



Report to Licensing (Regulatory) Committee

Date:	9 th January 2025
Title:	Penalty Notices for Animal Welfare Offences
Cabinet Member(s):	Cllr Mark Winn, Cabinet Member for Homelessness & Regulatory Services
Contact officer:	Catriona Crelling, Senior Licensing Officer
Ward(s) affected:	none specific
Recommendations:	1. To note the contents of this Report 2. To agree an amendment to Buckinghamshire Council's Animal Licensing Policy to reflect the inclusion of Fixed Penalty Notices as an available enforcement option for certain relevant offences

1. Background

- 1.1 In accordance with the Animal Welfare Act 2006, Buckinghamshire Council, in its role as Licensing Authority, is responsible for licensing operators of businesses carrying out prescribed activities involving animals under The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. In addition, the Council is also responsible for licensing keepers of animals that are defined as dangerous wild animals and for the licensing of zoos.
- 1.2 [The Animals \(Penalty Notices\) Act](#) ("The Act") came into force on 1st January 2024. This Act made provision for the issuing of fixed penalty notices for certain relevant offences relating to animal licencing and welfare. Before the Act came into force, Government carried out a consultation which found that more than 85% of respondents supported the view that penalty notices could be a proportionate tool to ensure compliance with regulations and supported the use of penalty notices to enforce regulations across different areas of animal health and welfare legislation.
- 1.3 [The Animals \(Penalty Notices\) \(England\) Regulations 2023](#) ("Regulations") also came into force on 1st January 2024, specifying certain offences which enforcement

authorities (including Buckinghamshire Council) may issue fixed penalty notices for under the Act. For officers within the Licensing Service, the relevant offences specified in the Regulations include those under the Dangerous Wild Animals Act 1976, Sections 9 and 13 of the Animal Welfare Act 2006 and under Regulation 20 of the Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018.

- 1.4 In December 2023 the Department for Environment Food and Rural Affairs (DEFRA) issued [Statutory guidance on the use of penalty notices for animal health and welfare offences](#) (updated on 21 November 2024) (“statutory guidance”), to provide a framework for enforcement agencies to have regard to when issuing fixed penalty notices (FPN).

2. Main content of report

- 2.1 As set out in the statutory guidance, an FPN under the Act gives an individual or body corporate 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.
- 2.2 An FPN can only be issued if the Council is satisfied, beyond reasonable doubt, that a relevant offence has been committed. This enforcement option is considered an alternative to prosecution and whilst the same burden of proof applies as for a prosecution, it is likely that the work and time spent by officers would be considerably less than what would be required to take a prosecution case to court.
- 2.3 DEFRA are clear in the statutory guidance that FPNs are not designed for dealing with serious offences (where prosecution would be more appropriate), nor for tackling minor areas of non compliance, where advice and guidance would be more appropriate in the first instance. These recommendations are in line with the Council’s own enforcement policy.
- 2.4 In general terms, the offences specified in the Regulations relate to operating or keeping animals without the required licence, non compliance with licence conditions (for current licence holders), obstructing or delaying inspectors and lower level animal welfare offences under section 9 of the Animal Welfare Act 2006 “duty of a person responsible for an animal to ensure welfare”. A link to the schedule of relevant offences set out in the Regulations can be viewed [here](#) .
- 2.5 It should be noted that whilst offences under section 19 of the Zoo Licensing Act 1981 are referenced in the Act, they are not specified in the Regulations as relevant offences which means that currently FPNs cannot be issued for these offences.

2.6 Section 4 of the Act sets out factors that should be considered when deciding whether to issue a penalty notice and if so, the amount to be specified in the notice. These are:

- The seriousness of the conduct to which the proposed notice relates.
- 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.

2.7 An FPN should be issued for a single offence, but it is possible to issue more than one notice at the same time and there is no limit to how many notices an individual can receive in any given period. However, as set out in the statutory guidance, where FPNs have been issued in the previous three years and offences continue, it may be more appropriate to consider alternative enforcement action, such as prosecution. The guidance sets out additional factors to consider when making this decision.

2.8 Section 3 of the Act sets out what information must be included in a penalty notice and example templates have been provided by the Chartered Trading Standards Institute.

2.9 The maximum penalty notice amount which can be issued is whichever is lower of £5,000, or the maximum fine the offender could be liable to pay if convicted of the same offence. Alongside the factors set out in section 4 of the Act, DEFRA have provided additional guidance and a “calculator” to assist with determining the level of fine that is appropriate, depending on culpability and harm of an offence. The total amount payable must be paid in one instalment.

2.10 The Act and the statutory guidance are clear that FPNs must not be used to generate income. When an FPN is paid, the Council may deduct its costs for investigating the offence and issuing the notice, but any remainder must be paid to the Government’s Consolidated Fund.

- 2.11 An FPN must be paid within 28 days, beginning with the date on which the notice was issued. If it is paid within the first 14 days of the 28 day notice period, then the fine is reduced by 50%.
- 2.12 Should an FPN not be paid, officers will need to consider whether it is necessary and proportionate to prosecute for the offence, having regard to the statutory guidance and the Council's own enforcement policy.
- 2.13 Under section 6 of the Act, the Council will be required to submit an annual report to the Secretary of State for DEFRA after the end of each financial year, setting out the number of penalty notices issued, the offence for each penalty notice and the penalty amount.
- 2.14 Any decision to issue an FPN will be signed off by the Head of Service or other Senior officer as set out in the Scheme of Delegations.

3. Other options considered

- 3.1 None. FPNs provide a proportionate enforcement tool for officers to use which compliments the existing enforcement measures available to them. In some cases, the issuing of an FPN will be considered more appropriate than prosecution, providing an opportunity to promote compliance with animal welfare and licensing rules.

4. Next Steps and Review

- 4.1 Further in house training will be provided to Officers authorised as Inspectors under Section 51 of the Animal Welfare Act 2006, who are responsible for investigating alleged animal licensing offences.
- 4.2 A minor amendment will be required to the Animal Licensing Policy to reference the use of Penalty Notices as an enforcement option. The redrafted section on enforcement (with additional wording highlighted) is attached as **Appendix 1**
- 4.3 Existing licence holders will be notified of the introduction of fixed penalty notices as an enforcement option.

5. Legal and financial implications

- 5.1 Section 1 of the Animal (Penalty Notices) Act 2022 ("the Act") provides an enforcement authority with powers to issue a fixed penalty notice if satisfied, beyond reasonable doubt, that a person has committed a relevant offence. Relevant offences are those specified in section 3 of the Act and regulations made thereunder (the Animal (Penalty Notices)(England) Regulations 2023).

- 5.2 A fixed penalty notice is a notice giving the person to whom it is issued (an individual or a body corporate) the opportunity to discharge any liability to conviction for the offence to which it relates by payment of an amount specified in the notice within the relevant period. The relevant period is 28 days beginning with the date the penalty notice was issued.
- 5.3 Where a fixed penalty notice has been issued (and not withdrawn), proceedings may not be instituted for the offence before the end of the relevant period, being 28 days beginning with the date the notice was issued. A person may not be convicted of an offence to which the penalty notice relates if they pay the full amount of the fixed penalty notice before the end of the relevant period, or pay 50% of the penalty notice amount within 14 days beginning with the date on which the notice was issued.
- 5.4 It should be noted that the Council cannot prosecute a person for failing to pay a penalty notice. If a person does not accept their liability for the offence, there is no requirement on them to pay the penalty notice. In these circumstances, the Council would consider whether it was in the public interest to prosecute the person for the original offence which they were issued the fixed penalty notice for.
- 5.5 For some relevant offences, prosecutions must ordinarily be commenced at court within 6 months of the date of the offence, however where a fixed penalty notice has been issued, the 6 month period does not start until the expiry of the 28 day period allowed for payment of the notice.
- 5.6 The Government has provided a small sum of money (£468.76 over 3 financial years) to local authorities to assist them with the implementation of the new powers and the associated training required before an FPN is issued.
- 5.7 The potential income from the issuing of FPNs will be cost neutral. Any proceeds after costs (investigation costs and costs of issuing the notice) must be forwarded to the Government's Consolidated Fund.
- 5.8 There are no financial implications to the trade or public if the recommendations in this report are approved.
- 5.9 A small amount of Officer time will be required to update the website, set up templates and procedures for implementing penalty notices and to familiarise officers with these processes. These costs will come out of the Licensing Services budget and the small amount of funds mentioned in paragraph 5.6.

6. Corporate implications

- 6.1 **Property** – N/A
- 6.2 **HR** – N/A

- 6.3 **Climate change** – N/A
- 6.4 **Sustainability** – N/A
- 6.5 **Equality** - An equality impact assessment was completed whilst developing the Animal Licensing Policy and upon review it is not felt that the introduction of using FPN alters the assessment that there are no adverse or disproportionate effects on those with protected characteristics.
- 6.6 **Data** - The investigation of offences by licence holders and those operating without a licence will require the collection and processing of personal data. Such processing is justified by the public interest in appropriate licensing, safety requirements for both animals and their owners or others who they will come into contact with and the prevention of crime. The Council's current licensing procedures ensure relevant personal data is processed in accordance with the Data Protection Act and UK GDPR requirements.
- 6.7 **Value for money** – The work carried out to facilitate the use of penalty notices will be carried out by officers in-house. The Chartered Trading Standards Institute have provided training for officers in the use of penalty notices free of charge .

7. Links to key documents

[Animals \(Penalty Notices\) Act 2022](#)

[The Animals \(Penalty Notices\) \(England\) Regulations 2023](#)

[DEFRA statutory guidance on Penalty Notices for animal health and welfare offences](#)

