a dog control order.

7.2 The Clean Neighbourhoods and Environment Act 2005 contains many new enforcement provisions, including powers for local authorities to set the amount of fixed penalties at a local level, and to offer "discounts" for early payment. These powers are available for a range of environmental offences.

7.3 The Clean Neighbourhoods and Environment Act 2005 has given powers to Parish Councils to issue fixed penalty notices under Part 3 (Litter), Part 4 (Graffiti and other Defacement) and part 6 (Dog Control Orders). Fixed Penalty Notices can only be issued by officers authorised by a parish council after they have attended a Government approved training course.

7.4 In 2005 the Audit Commission published a new Corporate Performance Assessment framework for England's 150 single tier and county councils. This introduced the Harder Test framework under which councils

receive an overall performance category ranging from 0-4 stars, with 4 stars being the highest. A “4 star“ or “3 star” rating is equivalent to “excellent”, while a “2 star” is equivalent to a “good” rating. The scoring system also assesses the direction of travel, with the following labels: improving strongly; improving well; improving adequately; and not improving adequately (or not improving).

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for these regulations as they have no impact on the costs of business.

9. Contact

Tim Brooks at the Department for Environment, Food & Rural Affairs, tel: 0207 082 8753 or e-mail: tim.brooks@defra.gsi.gov.uk, can answer any queries regarding the regulations.