

 <b>West Lothian Council</b>	<b>Environmental Health</b>		<b>SUBJECT:</b> Fixed Penalty Notices (Statutory Nuisance)
		Food Safety/Food Hygiene	<b>NUMBER:</b> PH15
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		Pest Control/Dog Warden	

## Information Sheet PH15 Fixed Penalty Notices (Statutory Nuisance)

### Fixed Penalty Notices: Background

Fixed Penalties have been introduced into environmental and other laws to provide a 'half way house' to deal with problems or breaches of the law which have happened. The alternative to using them is often a Report to the Procurator Fiscal to begin the process of prosecution in the criminal courts. (This can leave people with a criminal record and legal bills for their defence.) The detail of how they work varies depending on the piece of law involved.

Before reading further, you should check what type of Fixed Penalty Notice you are interested in. This Information Sheet relates to Fixed Penalty Notices issued by Environmental Health because an Abatement Notice served under the [Environmental Protection Act 1990](#) has not been complied with.

### Fixed Penalty Notices: Failure to comply with an Abatement Notice

Before a Fixed Penalty Notice is issued, an Abatement Notice under S80 of the [Environmental Protection Act 1990, as amended](#), must have been served on all owners or occupiers of the property or land concerned. This is done under what is known as the 'Statutory' Nuisance' law. We have two information sheets, which give more information on Statutory Nuisance:

- PH07a: The Law of Statutory Nuisance (Short Summary); and
- PH07b: The Law of Statutory Nuisance (Longer Description).

These are available on our web site at <http://www.westlothian.gov.uk/1210/pollution/>.

In addition, the Abatement Notice must have expired without the problem being resolved, or there must be a further breach of the Abatement Notice before a Fixed Penalty Notice can be served. If the Abatement Notice required you to *prevent recurrence* of the problem, you may without warning receive further fixed penalty notices for each subsequent breach of the Abatement Notice.

### Who can get one?

Usually, everyone who received an Abatement Notice which has not been complied with or breached will receive a Fixed Penalty Notice.

### What does it mean?

The Fixed Penalty Notice offers *"the person the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty"*. If a Fixed Penalty Notice is paid within 14 days, no

report will be made to the Procurator Fiscal about the matter. (This does not stop Environmental Health from serving further notices if necessary or carrying out work and recovering the costs).

The amount of Fixed Penalty Notice is £400 for business premises and £150 for anywhere else. It is not a criminal offence not to pay, but if the recipient does not pay within 14 days they have lost any protection from being reported to the Procurator Fiscal.

### **How does it Work?**

The recipient will receive the Fixed Penalty Notice from Environmental Health. It also tells them that they will shortly receive an invoice for the amount of the Fixed Penalty. Instructions are given how to pay this.

If the Fixed Penalty is not paid in 14 days the invoice will be cancelled, but the recipient may then be reported to the Procurator Fiscal for criminal prosecution.

Sometimes, Environmental Health will carry out work to comply with the notice. If this happens, all notice recipients will receive an invoice for their share of the bill. This must be paid. The council pursues all debts against it.

### **Legal Information**

The powers to serve a Fixed Penalty Notice were introduced under [S113 of the Public Health etc \(Scotland\) Act 2008](#). The [Environmental Protection Act 1990](#) was amended by this new legislation.

This Information Sheet is not legal advice. It is here to explain the background to Fixed Penalty Notices and point the reader towards the best information. If you have received an Abatement Notice or Fixed Penalty Notice and you are not sure what you should do, you should contact a solicitor.

### **More Information**

More detailed information can be found in a Scottish Government guidance on changes to Statutory Nuisance law, '*Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008*'. It can be found online at <http://www.scotland.gov.uk/Publications/2009/01/23142152/10>.

If you need further information, please do not hesitate to contact Environmental Health on 01506 282500 or [environmentalhealth@westlothian.gov.uk](mailto:environmentalhealth@westlothian.gov.uk), and we will try to help.