EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL OFFENCES (FIXED PENALTIES) (MISCELLANEOUS PROVISIONS) REGULATIONS 2006

2006 No. 783

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command.

This memorandum contains information for the Select Committee on the Merits of Statutory Instruments.

2. Description

2.1 The Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) Regulations 2006:

- prescribe the minimum and maximum ranges of fixed penalties, which may be offered (in lieu of prosecution) for those offences in respect of which the amount of a fixed penalty is capable of being set at the local level;
- specify the minimum amount below which a fixed penalty in respect of which a discount is offered for r early payment may not fall;
- provide that certain high-performing local authorities may use their fixed penalty receipts from certain offences to discharge any of their functions;
- specify the condition to be satisfied (i.e. completion of an approved course of training) before a person may be authorised by a parish council (or other "secondary authority") to give fixed penalty notices in respect of certain offences.

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

3.1 None

4. Legislative Background

4.1 The Minister of State (Alun Michael) gave made two commitments regarding fixed penalty notice provisions during the Committee stage (session 4) of the Clean Neighbourhoods and Environment Bill. Firstly, regulations would be made to set out the penalty ranges for those fixed penalty notice powers that allow the amount to be set at the local level (Hansard 20 Jan 2005, column 133). The ranges prescribed in this instrument are linked to the statutory default amount (which applies where no local level is set) provided for each offence. In respect of those offences where the default amount is £75 the minimum and maximum "local" amount is £50-80, and where the default amount is £100 the local range is £80-100. Secondly, that regulations would also prescribe the conditions persons authorised by parish councils would need to meet before they can issue fixed penalties (Hansard 20 Jan 2005, column 129).

5. Extent

5.1 This instrument applies in England.

6. European Convention on Human Rights

6.1 The Minister for Local Environmental Quality has made the following statement regarding Human Rights:

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Clean Neighbourhoods and Environment Act 2005 provides for fixed penalty notices to be offered for a wide range of offences as an alternative to prosecution, and introduces new powers for local authorities to set the levels of certain fixed penalties and to offer discounts for early payment. However, the Secretary of State may set maximum and minimum levels for locally set fixed penalties.

7.2 The Act also provides for parish councils to issue fixed penalty notices for some offences. However, the Secretary of State may make regulations requiring such notices to be issued only by authorised officers who have completed an approved training course

7.3 The Secretary of State may also make regulations specifying how local authorities may use their fixed penalty receipts. These regulations specify as "qualifying functions", on which such receipts may be spent, any functions of certain high-performing local authorities. This is in line with the Office of the Deputy Prime Minister's freedoms and flexibilities policy. Those offences in respect of which fixed penalty receipts may be spent by high-performing authorities on any of their functions include abandoned vehicles; nuisance parking offences; failure to nominate, or to notify the local authority of, a registered key-holder (in an *alarm notification area*); failure to produce required documentation relating to waste; failure to produce a waste transfer note; unauthorised placing out of waste; and noise offences.

Consultation

7.4 These regulations were published in draft, together with the Environmental Offences (Fixed Penalties)(Miscellaneous Provisions) Regulations 2006, in the consultation document published on 14 October 2005. In the light of the consultation the minimum level for discounted fixed penalties was increased from £40 to £50 for offences with a £75 default rate.

8. Impact

8.1 A full and final Regulatory Impact Assessment on the Clean Neighbourhoods and Environment Act was completed in April 2005. This instrument will have no additional impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is neutral.

9. Contact

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