

LITTERING ENFORCEMENT – LITTERING FROM VEHICLES OUTSIDE LONDON (KEEPERS: CIVIL PENALTIES) REGULATIONS 2018

1 INTRODUCTION

1.1 This report –

- provides an overview of a new enforcement regime in respect of littering from vehicles introduced by the Littering from Vehicles Outside London(Keepers: Civil penalties) Regulations 2018 ('the Regulations');
- summarises the steps required to use the new powers; and
- requests Cabinet's approval of the Council making use of the new powers and the necessary delegations to officers.

2 BACKGROUND

2.1 The Council is a principal litter authority for the purposes of Part IV of the Environmental Protection Act 1990 ('The Act'). The Act places a statutory duty on the Council to ensure that the land within its area is, so far as is practicable, kept clear of litter and refuse.

2.2 The Act provides that a person is guilty of a criminal offence if he "throws down, drops or otherwise deposits any litter in any place" in the area of the Council which is open to the air and "leaves it". The following apply -

- A person who is guilty of such an offence shall be liable following a criminal conviction to a fine not exceeding £2,500.
- Where there is reason to believe that a criminal offence has been committed the person may be offered a fixed penalty notice to discharge any liability to conviction for that offence. The amount of a fixed penalty shall be specified by the principal litter authority.
- The Council has currently set the fixed penalty at £80.00, discounted to £50.00 if paid within 10 days of issue.
- If the fixed penalty notice is not paid, the Council should take prosecution action.

The Council makes use of these powers in the discharge of its statutory duty to keep land free from litter.

2.3 The Department for Environmental Food & Rural Affairs (DEFRA) has identified that, in cases of littering from vehicles, it is difficult to identify which person in a vehicle committed the offence.

2.4 As a way of trying to tackle this issue in London, powers were conferred on Borough Councils in London to impose a penalty charge on the owner of a vehicle from which litter is thrown. Recent legislation, the Regulations, have conferred similar powers on authorities in England. These Regulations came into force on 1 April 2018.

3 POWERS CONFERRED BY THE REGULATIONS

Civil penalty notices

- 3.1 District Councils which have a statutory duty to collect litter are now able to hold the keeper of a vehicle responsible for littering offences committed from it. A civil penalty may be imposed if there is reason to believe that a littering offence has been committed from the vehicle.
- 3.2 The amount of any civil penalty should be the same as the amount set for the fixed penalty notice under the Act. If the civil penalty notice remains unpaid after 28 days, there is provision to double the amount due and it becomes recoverable as a civil debt or as if payable under a county court order.
- 3.3 As set out above, the Regulations have been introduced to overcome the difficulties Councils had in identifying the offender with sufficient certainty to take enforcement action. The powers to issue fixed penalty notices and prosecute under the Act are both subject to the criminal burden of proof 'beyond reasonable doubt'. The new civil penalty powers are subject to the civil burden of proof 'on the balance of probabilities'.
- 3.4 There are provisions in the Regulations for persons to appeal against penalty notices, both via a written representations procedure to the Council and following this to an external adjudicator.

4 HOW THE POWERS FIT WITH THE CURRENT FIXED PENALTY REGIME

- 4.1 The new powers do not replace the fixed penalty notice powers in respect of littering offences. However, it is only possible to issue a civil penalty under the Regulations, or a fixed penalty under the Act for littering in respect of any one littering offence. Either notice can also be cancelled at any time before it is paid. Detailed procedures are set out in the Regulations.

5 USE OF THE POWERS IN LONDON 2012-2017

- 5.1 The use of the powers in London, since their introduction, has been minimal.
- 5.2 DEFRA commissioned a Scoping Study for Research on Littering from Vehicles which was published in November 2015. The report highlighted a number of issues experienced by London Boroughs in implementing the new regime:
 - Setting up new systems to deal with the appeals process;
 - Difficulties with identifying littering offences using CCTV cameras;
 - Difficulties in back office functions dealing with criminal offences and civil contraventions;
 - Difficulties enforcing payments as there is no standard paperwork in place to enable bailiffs to obtain a warrant from the county court as currently happens with the Council's enforcement of parking Penalty Charge Notices;
 - Difficulties enforcing the notices as a civil debt in the county court;

- 5.3 Despite the difficulties experienced by the London Boroughs, the Regulations were made to extend the civil penalty powers to the remainder of England.
- 5.4 Chris Preston, DEFRA's Deputy Director of Resources and Waste has issued advice to local authorities on implementing the Regulations, in the form of a letter and Implementation Advice. A copy of this letter and the Implementation Advice are attached as **Appendix 1, parts 1 and 2**.
- 5.5 The letter stated that "it is of course up to you to decide how best to meet your statutory duties to keep relevant land clear of litter and refuse, and to keep the highways clean. I am writing to encourage you to make use of these new powers, and to provide advice on the steps you may need to take in order to do so". The Implementation Advice sets out that "any enforcement action should be proportionate and in the public interest".

6 DELEGATIONS

- 6.1 The Council operates an extensive scheme of delegation of powers to officers, which allows decisions to be taken quickly and efficiently within defined policies. To make use of the new powers, delegations are required to deal with the issuing of civil penalty notices and any subsequent appeals.
- 6.2 Proposed delegations are set out in the table below:

Source	Power Delegated	Delegated to
Section 88A, Environmental Protection Act 1990 and Littering From Vehicles – Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, Part 2	To be an authorised officer and to exercise the powers conferred on the litter authority in respect of penalty notices (fixed penalties)	Executive Head, Service Manager, Enforcement Manager, Enforcement Team Leader, Enforcement Supervisors Enforcement Officers, Dog Warden, Streetscene Senior Supervisor, Streetscene Supervisor
Section 88A, Environmental Protection Act 1990 and Littering From Vehicles – Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, Part 4	To carry out the functions of the litter authority following representations and adjudication	Executive Head, or Service Manager, Enforcement Manager, Enforcement Team Leader, Enforcement Supervisors

7 FEES AND CHARGES

- 7.1 As referred to above, the Regulations require that the amount specified for the civil penalty must be the same as the amount set for fixed penalty notices in respect of litter. Therefore, the civil penalty will be £80.
- 7.2 Whilst a fixed penalty may be reduced to £50 if it is paid within 10 days, the Regulations state that if a Council chooses to accept a lesser amount if it is paid within

a shorter period, that period is set as 14 days. For consistency, it is proposed that the Council does accept a lesser sum for early payment and that sum is agreed as £50.

8 OTHER ISSUES

- 8.1 Processes and procedures will need to be put in place to make use of the new civil penalty notice powers, including to deal with appeals and to pursue unpaid penalties.
- 8.2 The administrative processes to issue the civil penalty notices and deal with challenges will be undertaken by the enforcement team administrative staff.
- 8.3 Staff will also require training.
- 8.4 Whilst the Regulations are designed to make it easier to enforce against offences of littering from vehicles and although the burden of proof is reduced, enforcement officers will need sufficient evidence to interrogate the DVLA database to identify the keeper/owner of the vehicle.

9 WORKING GROUP

- 9.1 In order to address the evidential issue identified at 8.4 and to establish a cohesive approach with key partners in tackling this important issue, it is proposed to establish a working group with officers from:
 - Forestry Commission
 - National Park Authority
 - Verderers of the New Forest
 - Hampshire County Council
 - Any other authorities/ agencies as may be considered relevant.
- 9.2 This working group will consider the extent of the problem of littering from vehicles in the New Forest and identify how use of the new Regulations can be supported including enforcement options and publicity opportunities.
- 9.3 The working group should report back to Cabinet as soon as they are able.

10 CONCLUSION

- 10.1 The Regulations provide the Council with a new civil enforcement power in respect of littering offences that take place from a vehicle.
- 10.2 In order to make use of these powers, there will need to be an investment in the development of processes and procedures, staff training and updates to the Council's systems to deal with the new process.
- 10.3 DEFRA's review of the use of the powers in London shows that there was minimal uptake. However, DEFRA subsequently adopted the Regulations and have encouraged local authorities to make use of the powers.
- 10.4 Cabinet are asked to support the use of the new powers in the New Forest and agree to the recommendations set out below.

11 FINANCIAL IMPLICATIONS

- 11.1 Costs will be associated with setting up new procedures to process civil penalty notices up to and including the appeal stage and any subsequent enforcement action in respect of unpaid penalties. In addition, there will be costs associated with training staff and setting up IT solutions.
- 11.2 Any income from the payment of civil penalty notices is ring fenced and 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 and controlling and enforcing against the unauthorised distribution of free literature.
- 11.3 It is difficult to quantify possible income and associated costs at this stage.

12 CRIME & DISORDER IMPLICATIONS

- 12.1 The use of the civil penalty notice scheme is a way of dealing with a potential criminal offence through the use of the civil enforcement system.

13 ENVIRONMENTAL IMPLICATIONS

- 13.1 The aim of the Regulations is to assist with enforcing against littering offences and in turn reduce the amount of litter which is found within the Council's area.
- 13.2 It is not yet known whether the use of the new powers will reduce littering.

14 EQUALITY & DIVERSITY IMPLICATIONS

- 14.1 There are none.

15 PORTFOLIO HOLDERS' COMMENTS

- 15.1 **Environment and Regulatory Services** - I fully support the new powers to fine the registered keeper of any vehicle from which litter has been thrown. It is an important extra tool in our fight against littering and we will work with our partners to prevent and catch those who throw litter from their vehicles
- 15.2 **Community Affairs** - As principal litter authority this new Regulation is a welcome resource in tackling littering from vehicles. I support the use of the new powers in the Forest and will welcome their early implementation.

16 RECOMMENDATIONS

16.1 That Cabinet support the use of the new powers conferred by the Regulations.

16.2 In particular Cabinet is asked to approve the following:

16.2.1 The update to the Council's scheme of delegations set out at paragraph 6 of this report;

16.2.2 The fees and charges set out at paragraphs 7.1 and 7.2 of this report; and

16.2.3 The establishment of a working group as set out at paragraph 9 of this report.

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Background Papers:

Published documents
DEFRA report: A Scoping Study for
Research on Littering from Vehicles
published in November 2015