

Annex C – Draft Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

Draft Regulations laid before Parliament under section 161(2ZC) of the Environmental Protection Act 1990, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

ENVIRONMENTAL PROTECTION, ENGLAND

The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

Made - - - - - ***

Coming into force - - - - - ***

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The Secretary of State makes these Regulations in exercise of the powers conferred by section 88A of the Environmental Protection Act 1990⁽¹⁾.

A draft of these Regulations has been laid before Parliament in accordance with section 161(2ZC) of that Act⁽²⁾ and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2017.

(2) They come into force on 11th December 2017.

Interpretation

2. In these Regulations—

“the 2013 Regulations” means the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013⁽³⁾;

“adjudicator” means a person who is an adjudicator for the purposes of these Regulations by virtue of regulation 15(1);

“authorised officer” has the meaning given by regulation 10(1);

“the EPA 1990” means the Environmental Protection Act 1990;

“fixed penalty” means a fixed penalty payable under a penalty notice;

“increased fixed penalty” means an increased fixed penalty payable under a late payment notice;

“late payment notice” means a notice given under regulation 9(1);

“litter authority” has the meaning given by regulation 3(3);

“littering offence” has the meaning given by section 88A(2) of the EPA 1990;

“notice of rejection” means a notice given by a litter authority under regulation 12(2)(b);

“payment period” has the meaning given by regulation 7(6);

“penalty notice” means a notice given under regulation 3(1);

“subject” has the meaning given by regulation 11(1).

⁽¹⁾ C.43. Section 88A was inserted by section 154(2) of the Anti-social Behaviour, Crime and Policing Act 2014 (c.12).

⁽²⁾ Section 161(2ZB) and (2ZC) was inserted by section 154(3) of the Anti-social Behaviour, Crime and Policing Act 2014.

⁽³⁾ S.I. 2013/1783, to which there are amendments not relevant to these Regulations.

PART 2

Fixed penalties for keepers of vehicles

Littering offences: fixed penalty for keepers of vehicles

3.—(1) A litter authority may by notice (a “penalty notice”) require the keeper of a vehicle to pay to the authority a fixed penalty where it has reason to believe that a littering offence has been committed in respect of the vehicle on the authority’s land.

(2) Regulation 4 contains an exception to paragraph (1) and regulations 5 and 6 set out circumstances in which a keeper is not liable to pay a fixed penalty or increased fixed penalty.

(3) In this regulation—

“the authority’s land” means the land in respect of which the authority is under a duty under section 89(1) of the EPA 1990 (duty to keep land clear of litter etc.);

“litter authority” means—

- (a) a district council in England;
- (b) a county council in England for an area for which there is no district council;
- (c) the Council of the Isles of Scilly.

Circumstances where penalty notices must not be given

4. A litter authority must not give a penalty notice to the keeper of a vehicle for a littering offence in respect of the vehicle if—

- (a) a notice under section 88(1) of the EPA 1990 has been given to a person in respect of the same offence (whether or not the person is the vehicle’s keeper), or
- (b) a prosecution has been brought against a person under section 87 of the EPA 1990 in respect of the same offence (whether or not the person is the vehicle’s keeper and whether or not the prosecution has concluded or was successful).

Public service vehicles and licensed taxis etc.

5.—(1) The keeper of a vehicle is not liable to pay a fixed penalty or increased fixed penalty for a littering offence in respect of the vehicle if—

- (a) the vehicle is of a kind listed in paragraph (2), and
- (b) the person who committed the offence was (at the time of the offence) a passenger in the vehicle.

(2) The kinds of vehicle are—

- (a) a public service vehicle, within the meaning of section 1 of the Public Passenger Vehicles Act 1981⁽⁴⁾;
- (b) a hackney carriage licensed under section 37 of the Town Police Clauses Act 1847⁽⁵⁾ or section 6 of the Metropolitan Public Carriage Act 1869⁽⁶⁾;
- (c) a vehicle in respect of which a private hire vehicle licence is in force within the meaning given by section 6(6) of the Private Hire Vehicles (London) Act 1998⁽⁷⁾;

⁽⁴⁾ C.14. Section 1 was amended by Schedule 8 to the Transport Act 1985 (c.67).

⁽⁵⁾ C.89.

⁽⁶⁾ C.115. Section 6 was substituted by paragraph 5(3) of Schedule 20 to the Greater London Authority Act 1999 (c.29) and amended by S.I. 2014/560.

⁽⁷⁾ C.34.

- (d) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976⁽⁸⁾ (licensing of private hire vehicles);
- (e) a vehicle licensed under section 5 of the Plymouth City Council Act 1975⁽⁹⁾ (licensing of private hire vehicles).

Discharge of liability

6. The liability of the keeper of a vehicle to pay a fixed penalty or increased fixed penalty for a littering offence in respect of the vehicle is discharged if—

- (a) a notice under section 88(1) of the EPA 1990 is subsequently given to a person in respect of the same offence (whether or not the person is the vehicle's keeper), or
- (b) a prosecution is subsequently brought against a person under section 87 of the EPA 1990 in respect of the same offence (whether or not the person is the vehicle's keeper and whether or not the prosecution is successful).

Fixed penalties: amount and payment

7.—(1) The amount of a fixed penalty is—

- (a) the amount specified by a litter authority in relation to its area, or
- (b) if no amount is specified, [X].

(2) An authority must not specify an amount under paragraph (1)(a) which is less than [X] or more than [X].

(3) Regulation 9 makes provision for the amount of a fixed penalty to be increased.

(4) An authority may make provision for treating the amount in paragraph (1) as having been paid in full if a lesser amount is paid within the period of 14 days beginning with the day on which the penalty notice is given.

(5) The lesser amount must not be less than [X].

(6) A fixed penalty must be paid within the period of 28 days beginning with the day on which the penalty notice is given (the "payment period").

Penalty notices

8.—(1) A penalty notice must be in writing and must—

- (a) give particulars of the circumstances alleged to constitute the littering offence to which the notice relates, including any registration mark (if known) of the vehicle concerned,
- (b) state the amount of the fixed penalty (the "full amount") and the date by which it must be paid,
- (c) if the litter authority has made provision under regulation 7(4), state the lesser amount of the fixed penalty and the date by which it must be paid in order for it to be treated as discharging the liability to pay the full amount,
- (d) set out the name and address of the person to whom the fixed penalty must be paid and the permissible methods of payment,
- (e) explain the subject's right to make representations to the litter authority under regulation 11(1) against the imposition of the fixed penalty, including the grounds on which, and manner in which, representations may be made and the date by which they must be made,
- (f) explain the consequences of a failure to pay the fixed penalty by the date set out in the notice,

⁽⁸⁾ C.57. Section 48 was amended by paragraph 16 of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c.54).

⁽⁹⁾ C.xx.

- (g) set out, in general terms, the form and manner in which an appeal to an adjudicator may be made.
- (2) A litter authority which has given a penalty notice may cancel the notice at any time.
- (3) In paragraph (1)(a), “registration mark” has the meaning given by section 23 of the Vehicle Excise and Registration Act 1994⁽¹⁰⁾.

Late payment notices: increased fixed penalty

- 9.**—(1) A litter authority which has given a penalty notice to the keeper of a vehicle may give a further written notice (a “late payment notice”) to the keeper where—
- (a) the relevant period has ended, and
 - (b) the fixed penalty has not been paid in full.
- (2) The “relevant period” is—
- (a) in a case where the keeper does not make any representations under regulation 11, the payment period, or
 - (b) in a case where the keeper makes representations and the litter authority gives a notice of rejection to the keeper, the period of 28 days beginning with—
 - (i) the day on which the litter authority gives the notice of rejection, or
 - (ii) if the keeper makes an appeal to an adjudicator under regulation 13—
 - (aa) the day on which that appeal is dismissed or withdrawn, or
 - (bb) if a recommendation is made that the penalty notice is cancelled but the litter authority refuses to accept the recommendation, the day on which notice of the refusal is given to the keeper under regulation 14(3).
- (3) The late payment notice must state—
- (a) the details of the penalty notice given to the keeper,
 - (b) that the fixed penalty was not paid in full before the end of the relevant period,
 - (c) that the fixed penalty is increased by half with effect from the day after the day on which the late payment notice is given, and
 - (d) that the litter authority may, if the increased fixed penalty is not paid within the period of 14 days beginning with the day on which the late payment notice is given, bring proceedings in the county court for the recovery of the increased fixed penalty.
- (4) A litter authority which has given a late payment notice may cancel the notice at any time.

Authorised officers

- 10.**—(1) A litter authority may authorise in writing any person (an “authorised officer”) to perform any of the following functions on the authority’s behalf.
- (2) The functions are—
- (a) functions under regulation 3(1);
 - (b) cancelling a penalty notice;
 - (c) receiving payment of a fixed penalty;
 - (d) giving or cancelling a late payment notice;
 - (e) receiving payment of an increased fixed penalty.

⁽¹⁰⁾ C.22.

PART 3

Representations and appeals

Right to make representations against penalty notice

11.—(1) A person to whom a penalty notice is given (the “subject”) may make representations to the litter authority in writing if it appears to the subject that one or more of the following grounds apply.

(2) Ground 1 is that the littering offence in question did not occur.

(3) Ground 2 is that the subject was not the keeper of the vehicle at the time of the littering offence because the subject became the keeper of the vehicle after the littering offence occurred.

(4) Ground 3 is that the subject was not the keeper of the vehicle at the time of the littering offence because the subject had disposed of the vehicle to another person before the littering offence occurred.

(5) Ground 4 is that the subject was not the keeper of the vehicle at the time of the littering offence because the vehicle was a stolen vehicle when the offence occurred.

(6) Ground 5 is that the subject was not the keeper of the vehicle at the time of the littering offence because at that time—

- (a) the subject was engaged in the hiring of vehicles in the course of a business,
- (b) the vehicle was hired to another person under a hire agreement with the subject, and
- (c) the hire agreement had the effect that the hirer was the keeper of the vehicle.

(7) Ground 6 is that the subject was not the keeper of the vehicle at the time of the littering offence for a reason not mentioned in Grounds 2 to 5.

(8) Ground 7 is that the litter authority was not authorised to give the subject a penalty notice by virtue of regulation 4.

(9) Ground 8 is that the subject is not liable to pay the fixed penalty by virtue of regulation 5.

(10) Ground 9 is that liability to pay the fixed penalty has been discharged in the circumstances set out in regulation 6.

(11) Ground 10 is that the fixed penalty exceeds the amount payable under these Regulations.

(12) Ground 11 is that the litter authority has failed to observe any requirement imposed on it by these Regulations in relation to the imposition or recovery of the fixed penalty.

(13) Ground 12 is that there are compelling reasons why, in the particular circumstances of the case, the penalty notice should be cancelled (whether or not any of Grounds 1 to 11 apply).

(14) A representation under paragraph (1) may only be made within the period of 28 days beginning with the day on which the penalty notice is given.

(15) If the subject makes representations that Ground 2 applies, the representations must include the name and address of the person from whom the vehicle was acquired (if known).

(16) If the subject makes representations that Ground 3 applies, the representations must include the name and address of the person to whom the vehicle had been disposed (if known).

(17) If the subject makes representations that Ground 4 applies, the representations must include the crime reference number, insurance claim reference or other evidence of the vehicle’s theft.

(18) If the subject makes representations that Ground 5 applies, the representations must include—

- (a) a statement signed by or on behalf of the subject to the effect that at the time of the littering offence the vehicle was hired to a named person under a hire agreement with the subject, and
- (b) a copy of the hire agreement.

(19) In this regulation—

- (a) “hire agreement” means an agreement which—
 - (i) provides for a vehicle to be let to a person for a period of any duration (whether or not the period is capable of extension by agreement between the parties), and

- (ii) is not a hire-purchase agreement within the meaning of the Consumer Credit Act 1974⁽¹¹⁾;
- (b) a reference to the currency of a hire agreement includes a reference to any period during which, with the consent of the subject, the hirer continues in possession of the vehicle as hirer, after the expiry of any period specified in the agreement but otherwise on terms and conditions specified in it.

Representations and duty to cancel penalty notice

12.—(1) A litter authority to whom representations are made under regulation 11 must within the period of 56 days beginning with the day on which the representations are given—

- (a) consider them and any supporting evidence which the subject provides,
- (b) decide whether or not it accepts that—
 - (i) one or more of the grounds in regulation 11 applies, or
 - (ii) there are compelling reasons why, in the particular circumstances of the case, the penalty notice should be cancelled,
- (c) if it decides that it does accept a matter mentioned in sub-paragraph (b)(i) or (ii), cancel the penalty notice, and
- (d) give the appropriate notice to the subject.

(2) “Appropriate notice” means—

- (a) in a case where a litter authority cancels the penalty notice, a notice setting out that the authority accepts a matter mentioned in paragraph (1)(b)(i) or (ii) and has cancelled the penalty notice;
- (b) in any other case, a notice (a “notice of rejection”) complying with the requirements of paragraph (3).

(3) A notice of rejection must—

- (a) set out the litter authority’s decision that it does not accept any matter mentioned in paragraph (1)(b)(i) or (ii) and the reasons for it,
- (b) explain that a late payment notice may be given under regulation 9(1) unless, within the period of 28 days beginning with the day on which the notice of rejection is given—
 - (i) the fixed penalty is paid in full, or
 - (ii) the subject appeals to an adjudicator against the decision set out in the notice of rejection,
- (c) set out, in general terms, the form and manner in which an appeal to an adjudicator may be made, and
- (d) indicate the nature of an adjudicator’s power to award costs against a person appealing against the decision set out in the notice of rejection.

(4) If a litter authority fails to comply with paragraph (1), the authority is deemed to have decided that it accepts a matter mentioned in paragraph (1)(b)(i) or (ii) and to have cancelled the penalty notice.

Right to appeal to against rejection of representations

13.—(1) A person who is given a notice of rejection may appeal against the decision set out in the notice.

(2) The appeal must be made to an adjudicator (see regulation 15).

(3) The appeal must be made within a period of 28 days beginning with the day on which the notice of rejection is given.

(4) But an adjudicator may allow a longer period within which an appeal may be made (whether or not the period of 28 days has expired).

⁽¹¹⁾ C.39. “Hire-purchase agreement” is defined in section 189.

(5) An adjudicator must consider the representations made under regulation 11 and any additional representations which are made by the appellant, together with any representations made to the adjudicator by the litter authority.

(6) If the adjudicator concludes that one or more of the grounds in regulation 11 applies, the adjudicator must allow the appeal.

(7) Where an appeal is allowed, the adjudicator may give any directions to the litter authority which the adjudicator considers appropriate for the purpose of giving effect to the adjudicator's decision, and the directions may in particular include directions requiring—

- (a) the cancellation of the penalty notice;
- (b) the refund of any amount that has been paid to the litter authority in respect of the fixed penalty it relates to.

(8) Despite not allowing an appeal, an adjudicator may recommend to the litter authority in writing that it cancels the penalty notice.

(9) Before making a recommendation under paragraph (8), an adjudicator must be satisfied that there are compelling reasons why, in the particular circumstances of the case, the penalty notice should be cancelled.

(10) An adjudicator must dismiss an appeal if the adjudicator concludes that—

- (a) none of the grounds in regulation 11 applies, and
- (b) there are not compelling reasons why the penalty notice should be cancelled.

Duties of litter authority after adjudication

14.—(1) A litter authority must comply with any direction given to it under regulation 13(7) as soon as reasonably practicable.

(2) A litter authority which is the subject of a recommendation under regulation 13(8) must reconsider whether to cancel the penalty notice, taking account of any observations made by the adjudicator.

(3) Within the period of 35 days beginning with the day on which the recommendation under regulation 13(8) is made, the authority must give notice to the appellant and the adjudicator stating—

- (a) whether or not it accepts the adjudicator's recommendation,
- (b) if it does accept the adjudicator's recommendation, that the penalty notice is cancelled, and
- (c) if it does not accept the adjudicator's recommendation, the reasons for its decision.

(4) No appeal to an adjudicator lies against the decision of the litter authority under paragraph (3).

(5) If a litter authority fails to comply with paragraph (3), the authority is deemed to have accepted the adjudicator's recommendation and to have cancelled the penalty notice.

Adjudicators

15.—(1) A person who at any time holds office as an adjudicator for the purposes of Part 6 of the Traffic Management Act 2004⁽¹²⁾ by virtue of an appointment under regulation 17 of the 2007 Regulations also holds office at that time (and on the same terms) as an adjudicator for the select purposes of these Regulations.

(2) The litter authorities must—

- (a) provide, or make arrangements for the provision of, accommodation, administrative staff and facilities for adjudicators,
- (b) determine the places where adjudicators are to sit,

⁽¹²⁾ C.18.

- (c) appoint a member of the administrative staff to fulfil the functions of the proper officer (for the purposes of the Schedule to the 2013 Regulations as it applies pursuant to regulation 16 in respect of appeals made under regulation 13),
 - (d) fix the date by which each adjudicator is to make the report mentioned in paragraph (5),
 - (e) make and publish an annual report in writing to the Secretary of State on the discharge by adjudicators of their functions under these Regulations.
- (3) The functions of the litter authorities in paragraph (4) must be discharged by a joint committee (the “joint committee”) appointed under section 102(1)(b) of the Local Government Act 1972⁽¹³⁾.
- (4) The litter authorities must pay the expenses associated with the adjudication process (including the expenses of the joint committee and the remuneration of adjudicators)—
- (a) in such proportions as they may decide, or
 - (b) in default of any decision, as may be determined by an arbitrator nominated by the Chartered Institute of Arbitrators on the application of any litter authority.
- (5) Each adjudicator must prepare a report of the performance of the adjudicator’s functions under these Regulations in each financial year.
- (6) The report relating to a financial year must be given to the joint committee as soon as reasonably practicable after the end of the financial year.
- (7) For the purposes of paragraphs (5) and (6), each of the following is a “financial year”—
- (a) the period beginning with 11th December 2017 and ending with 5th April 2019, and
 - (b) each successive period of 12 months.
- (8) In this regulation, “the 2007 Regulations” means the Civil Enforcement of Parking Contraventions (England) General Regulations 2007⁽¹⁴⁾.

Appeal procedure

16.—(1) The Schedule to the 2013 Regulations (procedure in adjudication proceedings) applies in respect of appeals made under regulation 13 as it applies in respect of adjudication proceedings under those Regulations but as if—

- (a) each reference to a charging authority except that in paragraph 9(1) were a reference to a litter authority;
- (b) in paragraph 1(1), in the definition of “appeal period” the words “under regulation 10(1), 33(4) or 36(4) (as the case may be)” were omitted;
- (c) in paragraph 1(2)—
 - (i) in the definition of “the original representations”, the reference to regulation 8(1), 32(3) or 36(4) (as the case may be) of the 2013 Regulations were a reference to regulation 11(1) of these Regulations;
 - (ii) the definition of “the relevant notice of rejection” were omitted;
- (d) in paragraph 2(2)(d)—
 - (i) the reference to a penalty charge notice were a reference to a penalty notice;
 - (ii) the reference to a penalty charge were a reference to a fixed penalty;
- (e) in paragraph 3(4)(a), the reference to a penalty charge notice were a reference to a penalty notice;
- (f) in paragraph 3(4)(c), the word “relevant” were omitted;

⁽¹³⁾ C.70.

⁽¹⁴⁾ S.I. 2007/3483.

- (g) in paragraph 4(1), the reference to regulations 8(3), 32(4) or 35(4) (as the case may be) of the 2013 Regulations were a reference to regulation **Error! Reference source not found.** to **Error! Reference source not found.** of these Regulations;
 - (h) in paragraph 9(1), the reference to a charging authority were a reference to a litter authority and any authorised officer of the authority;
 - (i) in paragraph 17(1), the reference to the 2013 Regulations were a reference to these Regulations;
 - (j) in paragraph 17(4), the reference to an enforcement authority were a reference to a litter authority;
 - (k) [Part 4 were omitted];
 - (l) in paragraph 21(1), the reference to the 2013 Regulations were a reference to these Regulations.
- (2) Any aspect of procedure in respect of appeals under regulation 13 not provided for under this regulation may be regulated by the adjudicators themselves.

Evidence produced by a recording device

17.—(1) Evidence of a fact relevant to proceedings conducted under regulation 16 may be given by the production of—

- (a) a record produced by a recording device, and
- (b) (in the same or another document) a certificate as to the circumstances in which the record was produced, signed by a person authorised to do so by the litter authority which installed the device.

(2) A “recording device” is a camera or other device designed to produce a record of—

- (a) the presence of a particular vehicle on the litter authority’s land (within the meaning given by regulation 3(3)), and
- (b) the date and time at which the vehicle is present,

and includes any equipment used in conjunction with the camera or other device for the purpose of producing such a record.

(3) A document purporting to be a record or a certificate of the kind described in paragraph (1) is to be deemed to be such a record unless the contrary is proved.

PART 4

Enforcement

Power to recover penalties in court

18.—(1) A litter authority may, if the county court so orders, recover—

- (a) an increased fixed penalty which is not paid to the authority within the period of 14 days beginning with the day on which the notice was given, and
- (b) any costs awarded by an adjudicator which relate to that penalty,

as if they were payable under an order of that court.

(2) “Costs awarded by an adjudicator” means the costs and expenses which are required to be paid to the litter authority under an order under paragraph 13 of the Schedule to the 2013 Regulations as it applies to these Regulations by virtue of regulation 16.

PART 5

General

Use of receipts by litter authorities

19. Sums received by a litter authority under these Regulations may be used by the authority for the purposes of any of the authority's functions.

Payments to litter authorities

20. In determining whether an amount has been paid in respect of a penalty notice or late payment notice under these Regulations, it is taken to be paid when it is received by the litter authority.

Cancellation of notices: supplementary

21.—(1) Where a litter authority cancels, or is deemed to have cancelled, a penalty notice or late payment notice under these Regulations, the authority must as soon as reasonably practicable refund any amount paid in respect of the notice.

(2) Paragraph (1) does not apply where an adjudicator has—

- (a) given directions to a litter authority requiring the cancellation of a penalty notice under regulation 13(7)(b), and
- (b) the directions include directions about the refund of any amount paid in respect of the penalty notice.

(3) The cancellation or deemed cancellation of a penalty notice or late payment notice under these Regulations does not prevent the litter authority which gave the notice from giving a further penalty notice or late payment notice in respect of the same littering offence (whether to the same or another person).

Giving notices: supplementary

22.—(1) This regulation applies to the giving of notices under these Regulations by a litter authority to any person.

(2) A notice may be given to the person by—

- (a) handing it to the person,
- (b) leaving it at the person's proper address,
- (c) sending it by post to the person at that address, or
- (d) sending it to the person by electronic means (see paragraph (9) which sets out the circumstances in which a notice may be sent by electronic means).

(3) Unless the contrary is proved—

- (a) a notice sent by first class post to an address in the United Kingdom is to be treated as having been given on the second working day after the day on which it was posted;
- (b) a notice sent by first class post to an address outside the United Kingdom is to be treated as having been given on the fifth working day after the day on which it was posted;
- (c) a notice sent by electronic means is to be treated as having been given at 9 am on the working day immediately following the day on which it was sent.

(4) A notice to a body corporate may be given to a director or to the secretary or clerk of that body.

(5) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.

(6) For the purposes of this regulation and of section 7 of the Interpretation Act 1978 (service of documents by post)⁽¹⁵⁾ in its application to this section, the proper address of a person is—

- (a) in the case of a body corporate or a director or the secretary or clerk of a body corporate, the address of the body's registered or principal office;
- (b) in the case of the partnership, a partner or a person having the control or management of the partnership business, the address of the principal office of the partnership;
- (c) in any other case, the person's last known address.

(7) For the purposes of paragraph (6), the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.

(8) If a person has specified an address in the United Kingdom, other than the person's proper address within the meaning of paragraph (6), as the one at which the person or someone on the person's behalf will accept notices of the same description as a notice under these Regulations, that address is also treated for the purposes of this section and section 7 of the Interpretation Act 1978 as the person's proper address.

(9) A notice may be sent to a person by electronic means only if—

- (a) the person has indicated that notices of that description may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose, and
- (b) the notice is sent to that address in that form.

(10) In this regulation—

“electronic address” means any number or address used for the purposes of sending or receiving documents or information by electronic means;

“working day” means a day other than Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971⁽¹⁶⁾ in any part of the United Kingdom.

Amendment of section 87 of the EPA 1990

23. In section 87 of the EPA 1990, after subsection (4C)⁽¹⁷⁾ insert—

“(4D) No proceedings may be instituted for an offence under subsection (1) which is a littering offence in respect of a vehicle within the meaning of section 88A(2) if—

- (a) a penalty notice has been given under section 88A to the keeper of the vehicle in respect of which the offence was committed, and
- (b) the fixed penalty has been paid or recovered in full.”.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

⁽¹⁵⁾ C.30.

⁽¹⁶⁾ C.80.

⁽¹⁷⁾ Subsections (1) to (4C) were inserted by section 18 of the Clean Neighbourhoods and Environment Act 2005.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations confer power on each district council in England (and each county council in England for an area for which there is no district council) and the Council of the Isles of Scilly to require the keeper of a vehicle to pay a fixed penalty where there is reason to believe that a littering offence has been committed in respect of the vehicle. Each of the councils is, for the purposes of these Regulations, referred to as a “litter authority”.

A littering offence is, for the purposes of these Regulations, defined in section 88A(2) of the Environmental Protection Act 1990 (c.43) (“the EPA 1990”) as an offence under section 87(1) of the EPA 1990 (throwing down etc. litter and leaving it) as a result of litter being thrown, dropped or otherwise deposited from a vehicle. A litter authority may require the keeper of a vehicle in those circumstances to pay a fixed penalty despite the keeper not being the person who threw, dropped or otherwise deposited the litter from the vehicle.

Regulation 4 contains an exception to paragraph (1) and regulations 5 and 6 set out circumstances in which a keeper is not liable to pay a penalty.

Regulations 7 to 9 make provision about amounts, penalty notices and late payment. Each litter authority may specify the amount of fixed penalty in respect of its land. The amount must fall within the range of [X] to [X]. Where an amount is not specified, the amount is [X]. Provision may be made for liability for payment of that amount to be discharged upon early payment of the full amount. If payment of the full amount is not received, the litter authority may require the keeper to pay an increased amount being the amount of the fixed penalty increased by 100 per cent.

Regulations 11 to 17 make provision about representations and appeals.

Regulation 23 amends section 87 of the EPA 1990 with the effect that a prosecution may not be brought under that section against a person who threw etc. the litter where a litter authority has required the keeper to pay a fixed penalty in respect of the offence and the penalty has been paid or recovered in full.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.