

## **EXPLANATORY MEMORANDUM TO**

### **THE LITTER (FIXED PENALTY NOTICES) ORDER 1991 AND THE DOG FOULING (FIXED PENALTIES) ORDER 1996 (REVOCATION) (ENGLAND) ORDER 2005**

**2005 No. 3223**

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

#### **2. Description**

2.1 The Order revokes within England two Orders which prescribe the forms of fixed penalty notices for, respectively, litter and dog fouling offences.

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

3.1 None.

#### **4. Legislative Background**

4.1 Under Part 4 of the Environmental Protection Act 1990, authorised officers of litter authorities may, under section 88(1), issue a fixed penalty notice to a person they believe has committed a litter offence under section 87, giving that person the opportunity to discharge further liability for the offence by payment of a fixed penalty. Under section 88(5) the Secretary of State is permitted to prescribe the form of such fixed penalty notices, a power which is exercised in the Litter (Fixed Penalty Notices) Order 1991 (S.I. No. 1991/111).

4.2 Similarly, under section 4(1) of the Dogs (Fouling of Land) Act 1996, authorised officers of local authorities may give fixed penalty notices in relation to dog fouling offences under section 3 of that Act. Again, under section 88(5) of the Environmental Protection Act 1990 (as applied by section 4(2) of the Dogs (Fouling of Land) Act 1996) the Secretary of State is permitted to prescribe the form of such notices, and this power is exercised in the Dog Fouling (Fixed Penalties) Order 1996 (S.I. No. 1996/2763).

#### **5. Extent**

5.1 This instrument applies to England only.

#### **6. European Convention on Human Rights**

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

#### **7. Policy background**

7.1 Fixed penalty notices, currently in the amount of £50, may be issued under section 88(1) Environmental Protection Act 1990 for litter offences; and under section 4(1) Dogs (Fouling of Land) Act 1996 for dog fouling offences. The form of fixed

penalty notice for litter offences is prescribed in the Litter (Fixed Penalty Notices) Order 1991, and the form of fixed penalty notice for dog fouling is prescribed in the Dog Fouling (Fixed Penalties) Order 1996.

7.2 The Clean Neighbourhoods and Environment Act 2005 contains many new enforcement provisions, including new powers for local authorities to set the amount of fixed penalty at a local level, and to offer “discounts” for early payment. These powers are available for a range of environmental offences including litter and dog fouling. It is currently intended to commence the fixed penalty notice provisions of the Act on 6 April 2006. New fixed penalty forms will be developed in conjunction with stakeholders to replace those currently in use, but provision for different “local” amounts, and different levels of “discount” make it less feasible to use a single prescribed form. For this reason there are currently no plans to prescribe such a form.

7.3 The Litter (Fixed Penalty Notices) Order 1991 and the Dog Fouling (Fixed Penalties) Order 1996 (Revocation) (England) Order 2005 is being made now at this time as part of the Clean Neighbourhoods and Environment Act 2005 implementation programme. Although the order will revoke the requirement to use the prescribed fixed penalty forms for litter and dog fouling, existing stocks of formerly prescribed forms can continue to be used by local authorities.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

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