

## Implementation advice: Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018

### Introduction

Our roads and highways are the gateways to our towns and cities, and yet verges, traffic islands, and roadside paths are often marred by unsightly litter. Potential investors and customers' impressions of an area can be significantly harmed if they have to drive past accumulated rubbish on their routes into town. It is therefore also in your interests to ensure that the area is clean and attractive, in order to support a thriving local economy.

These new Regulations enable district councils in England (outside London), and the Council for the Isles of Scilly, to issue a civil penalty notice to the keeper of a vehicle from which litter is thrown. This removes the need to identify precisely who threw the litter before you can take enforcement action against this anti-social behaviour. In this context, "district" includes authorities which may call themselves district, metropolitan, borough, unitary or any other name: it simply means the council for the district.

A civil penalty is a civil fine which unlike a criminal penalty, does not carry the risk of a criminal prosecution. The 'keeper' of a vehicle is presumed to be the 'registered keeper', but evidence may be provided by showing that the vehicle was 'kept' by another person at the relevant time: the liability to pay the civil penalty rests with the keeper of the vehicle at the time of the offence.

In this advice, we use the term 'fixed penalty' to refer to a penalty notice issued in lieu of prosecution under section 88 of the Environmental Protection Act 1990. We use the term 'civil penalty' to refer to a civil penalty notice issued under the Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018.

It is up to you whether or not to use these powers. We are absolutely clear that any enforcement action should be proportionate and in the public interest. Any surplus income from these penalties is ring-fenced to be spent on your statutory functions of keeping relevant land and highways clear of litter and refuse, and on enforcement against littering, graffiti and so on.

This advice is merely a guide: the legislation always takes precedence. See: <http://www.legislation.gov.uk/uksi/2018/171/contents/made>

### Comparison with fixed penalties in lieu of prosecution for littering

In the case of criminal offences such as littering, a successful prosecution will require evidence sufficient to prove the offender's guilt beyond reasonable doubt. While a fixed penalty may be issued where the authorised officer has "reason to believe" that the offence has been committed, it will still be necessary to submit evidence proving the offence beyond reasonable doubt in order to prosecute the offender if the fixed penalty is unpaid. Failure to pursue unpaid penalties will undermine the threat of enforcement, and their effectiveness as a deterrent.

To issue a civil penalty for littering from a vehicle, enforcement officers have to be satisfied that, on the balance of probabilities, litter was thrown from that vehicle. If a civil penalty is not paid on time, the penalty amount automatically doubles. You can recover unpaid amounts as a civil debt or via county court order.

## Relationship between fixed penalties in lieu of prosecution and civil penalties for littering from a vehicle.

You can only issue either a civil penalty, or a fixed penalty for littering in respect of any one littering offence. You can also cancel either type of penalty at any time before it is paid.

If you issue a civil penalty notice but then cancel it before it is paid, you may still issue a fixed penalty notice in respect of the same offence.

If you issue a civil penalty notice and it is paid, you cannot subsequently issue a fixed penalty notice or bring a prosecution against anybody for the same littering offence.

If you issue a civil penalty but, before it is paid, you also bring prosecution proceedings against anyone or issue a fixed penalty notice in lieu of prosecution in respect of the same offence, the vehicle keeper's liability to pay the civil penalty notice is discharged. This applies whether or not any prosecution is successful.

Therefore, if you issue a civil penalty notice and the recipient provides evidence as to the identity of the litterer, you will need to consider whether this is a sufficiently compelling reason to cancel the original civil penalty. You may also (separately) decide whether sufficient evidence has been provided to pursue criminal enforcement action (a fixed penalty notice or prosecution) against the alleged litterer. However, you may only issue one – or no – penalty notice in respect of a single littering offence.

## Adopting an enforcement policy

As with other penalties for environmental offences, we are clear that penalties should only be given when in the public interest to do so. Disproportionate enforcement activity, which is not supported by suitable education/communications and provision of disposal facilities, undermines legitimate messages against littering.

Councils remain accountable to local residents for the decisions they take, including decisions on when and how enforcement against environmental offences will be carried out. We therefore recommend that enforcement authorities should publish, promote and explain their enforcement policies openly, so that local residents can understand their approach. This should include details of:

- a. the offences against which enforcement action will be taken
- b. the level of penalty for each offence (particularly following any changes)
- c. details of any early payment discounts
- d. arrangements for issuing fixed penalties (by post, electronically etc.)
- e. policies on enforcement against juvenile offenders
- f. policies in the event of non-payment
- g. appeals (if appropriate)
- h. policies on the use of income from fixed penalties
- i. what records are kept, and how information associated with enforcement action is used.

Enforcement authorities may also choose to make clear their policies on when a fixed penalty should not be issued.

## Cameras/ recording devices and evidence from the public

As part of setting your enforcement policy, you will need to decide whether you intend (or are willing) to take enforcement action on the basis of CCTV evidence, or evidence supplied by members of the public.

To issue a civil penalty for littering from a vehicle, enforcement officers have to be satisfied that, on the balance of probabilities, litter was thrown from that vehicle on the litter authority's relevant land.

You may take enforcement action on the basis of evidence supplied by members of the public provided that, in your opinion, the evidence is sufficient to meet the relevant standards of proof. You may decide to adopt a policy of only issuing a notice based on multiple public reports of litter from the same vehicle, or a pattern of behaviour.

If you wish to use evidence from a recording device (such as a CCTV camera or dash-cam in one of your own vehicles) in appeal proceedings, you will need to produce the recording(s) and a certificate stating the circumstances in which the record was produced must be provided (signed by a person authorised to do so by the litter authority which installed the device).<sup>1</sup>

If you intend to use recording devices to gather evidence in this way, you must ensure that you remain compliant with other relevant legislation, such as the Regulation of Investigatory Powers Act 2000, and the Protection of Freedoms Act 2012. The recording devices must be able to produce a record of the presence of a particular vehicle on the litter authority's land, and the date and time at which the vehicle is present.

## Communications

If you have not previously carried out enforcement against littering from vehicles, before starting to issue penalties you should consider taking steps to inform local residents, and those driving through your area, of your intention to use these powers in future.

## Before you can use the powers

### Set the penalty level

Regulation 6 sets out how the amount of a fixed penalty is to be determined. The amount of a penalty for littering from a vehicle will be the same as the amount specified by the authority for fixed penalty notices for leaving litter. The amount of penalty may therefore vary from litter authority to litter authority, within the prescribed range.

Enforcement authorities can set fixed penalties for environmental offences within the ranges specified in the Environmental Offences (Fixed Penalties) (England) Regulation 2017. From 1 April 2018 for littering offences the range is between £50 to £150, with a default penalty of £100 if no local level has been set.<sup>2</sup> You therefore have significant flexibility to set penalties at an appropriate level to reflect local circumstances, including local ability to pay and your expected enforcement costs.

If the fixed penalty is not paid within the fixed penalty payment period (28 days - defined in Regulation 2), it will double.

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<sup>1</sup> Regulation 20

<sup>2</sup> From 1 April 2019, the minimum penalty will increase to £65, in line with changes to penalties for littering under the Environmental Offences (Fixed Penalties: England) Regulations 2017 <http://www.legislation.gov.uk/ukxi/2017/1050/contents/made> Regulation 5

### Early-payment discounts

In order to encourage prompt payment, Regulation 6 provides for an early-payment discount to be offered if the penalty is paid within 14 days. Payment of this 'lesser amount' within 14 days discharges the person's liability to pay the full penalty amount. The 'lesser amount' must not be less than £50.

You will need to decide whether to offer an early-payment discount, and (if necessary) agree the level of the discounted penalty.

### Income from penalties

Receipts from civil penalties for littering from vehicles can only be spent on functions relating to litter and refuse (including keeping land and highways clear of litter and refuse, and enforcement against littering and littering from vehicles), graffiti and fly-posting, controlling and enforcing against the unauthorised distribution of free literature.<sup>3</sup>

### Prepare forms and systems

#### Penalty notice

Before you begin issuing civil penalties, you will need to prepare a civil penalty notice template/form.

Regulation 6 provides that a civil penalty notice for littering from a vehicle **must** state all of the following:

- The circumstances alleged to constitute the littering offence in question, including the registration mark (if known) of the vehicle concerned
- How long they have to pay the penalty (28 days from the date the penalty notice is given)
- The amount of the penalty if paid within 28 days
- That the amount of the fixed penalty will double if not paid within 28 days
- That the enforcing litter authority may recover any fixed penalty not paid within 28 days in court
- [If applicable] details of any early-payment discount available if the penalty is paid within 14 days (including the amount of the discounted penalty, which must not be less than £50)
- Details of how to pay (the name and address of the person to whom payment must be made, and the permissible methods of payment)
- That the recipient has a right to make representations to the enforcing litter authority
- The grounds on which representations may be made; and
- In general terms, how an appeal to an adjudicator can be made.

In order to cross-match with the details from the DVLA's database of registered keepers, it is strongly recommended that the penalty form also contain space for recording the following details;

- the make of the vehicle
- the model
- the colour

The opening from which the litter was thrown (e.g. driver's side window) should also be noted.

### Processes and management information

You will also need to establish internal policies and systems for processing and recording:

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<sup>3</sup> Regulation 11

- penalties issued (including issuing officer, date, details of the offence, recipient’s details, address to which the penalty is sent etc.);
- payments received (amount, date received – including payments following debt recovery)
- payments overdue (including penalties registered for debt recovery)
- representations received (including date received, ground(s) cited, supporting evidence etc.)
- outcome of considering representations (including date sent to penalty recipient)
- penalties cancelled/refunded and reasons
- penalties appealed and appeal outcomes

You may wish to use existing systems and/or software which could be adapted for this purpose – for example systems used for tracking other fixed penalties, or for civil parking enforcement.

It is recommended as good practice that enforcing authorities make information about their enforcement activities publicly available: a suitable management information system will also enable reports to be easily generated for this purpose.

### Establish access to the DVLA Web-enabled Enquiry (WEE) System

Access to the DVLA WEE system is available to all councils upon request. If you do not currently have access, you should contact the DVLA at: [kadoeservice.support@DVLA.gsi.gov.uk](mailto:kadoeservice.support@DVLA.gsi.gov.uk)

The WEE system is designed to allow councils access to data for the investigation/prosecution of a specific range of offences. In particular, an enquiry can be made for vehicle keeper details where “waste/rubbish is seen or witnessed being deposited in an open or public place which is not an authorised waste disposal site, or without the permission of the landowner”.

For the purposes of issuing a civil penalty to the keeper of a vehicle from which litter is thrown, the “keeper” to which the penalty notice should be issued is the person by whom the vehicle is kept at the time when the littering offence in question occurs. In the case of a registered vehicle this is presumed to be the registered keeper, unless it is proven otherwise.<sup>4</sup>

### Authorise people to issue penalties

Enforcement staff (whether in-house, or under contract) **must** be authorised in writing to issue civil penalties for littering from vehicles. If you have already authorised staff or contractors to issue fixed penalty notices for littering etc, they will need separate, written authorisation to issue civil penalties for littering from vehicles.

Environmental enforcement officers may also be authorised to carry out other functions in addition to environmental enforcement, for example, parking enforcement duties, or vice versa.<sup>5</sup>

Enforcement authorities that choose to take this approach will need to ensure that neither function is compromised as a result of the integration of duties. Income from penalties issued under each statutory regime should be kept separate.

We are clear that, where councils choose to use a third-party enforcement service, they should use an approach which is not based on targets on the number of penalties given or revenue raised as this practice undermines public confidence in and support for a fair judicial system.

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<sup>4</sup> Anti-social Behaviour, Crime and Policing Act 2014, section 154(9)

<sup>5</sup> ‘Dual Function Civil Enforcement Officers’, Department for Transport (2016), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/609788/statutory-guidance-local-authorities-enforcement-parking-contraventions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/609788/statutory-guidance-local-authorities-enforcement-parking-contraventions.pdf)

Enforcement authorities remain responsible for the whole enforcement process, whether they contract out part of it or not. Enforcement authorities should not contract out the consideration of representations or challenges against penalties.

The Regulations set out timescales for various stages of the process. For example:

- Regulation 15 requires that you consider and respond to representations against a penalty notice within 56 days.
- Regulation 6 provides that an unpaid penalty becomes recoverable 28 days after it is given.

You should therefore authorise and train enough staff to meet these timescales for the volume of work that you anticipate.

## Train and equip your enforcement team

### Training

Training should be seen as a legitimate and important aspect of running costs.

The processes for issuing and pursuing fixed penalty notices and civil penalties are not identical, and you should make sure that enforcement officers issuing civil penalties are fully trained in the detail of the regulations, the process for issuing penalties, and how to deal with associated representations, appeals and debt recovery. The office processes involved are also important and staff carrying them out need similar levels of skill, training and professionalism as the more visible on-street enforcement officers.

The process of considering challenges, representations and defence of appeals is a legal process that requires officers dealing with these aspects to be trained in the relevant legislation and how to apply it. They should be well versed in the collection, interpretation and consideration of evidence; writing clear but concise case-specific responses to challenges, enquiries and representations; presenting the authority's case to adjudicators.

If the service is to command public confidence and respect, it is essential to give enforcement staff at all levels the skills and training to do their jobs effectively, whether they are employed directly by the enforcing authority, or by a contractor. If you choose to outsource any area of enforcement to a private company, you are responsible for ensuring that the contractor meets the same standards as would be expected of your own authority.

### Equipment

Enforcement officers should be equipped with a uniform or badge, and carry a Police and Criminal Evidence Act (PACE) Notebook for recording evidence to support a fixed penalty or prosecution. It is best practice for enforcement officers to carry identification e.g. a warrant card.

### Make provision for appeals

You should offer individuals flexible and efficient ways to get in contact about penalties received, including e-mail and telephone. You should also ensure there is an adequate audit trail to rebut any accusations of unfairness.

The Regulations provide that a person to whom a penalty is given may make representations to the litter authority against the penalty on specified grounds. If you do not accept those representations, the person has a right to appeal to independent adjudicators.<sup>6</sup> The independent adjudicators and their support staff are collectively known as the Traffic Penalty Tribunal.

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<sup>6</sup> See Regulation 14 and Part 4 of the Regulations

The Traffic Penalty Tribunal operates a digital by default online appeal system – FOAM (Fast Online Appeal Management). Appellants submit their appeal, authorities respond online and upload evidence and the adjudicator publishes a decision online. In some circumstances, the adjudicator will conduct a telephone hearing with all parties invited to participate. All local authorities outside London that operate civil parking enforcement use this system. A dashboard enables authorities to manage their cases and includes reporting functionality. The tribunal also operates an Assisted Digital Support programme for people who are not able to appeal online.

Regulation 18 provides for this function to be exercised by PATROL (Parking and Traffic Regulation Outside London), and that the expenses associated with the adjudication (including the expenses of the joint committee or joint committees and the remuneration of adjudicators) **must** be paid by the litter authorities.<sup>7</sup> It will be up to the joint committee to decide and agree how to allocate these costs between the litter authorities.

You **must** therefore be a member of PATROL to use these powers. You can find more information about PATROL online at: <https://www.patrol-uk.info/>

### Prepare to pursue unpaid penalties

Debts arising from unpaid penalties can be registered with the Traffic Enforcement Centre (TEC) at Northampton County Court. Existing TEC customers can do this using contravention 75 and their existing prefix – individual identifier. New TEC customers should contact [TECInsight@hmcts.gsi.gov.uk](mailto:TECInsight@hmcts.gsi.gov.uk) for further assistance.

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<sup>7</sup> Regulation 18(3) provides for this function to be discharged by “the joint committee responsible for discharging functions relating to parking contraventions in accordance with regulation 16(1) of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007”.





## Flow chart of civil enforcement process

