



# Clean Neighbourhoods and Environment Act 2005

## 2005 CHAPTER 16

### PART 5

#### WASTE

### CHAPTER 1

#### TRANSPORT OF WASTE

### 38 Failure to produce authority: fixed penalty notices

- (1) In the Control of Pollution (Amendment) Act 1989 (c. 14), after section 5A (as inserted by section 37 above) insert—

#### “5B Fixed penalty notices for offences under section 5

- (1) This section applies where it appears to a regulation authority that a person has failed without reasonable excuse to comply with a requirement under section 5(2)(a) above (requirement to produce authority to transport waste).
- (2) The regulation authority may give that person a notice offering him the opportunity of discharging any liability to conviction for an offence under section 5(7)(a) above by payment of a fixed penalty.
- (3) Where a person is given a notice under this section in respect of an offence—
  - (a) no proceedings may be instituted for that offence before expiration of the period of fourteen days following the date of the notice; and
  - (b) he may not be convicted of that offence if he pays the fixed penalty before the expiration of the period.

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**Changes to legislation:** *Clean Neighbourhoods and Environment Act 2005, Section 38 is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (4) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.
- (5) A notice under this section must also state—
- (a) the period during which, by virtue of subsection (3) above, proceedings will not be taken for the offence;
  - (b) the amount of the fixed penalty; and
  - (c) the person to whom and the address at which the fixed penalty may be paid.
- (6) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) to the person mentioned in subsection (5) (c) above at the address so mentioned.
- (7) Where a letter is sent in accordance with subsection (6) above payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (8) The form of a notice under this section must be such as the appropriate person may by order prescribe.
- (9) The fixed penalty payable to a regulation authority under this section is, subject to subsection (10) below, £300.
- (10) The appropriate person may by order substitute a different amount for the amount for the time being specified in subsection (9) above.
- (11) The regulation authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount is paid before the end of a period specified by the authority.
- (12) The appropriate person may by regulations restrict the extent to which, and the circumstances in which, a regulation authority may make provision under subsection (11) above.
- (13) In any proceedings a certificate which—
- (a) purports to be signed on behalf of the chief finance officer of the regulation authority, and
  - (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,
- is evidence of the facts stated.
- (14) In this section “chief finance officer”, in relation to a regulation authority, means the person having responsibility for the financial affairs of the authority.

### **5C Use of fixed penalties under section 5B**

- (1) This section applies in relation to amounts paid to a regulation authority in pursuance of notices under section 5B above (its “fixed penalty receipts”).
- (2) Fixed penalty receipts—

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- (a) where received by the Environment Agency, must be paid to the Secretary of State;
  - (b) where received by a waste collection authority, must be used in accordance with the following provisions of this section.
- (3) A waste collection authority may use its fixed penalty receipts only for the purposes of—
- (a) its functions under section 5 above (including functions relating to the enforcement of offences under that section);
  - (b) such other of its functions as may be specified in regulations made by the appropriate person.
- (4) Regulations under subsection (3)(b) above may in particular have the effect that an authority may use its fixed penalty receipts for the purposes of any of its functions.
- (5) A waste collection authority must supply the appropriate person with such information relating to its use of its fixed penalty receipts as the appropriate person may require.
- (6) The appropriate person may by regulations—
- (a) make provision for what a waste collection authority is to do with its fixed penalty receipts—
    - (i) pending their being used for the purposes of functions of the authority referred to in subsection (3) above;
    - (ii) if they are not so used before such time after their receipt as may be specified by the order;
  - (b) make provision for accounting arrangements in respect of a waste collection authority's fixed penalty receipts.
- (7) The provision that may be made under subsection (6)(a)(ii) above includes (in particular) provision for the payment of sums to a person (including the appropriate person) other than the authority.
- (8) Before making regulations under this section, the appropriate person must consult—
- (a) the authorities to which the regulations are to apply;
  - (b) such other persons as the appropriate person thinks fit.
- (9) The powers to make regulations conferred by this section are, for the purposes of subsection (1) of section 100 of the Local Government Act 2003, to be regarded as included among the powers mentioned in subsection (2) of that section.”

#### Commencement Information

- I1** S. 38 in force at 16.3.2006 for specified purposes for W. by [S.I. 2006/768, art. 3](#)
- I2** S. 38 in force at 6.4.2006 for E. by [S.I. 2006/795, art. 2\(3\)](#), [Sch. 2](#)
- I3** S. 38 in force at 15.3.2007 (being the date on which S.I. 2007/739 came into force) for W. in so far as not already in force by [S.I. 2006/2797, art. 4\(q\)](#)

**Changes to legislation:**

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**Commencement Orders yet to be applied to the Clean Neighbourhoods and Environment Act 2005**

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2007/120 art. 3](#) Amendment to earlier commencing S.I. 2006/2797