



Department
for Environment
Food & Rural Affairs

Review of Fixed Penalties for Environmental Offences and Introduction of Civil Penalties for Littering from Vehicles Outside London

April 2017



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Why We Are Consulting

1. Littering, and associated environmental offences like dog fouling, blight our communities and impose avoidable costs on the public purse, drawing money away from priorities such as social care and education. We committed in our [election manifesto](#) to “review the case for increasing the fines for littering” to help tackle this type of anti-social behaviour.¹ The levels for fixed penalties under section 88 of the [Environmental Protection Act 1990](#) have not changed since 2006, but adjusting for inflation since that time means that a maximum penalty of £80 in 2006 would now be £100.²
2. The [Environmental Offences \(Use of Fixed Penalty Receipts\) Regulations 2007](#)³ and the [Environmental Offences \(Fixed Penalties\) \(Miscellaneous Provisions\) Regulations 2007](#)⁴ (“the Regulations”) both relate to the levels for fixed penalty notices that can be issued for various environmental offences, and to how income from fixed penalty notices can be used by the local authorities/parish councils that issue them. They also provide for training requirements for enforcement officers authorised by parish councils.
3. The [Anti-social Behaviour, Crime and Policing Act 2014](#) replaced some anti-litter enforcement powers covered by the Regulations with new improved enforcement powers, and we need to update the Regulations to reflect this.⁵
4. The Regulations also allowed “high performing” councils (as classified by the Audit Commission under the [Local Government Act 2003](#)⁶) greater flexibility in how they use the income from fixed penalty notices for environmental offences than councils not classified as “high performing”. However, performance classification was abolished in 2010 and the Audit Commission itself was abolished in March 2015, so a new approach is needed to reflect the new enforcement landscape and provide clarity to councils.
5. We recognise that, when litter is thrown from a vehicle, it can be hard to identify the offender. London borough councils are currently able to issue a penalty charge notice to the keeper of a vehicle from which litter is thrown, even if they cannot establish the identity of the person who threw the litter. [Section 154](#) of the [Anti-social Behaviour, Crime and Policing Act 2014](#) enables the Government to make regulations which would extend similar powers to other local authorities. Introducing these regulations will improve the suite of enforcement powers available to councils to tackle littering offences.

Introduction

¹ Conservative Manifesto 2015 <https://www.conservatives.com/manifesto> page 45

² 2006 prices uplifted to 2016 levels using Consumer Price Index (CPI).

³ <http://www.legislation.gov.uk/ukxi/2007/901/contents/made>

⁴ <http://www.legislation.gov.uk/ukxi/2007/175/contents/made>

⁵ <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

⁶ <http://www.legislation.gov.uk/ukpga/2003/26/part/8/chapter/1/crossheading/performance-categories>

6. This consultation seeks your views on proposals by the Department for Environment, Food and Rural Affairs, to:
- i. Increase the levels for section 88 fixed penalties in the [Environmental Protection Act 1990](#) for littering and other environmental offences;
 - ii. Change the provision for how councils can use the income from fixed penalties for environmental offences; and
 - iii. Remove the requirement for the parish council enforcement officers to attend a specified training course.
7. In connection with (i) above, we are also seeking your views on potential amendments to the default penalties for littering and related offences, are which are set out in the Environmental Protection Act 1990.
8. We propose to make any changes on these points by amending the Regulations. Draft regulations for consideration are [here](#).
9. This consultation also seeks your views on introducing new regulations to enable councils to issue fixed penalties (civil fines) to the keeper of a vehicle from which litter is thrown, where the litterer cannot be identified. Draft regulations are [here](#).
10. Throughout this consultation, to more easily distinguish between the two types of fixed penalties we will refer to:
- penalties issued in lieu of prosecution under section 88 in the [Environmental Protection Act 1990](#) as **‘fixed penalties’**
 - fixed penalties issued to the keeper of a vehicle from which litter is thrown (which would be issued under the proposed new regulations made under section 88A in the [Environmental Protection Act 1990](#)) as **‘civil penalties’**. These will not be issued in lieu of a criminal prosecution.

The draft regulations use the term ‘fixed penalty’ for both types of penalty.

Scope of this Consultation

11. This consultation:

- Covers England only.
- Is concerned only with penalties that can be imposed by councils for environmental offences, not with the level of fines which could be imposed by the courts on conviction for these offences.

- Is not concerned with Penalty Notices for Disorder, which can be issued by the police for littering offences and which are being considered in the context of a separate Ministry of Justice review of Out of Court Disposals.
- Does not cover the fixed penalties that can be imposed for the following other offences which are also covered by the Regulations:
 - a) Noise offences
 - Audible intruder alarms – failure to nominate a keyholder
 - Noise exceeding the permitted level – domestic premises
 - Noise exceeding the permitted level – licensed premises
 - b) Nuisance parking offences (selling or repairing cars on the highway)
 - c) Abandoning a vehicle
 - d) Commercial or industrial waste receptacle offences.⁷
- Does not deal with the use of small scale fly-tipping though fixed penalties. In April 2015 we put in place new regulations ([the Control of Waste \(Dealing With Seized Property\) \(England And Wales\) Regulations 2015](#)) to enable a waste collection authority (most local authorities), the Environment Agency and Natural Resources Wales to take more effective enforcement action against those with suspected involvement in offences concerning the transport or disposal of waste (such as fly-tipping).

Who should read this consultation?

12. The proposals in this consultation are expected to be of greatest interest to:

- Local authorities in England, (particularly district councils and unitary authorities),
- National Park Authorities, and
- The Broads Authority; English parish or community councils; the Local Government Association

13. The proposals in relating to littering from vehicles may also be of particular interest to:

- Operators of commercial vehicles including:
 - Vehicle hire/rental companies
 - Private hire operators, including taxis, pedicabs, minicabs etc.

⁷ Noise Act offences; failure to nominate a keyholder in respect of an audible intruder alarm; nuisance parking offences; abandoned vehicles; waste transfer note offences.

14. Others who may have an interest include:

- Environmental Non-Governmental Organisations and charities;
- Any research institutions, groups or individuals with a particular interest in tackling environmental anti-social behaviour; and
- The public.

Responding to this Consultation

15. This consultation will run for 10 weeks from 10 April 2017. Please send your comments on the proposals in this consultation paper to the following address:

Local Environmental Quality Team, Defra
Area 2B Nobel House
17 Smith Square
London SW1P 3JR

16. Or you can send your comments by email to litter@defra.gsi.gov.uk

Confidentiality and Data Protection Information

17. A summary of responses to this consultation will be published on the Government website at: www.gov.uk/defra. The summary will include a list of organisations that responded **but not** personal names, addresses or other contact details.

18. Information provided in response to this consultation, including personal information, may be made available to the public on request, in accordance with the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs). Defra may also publish the responses to the FOIA/EIR requests on www.gov.uk/defra.

19. If you want your response, including personal information such as your name, that you provide to be treated as confidential, please explain clearly in writing when you provide your response to the consultation why you need to keep these details confidential. If we receive a request for the information under the FOIA or the EIRs we will take full account of your explanation, but we cannot guarantee that confidentiality can be maintained in all circumstances. However, Defra will not permit any unwarranted breach of confidentiality nor will we act in contravention of our obligations under the Data Protection Act 1998 (DPA). An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as a confidentiality request.

20. Defra will share the information you provide in response to the consultation, including any personal data, with a third party of contracted external analysts for the purposes of response analysis and provision of a report.

21. Defra is the data controller in respect of any personal data that you provide, and Defra's Personal Information Charter, which gives details of your rights in respect of the handling of your personal data, can be found at:
<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs/about/personal-information-charter>.
22. This consultation is being conducted in line with the "Consultation Principles" as set out in the Better Regulation Executive guidance which can be found at:
<https://www.gov.uk/government/publications/consultation-principles-guidance>.
23. If you have any comments or complaints about the consultation process, please address them to:
24. Consultation Co-ordinator
8A
8th Floor, Nobel House
17 Smith Square,
London, SW1P 3JR.
25. Or email: consultation.coordinator@defra.gsi.gov.uk

Background

Environmental Offences

26. “Environmental offences” include littering, graffiti, fly-posting, dog fouling and other offences which harm the public space.⁸
27. Enforcement against these environmental offences is carried out primarily by local authorities (district and London borough councils and unitary authorities, rather than county councils), and also by National Park Authorities, the Broads Authority, the Common Council of the Isles of Scilly, the Treasurers of the Inner and Middle Temple, and parish councils. In this document, we will use the term “councils” to refer to all these types of enforcement authorities.
28. Although these environmental offences do attract a criminal penalty, fixed penalty notices can be issued as an alternative to prosecution. This is because prosecuting an offender can be expensive, so fixed penalty notices offer councils an alternative to prosecution and enable straightforward cases to be diverted from the court system. Fixed penalty notices give offenders the opportunity to pay a “fixed penalty” in lieu of prosecution. It is up to councils to decide whether to issue a fixed penalty notice in any individual case, and up to the offender to decide whether to pay it, or to defend the case in court risking prosecution and conviction.⁹ By far the majority of enforcement activity against offences such as littering is via fixed penalty notices, rather than prosecution.¹⁰

⁸ The table on pages 7-8 lists relevant offences covered by the Regulations in more detail.

⁹ Government guidance for councils and enforcement officers on the use of FPNs is available online at www.gov.uk/local-environmental-quality#enforcement

¹⁰ For example, in the last year for which data was collected (2008/09), local councils in England issued around 30,000 fixed penalty notices for littering offences. In 2013 just over 5,500 people were found guilty in the magistrates’ courts for littering offences. (Figures from data.gov.uk and Ministry of Justice (2013).)

Fixed Penalties for Environmental Offences

29. The default fixed penalty for each offence is set out in [primary legislation](#) . For some of the environmental offences, councils can also choose to set the level of fixed penalty locally, within a range set out in the Regulations. If a council does not set a local level, then it must use the default fixed penalty. In some cases, councils may also discount (reduce) the fixed penalty if it is paid promptly. The minimum discounted fixed penalty is also set out in Regulations.

30. This table shows the minimum, default, maximum and minimum discounted fixed penalty which can be imposed for each of the environmental offences:

Offence	Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty
Littering	£75	£50	£80	£50
Dog control offences ¹¹	£75	£50	£80	£50
Graffiti	£75	£50	£80	£50
Fly-posting	£75	£50	£80	£50
Unauthorised distribution of free literature on designated land	£75	£50	£80	£50

¹¹ The power to make new Dog Control Orders was repealed by the Anti-social Behaviour, Crime & Policing Act 2014, but existing Orders remain enforceable.

The Regulations also set out the ranges and minimum discounted penalties for the following offences, but we do not propose changes to them - they are shown here for comparison only:

Alarm noise: failure to nominate key-holder or to notify local authority of key-holder's details	£75	£50	£80	£50
Nuisance parking (selling or repairing cars on the highway)	£100	--	--	£60
Abandoning a vehicle	£200	--	--	£120
Failure to produce a waste transfer or waste carrier's licence	£300	--	--	£180
Industrial and commercial waste receptacle offences	£100	£75	£110	£60
Noise exceeding permitted level - domestic premises	£100	£75	£110	£60
Noise exceeding permitted level - licensed premises	£500	--	--	£500 - no discount allowed

Enforcement Authorities

31. Different authorities have the power to issue fixed penalties for specific offences:

Authority	Offence
District councils, London Borough councils, Council of the City of London, Unitary authorities	Littering, graffiti, fly-posting, dog control offences, alarm noise (no nominated keyholder), Noise Act offences, nuisance parking, unauthorised distribution of free literature on designated land, abandoning a vehicle, waste receptacle offences, failure to produce a waste transfer note or waste carrier's licence
County councils (only if designated or in the absence of a district council); Common Council of the Isles of Scilly	Littering, graffiti, fly-posting, dog control offences, alarm noise (no nominated keyholder), Noise Act offences, nuisance parking, unauthorised distribution of free literature on designated land
Parish council	Littering, graffiti, fly-posting, dog control offences (under its own Dog Control Orders)
Police Community Support Officers (on behalf of district council or unitary authority)	Littering, dog control offences Only if authorised: graffiti, fly-posting
Broads Authority	Littering, graffiti, fly-posting
National Park Authority	Littering, abandoning a vehicle (in areas where the National Park authority is also the planning authority)
Sub-Treasurer of the Inner Temple; Under-Treasurer of the Middle Temple	Noise Act offences; waste receptacle offences; failure to produce a waste transfer note or waste carrier's licence
Environment Agency	Failure to produce a Waste Transfer Note or waste carrier's licence

Proportionate enforcement

32. Fixed penalty notices or civil penalty notices should not be used as a revenue generator for councils. 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 fines issued or revenue raised as this practice undermines public confidence in and support for a fair judicial system.
33. Fixed penalty notices or civil penalty notices should only be issued when it is proportionate and in the public interest to do so. Disproportionate enforcement activity undermines legitimate messages against littering and other environmental offences. We intend to issue new guidance to councils on the use of their enforcement powers. This guidance will make it clear that fixed penalties and civil penalties should only be issued when it is in the public interest to do so, and when it is proportionate to do so. Our policy is clear that under no circumstances should councils view the use of fixed penalty notices or civil penalty notices as a means to generate income.
34. We have also established a Working Group on Enforcement as part of the Litter Strategy for England, which brings together representatives of local authorities, anti-litter campaigners and the private enforcement industry. The Working Group will have an important role in helping us to develop the proposed new guidance.

Levels and Ranges of Fixed Penalties for Littering offences

Rationale for Change

35. The Government made a commitment in its [manifesto](#) to “review the case for higher Fixed Penalty Notices for littering”.
36. The Communities and Local Government Select Committee’s 2015 [report on litter and fly-tipping](#) also recommended that the Government consider increasing the maximum level of a fixed penalty for littering, both to encourage local authorities to make greater use of fixed penalties and to provide additional resources to remove litter.¹²
37. This consultation also considers the case for raising the levels for fixed penalties for some of the other environmental offences which are currently set at the same level as fixed penalties for littering. Those are:
- Graffiti
 - Fly-posting
 - Unauthorised distribution of free literature
38. We want to gather evidence about the likely effectiveness of any increase in the levels for fixed penalties in reducing littering and other environmental offences, as well as the likely impact on councils if the levels for fixed penalties were changed.

Inflation

39. On-the-spot fines for littering offences were introduced in 1990 at a flat rate of £10. This level was increased in 1996 to £25, and then in 2003 to £50. Following the passage of the [Clean Neighbourhoods and Environment Act 2005](#), councils were given discretion to set the level of fixed penalties locally between £50 and £80, with a default of £75.
40. The current levels of fixed penalties for environmental offences have not been reviewed since the fixed penalties were set at current levels in 2006. If we adjust for the effects of inflation since that point, the default level of £75 in 2006 would have been £95 in 2016, the minimum £65 and the maximum £100.¹³ Over this same period of

¹² Communities & Local Government Committee, 7th Report of 2014-15 *Litter and Fly-tipping in England* (HC607) paragraph 46

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcomloc/607/60702.html>

¹³ Calculated based on Office for National Statistics Consumer Price Index (CPI) Series (July 2015) and Office of Budget Responsibility Economic and Fiscal Outlook (July 2015). The CPI is a standard measure of

time, the costs to councils of administering their enforcement system are likely to have risen, making enforcement activity itself more expensive.

Consistency with other legislation

41. Legislative changes since 2007 mean that the fixed penalties set out in the Regulations are now out-of-step with the level of fixed penalties for similar offences in more recent legislation. In some cases, the offences referred to in the Regulations have already been replaced by other powers with different associated fixed penalties.
42. For example the Regulations also currently set out the ranges of fixed penalties that can be imposed for breaches of Dog Control Orders, Litter Clearing Notices, or Street Litter Control Notices.
43. However, the [Anti-social Behaviour, Crime and Policing Act 2014](#) replaced councils' powers to issue Dog Control Orders, Litter Clearing Notices and Street Litter Control Notices with new, more flexible powers to issue Community Protection Notices or Public Space Protection Orders, to tackle any type of anti-social behaviour which is having a detrimental impact on the quality of life in the local community. Councils can issue fixed penalties of up to £100 for breaches of Community Protection Notices or Public Space Protection Orders (no minimum fine).
44. This means that, in the case of dog control offences such as fouling, the maximum fixed penalty under the new powers introduced in 2014 is £100, whereas the maximum penalty for breach of a Dog Control Order is £80. Fixed penalties for dog fouling have historically been at the same level as fixed penalties for littering. Since the maximum possible fixed penalty for a dog fouling offence is now higher than that for a littering offence, it may be appropriate to also increase the maximum fixed penalty for littering.
45. **Where necessary we intend to update the Regulations to remove any redundant references to offences which have been replaced by new powers. These amendments will not affect councils' powers to take enforcement action against breaches of Orders or Notices that are already in place.¹⁴**

inflation and keeps fine levels in line with changes in the prices of goods and services. This is intended to maintain the deterrent effect of fines in terms of foregone purchases for fine payers and the value of revenue received by councils. Although CPI is deemed an appropriate measure, alternatives were also considered. For example, if the GDP Deflator were used, the revised minimum, default and maximum fines in 2016 would be £60, £90 and £100 respectively.

¹⁴ We do not propose to review the level of fines that can be imposed for offences under Dog Control Orders. The power for councils to make new Dog Control Orders was repealed in 2014, and any existing dog control orders will be treated as "Public Spaces Protection Orders" (PSPOs) from October 2017. The maximum fine for an offence under a PSPO is £100, as set out in the Anti-social Behaviour, Crime & Policing Act 2014. Existing Litter Clearing Notices or Street Litter Control Notices remain in effect and can be enforced indefinitely unless they are withdrawn by the issuing council.

Consistency with other parts of the UK

46. In Wales, fixed penalties for environmental offences can range from £75-£150, and may therefore be significantly higher than the equivalent fixed penalties in England.¹⁵
47. In Scotland, fixed penalties for littering were increased from £50 to £80 in 2014. This change was in response to the consultation in 2014 on Scotland's National Litter Strategy, in which two thirds of respondents indicated they were in favour of increasing the fixed penalties.¹⁶
48. Raising the levels of fixed penalties for these offences in England may help to enable a more consistent approach across parts of the UK.

Greater flexibility for councils

49. In determining the appropriate level for fixed penalties in their area, councils need to take into account the deterrent effect of different levels of penalty, as well as peoples' ability to pay and the levels of fines imposed locally for the relevant offence in magistrates' courts. Fixed penalties that are too low compared to the offender's ability to pay will not be effective in deterring them from committing the offence. Equally, fixed penalties that are higher than the likely fine that the court would impose in the event of conviction, or that that are too high for local conditions, are likely to lead to more cases reaching the courts, either because offenders cannot afford to pay the fixed penalty, or because they choose not to do so in the hope that the court will impose a lower fine. This would therefore lead to higher prosecution costs for councils. Neither of these scenarios achieves the overarching aim of deterring offenders from committing offences in the first place.
50. The Regulations currently provide councils with limited flexibility to impose fixed penalties below the default level, but very little flexibility to impose higher fixed penalties, meaning that in some areas the current maximum fixed penalty may be too low to be an effective deterrent.
51. Increasing the maximum fixed penalty, as recommended by the [Communities and Local Government Committee](#), would give councils greater freedom to match the level of fixed penalty to the community's ability to pay.
52. If the minimum and default fixed penalties were also increased, councils that are currently charging the lowest fixed penalties would have to increase their levels to at least the new minimum. This change could result in implementation costs, such as

¹⁵ In Wales, fines for littering, graffiti & fly-posting as well as nuisance parking, offences connected with audible intruder alarms, and dog control order offences are set locally within the range £75-£100, the default being £75. Fines for unauthorised distribution of free literature, commercial or industrial waste presentation offences and night noise exceeding the permitted level are set locally in the range £100-£150.

¹⁶ Scottish Government press release *Tipping Point* (4 Nov 2013) <http://news.scotland.gov.uk/News/Tipping-point-5cb.aspx>. The consultation document, *Towards a Litter Free Scotland* (2013) is available at <http://www.gov.scot/Resource/0042/00426900.pdf>

changes to signage stating the level of fixed penalty, and training for those who issue fixed penalty notices. However, such start-up costs could be offset against the increased income from higher fixed penalties.

53. Such costs could be avoided if the minimum and default fixed penalties were left unchanged, giving councils maximum flexibility to choose whether or not to implement higher fixed penalties in their area.
54. We want to gather evidence about the likely effectiveness of any increase in the level of fixed penalties in reducing littering and other environmental offences, as well as the likely impact on councils if the levels of fixed penalties were changed.

Consultation Questions

- 1 Should fixed penalties for littering offences be increased (Y/N)? ¹⁷**
- 2 For local council respondents only: What impact would an increase in these fixed penalties have on your council? Please consider both costs and benefits, and provide evidence to support your response (e.g. number and level of fixed penalties that you currently issue per year and payment rate, costs of enforcement, prosecutions and implementation of any changes etc.).**

¹⁷ Offences under s.87 of the Environmental Protection Act 1990

Options for Increasing Fixed Penalties

Fixed penalties for littering offences

55. Section 87(1) of the [Environmental Protection Act 1990](#) provides that:

A person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any place to which this section applies and leaves it.

56. Fixed penalties for littering offences may currently be between £50 and £80. The default fixed penalty is currently £75.

Option 1

Increase the minimum, default and maximum fixed penalties to £65, £95 and £100 respectively.

57. This option would take account of the decrease in value of current fixed penalties in real terms due to inflation since 2006, restoring them to their original equivalent levels (to the nearest £5). It would also bring the maximum fixed penalties into line with those available under different powers introduced by the 2014 Act.

58. Councils currently charging fixed penalties below £65 would need to change their signage and practice to reflect the new minimum level. Councils which have not set a level locally would have to do so in order to continue charging a penalty of £75, or change their signage and practices to reflect the new default penalty of £95.

Option 2

Increase only the maximum fixed penalty to either: (a) £100 or (b) £150

59. Fixed penalties could still be set locally between £50 and the new maximum, with the default fixed penalty remaining at £75 if no local level were set.

60. As the default and minimum fixed penalties would remain the same, this option would avoid imposing costs on councils that did not wish to change their existing fixed penalties. Increasing the maximum level of fixed penalties would give councils the greatest flexibility to increase local fixed penalties if they wish, while ensuring that they can still take into account local circumstances and offenders' likely ability to pay.

61. A new maximum fixed penalty of £100 would bring fixed penalties into line with those set under different pieces of legislation for similar offences (e.g. dog control offences under Public Space Protection Orders). However, this option would not represent a real-terms increase in the maximum fixed penalty for littering compared to 2006 levels.

62. A new maximum fixed penalty of £150 would give councils scope to increase fixed penalties above 2006 levels, and would bring the maximum fixed penalties in England into line with those in Wales.

Option 3

Increase the minimum, default and maximum fixed penalty to £65, £100 and £150 respectively.

63. Like Option 1, this option would require any councils currently charging the minimum fixed penalty of £50 to increase it to at least £65. Councils which have not chosen to set a local level would either have to do so (in order to continue charging fixed penalties at the previous default level of £75) or change their practices in order to impose fixed penalties at the new default level of £100.

64. The increase in the minimum fixed penalty from £50 to £65 would adjust for the effect of inflation since 2006, while the increase in the default fixed penalty to £100 (compared to £95 under Option 1) would represent a real-terms increase in the default fixed penalty for littering compared to 2006 levels. As with Option 2(b), increasing the maximum fixed penalty to £150 would give councils the greatest flexibility.

Consultation Questions

3 Which of the above options do you prefer?

- a. **Option 1 - increase the minimum, default and maximum fixed penalties to £60, £95 and £100 respectively.**
- b. **Option 2(a) – increase only the maximum fixed penalty to £100**
- c. **Option 2(b) – increase only the maximum fixed penalty to £150**
- d. **Option 3 - increase the minimum, default and maximum fixed penalty to £65, £100 and £150 respectively.**

Please use the free text box to tell us why.

Fixed penalties for graffiti, fly-posting and unauthorised distribution of free literature in a designated area

65. Since 2006, the range and default fixed penalties for these offences have been set at the same level as [fixed penalties for littering](#) .

66. Whichever option is taken forward for fixed penalties for littering, we propose to treat fixed penalties for these offences in the same way.

Consultation Questions

- 4 Do you agree that changes to the range of and default fixed penalties for littering should be applied in the same way to the fixed penalties for:**
- a. Graffiti (y/n)**
 - b. Fly-posting (y/n) and**
 - c. The unauthorised distribution of free literature in a designated area (y/n)?**

If you answered 'no' to any of these, please use the free text box to explain your reasoning.

How Income from Fixed Penalty Notices can be used by District or Unitary Councils and Parish Councils

Background

67. The various pieces of primary legislation which give councils the power to issue fixed penalties also provide that they can use the income from fixed penalties on any of their “qualifying functions”, as set out in the table below:

Offence	Fixed penalty income can be spent on functions relating to:
Litter, Graffiti, Dog control, Fly-posting, Unauthorised distribution of free printed material in a designated area	Litter, dog control, graffiti and fly-posting
Nuisance parking, Abandoning a vehicle	Road traffic, litter and refuse
Noise exceeding permitted levels – domestic or licensed premises, Alarm noise - no keyholder	Statutory noise nuisance, noise at night and audible intruder alarms

68. Parish councils (which can issue fixed penalty notices for littering, graffiti, fly-posting or dog control offences) must spend any income from these fixed penalties on their functions relating to those environmental offences, such as providing additional bins, enforcement officers, publicity material, etc.

69. The Secretary of State can make regulations which extend or vary the list of qualifying functions.

70. As well as setting out the ranges of fixed penalties that can be imposed, the Regulations provided that:

- where a council was categorised as ‘excellent’ or ‘good’, “4 stars”, “3 stars” or “2 stars” under the Comprehensive Performance Assessment, and was subsequently categorised accordingly by Order made by the Secretary of State, that council may spend the penalty receipts on “any of its functions”;¹⁸ and

¹⁸ Local government functions include provision of services relating to education, transport, planning, fire and public safety, social care, libraries, waste management and trading standards.

- parish councils which were approved as being as “Quality Parish Councils” can also use the income from these fixed penalties for any of their functions.¹⁹

71. Around 80% of district/unitary councils were classified as excellent or good, “4 stars”, “3 stars” or “2 stars”.²⁰

72. Where a high-performing council falls out of these categories, or a parish council ceases to be approved as a Quality Parish Council, the Regulations allow it to continue spending its receipts on any functions for the duration of one year.²¹

73. The Audit Commission and this system of performance classification was abolished under the [Local Accountability & Audit Act 2012](#). The last categorisation order ceased to have effect in April 2017. Until this date, councils retained their previous classification, including any associated spending flexibility. After April 2017, until the Regulations are updated, councils which currently enjoy the increased spending flexibility associated with having been categorised as “excellent” or “good” will be restricted to spending their fixed penalty income only on their qualifying functions, as set out in the underlying legislation.

74. The Quality Parish Council Scheme has also been discontinued and parish councils which held that status retained it until 31 January 2015. Transitional arrangements in the Regulations provide for councils to retain their spending flexibility for one year after losing their Quality Parish status.

Proposed Amendments to how councils can use the Income from Fixed Penalty Notices for Environmental Offences

75. This section of the consultation applies to income from [all of the offences listed in the Regulations](#).

76. The income to district (including borough) and unitary councils from fixed penalties for the environmental offences is relatively small: in the [latest year for which figures are available \(2008/09\)](#), 179 councils reported issuing a total of 45,076 fixed penalty notices for environmental offences, raising a combined total income of £1.88m of which by far the majority (£1.33m) came from fixed penalties for littering offences.²² Data has never been collected centrally on the number of fixed penalty notices issued by parish councils, but it is believed to be very low.

¹⁹ National Park Authorities may retain their fixed penalty receipts, which can be used only for their litter enforcement functions under section 88 of the Environmental Protection Act 1990. The Broads Authority may retain its fixed penalty receipts, which can only be used for its functions under section 88 of the Environmental Protection Act 1990, or its functions under section 43 of the Anti-social Behaviour Act 2003.

²⁰ <http://webarchive.nationalarchives.gov.uk/20100702154648/http://audit-commission.gov.uk/localgov/audit/cpa/pages/default.aspx>

²¹ Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2007 regulations 3 and 5; Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 regulation 5.

²² <http://data.gov.uk/dataset/fixed-penalty-notice-overview>

77. Our existing [guidance](#) to councils makes clear that fixed penalties should only be issued when enforcement action is appropriate and proportionate to the offence, not for accidental or trivial offences, nor without first giving the alleged offender the opportunity to pick up littered items and a warning that a fixed penalty notice will be issued.²³
78. The majority of councils were able to spend this income on “any of their functions” and budgetary planning decisions may already have allocated this income to support particular services. As new restrictions were automatically imposed in April 2017 on the way those councils can use that income (i.e. limiting its use to the “[qualifying functions](#)”), those council services could experience a funding shortfall.
79. In order to avoid permanently placing new limits on the spending flexibility currently enjoyed by the majority of councils, we propose to provide for all councils to be able to spend this income on “any of their functions”. This approach would be consistent with our [manifesto](#) commitment to “review how we can further reduce ring-fencing [...] to give councils more flexibility to support local services”.²⁴ Guidance will make clear that such fines should not be used as a way of raising extra revenue.

Consultation questions

- 5 Do you agree that all councils should have the ability to spend their income from environmental offences on “any of their functions”? If not, please use the free text box to explain why.**
- 6 For local council and parish council respondents only: Do you currently issue fixed penalty notices for environmental offences, and if so, how do you spend the income from these fixed penalty notices?**

²³ <https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices>

²⁴ *Conservative Manifesto 2015* <https://www.conservatives.com/manifesto> page 53

Transparency

80. We recognise the potential for any increase in the level of fixed penalties to create the perception that these could be used to generate income for councils. We have made it clear that enforcement activity against environmental offences should be proportionate and used in conjunction with education to help change offenders' behaviour. Fixed penalties should not be issued to meet targets or used as a way of generating income, and councils should actively avoid exercising their enforcement powers in a way which could be perceived as such.
81. In our Litter Strategy for England, published alongside this consultation, we make a commitment to promote transparency and accurate reporting of enforcement action. Regardless of the outcome of the decisions on increasing the level of fixed penalties for littering and/or introducing civil penalties for littering from vehicles, making this data public will support councils' accountability to their citizens, improve the transparency of the market for commercial enforcement contracts, and increase the public perception of a real threat of being caught to help change offenders' behaviour.
82. The [INSPIRE Regulations](#) came into force on 31 December 2009.²⁵ Under these Regulations, local authorities are required to improve public access to spatial data covering [34 environmental themes](#).²⁶ The 'Human Health and Safety' theme includes, among other matters, the effect on health or well-being of humans linked to the quality of the environment. The theme also covers both direct or indirect links between themes and the quality of the environment.
83. In our view, the 'Human health and Safety' theme therefore also covers data about local environmental quality and action to improve it, since living in a poor-quality local environment makes people feel less safe in their communities, and discourages people from going outside. This in turn can affect their mental and physical health and create further costs to local healthcare providers. We therefore consider that local authorities are already under a requirement to publish the following information about their enforcement activity (for each of the environmental offences, including the proposed new civil penalties for littering from vehicles):
- number of (a) fixed penalties notices and (b) civil penalty notices issued
 - number of (a) fixed penalty notices and (b) civil penalty notices cancelled
 - number of (a) fixed penalty notices and (b) civil penalty notices paid

²⁵ Amended by INSPIRE (Amendment) Regulations 2012

²⁶ <http://inspire.ec.europa.eu/Themes/Data-Specifications/2892>

- number of (a) fixed penalty notices and (b) civil penalty notices paid at discount rate
- number of prosecutions undertaken following non-payment of a fixed penalty notice (whether the case is concluded or not)
- number of prosecutions undertaken for environmental offences for which a fixed penalty notice was not offered
- number of penalty charge notices cancelled following an appeal made to an adjudicator
- number of penalty charge notices pursued as civil debts following non-payment
- number of fixed penalty or civil penalty notices written off for other reasons (e.g. procedural error, not in the public interest to pursue, alternative sanctions used etc.)
- total net income from (a) fixed penalty charge and (b) civil penalty notices for each of the environmental offences, and net income from civil penalty notices for littering from vehicles
- total spent on enforcement activity against (a) environmental offences and (b) littering from vehicles offences

84. We believe that in principle all data held and managed by councils should be made available to local people unless there are specific sensitivities (e.g. protecting vulnerable people, or commercial and operational considerations) to doing so. The [Local Government Transparency Code 2015](#) already requires local authorities to publish certain data about their revenue, expenditure, resources, assets and functions.
85. We think that many local authorities are not aware that the [INSPIRE Regulations](#) require them to publish data on their enforcement activities against littering offences etc. We will make clear in the guidance that we intend to issue to councils on the use of their enforcement powers that this data must be published within six months of the end of each financial year.
86. To further cement this requirement we consider that the [Local Government Transparency Code](#) should be amended to require all local authorities subject to the requirements of the [INSPIRE Regulations](#) to publish on their websites the data listed. This data must be published annually, within six months of the end of each financial year. Where there has been no activity against a particular function, this must be published also.

Consultation questions

- 7 Should the [Local Government Transparency Code](#) be amended to make it clear that data on enforcement activities against littering and the other environmental offences should be published?
- 8 For local council respondents only: Do you publish this data already? If so, where?

Training for Parish Council Enforcement Officers

Background

87. Regulation 6 of the [Environmental Offences \(Fixed Penalties\) \(Miscellaneous Provisions\) Regulations 2007](#) requires that anyone authorised by a parish council to issue fixed penalties must have first successfully completed an approved course provided by a recognised provider which is approved by the Secretary of State. The approved course, “Introduction to Fixed Penalty Notices for Litter, Graffiti, Flyposting and Dog Control Orders” is run by Keep Britain Tidy. Take-up of the course has been low in recent years.

Current Position

88. The Government has issued [guidance for parish councils on their enforcement powers](#).²⁷ It is important that anyone authorised to issue fixed penalties on behalf of parish councils receives appropriate training, so that they are familiar with their legal obligations, relevant policies and procedures.

89. However, we consider that parish councils and the people they wish to authorise for this purpose are better placed than central Government to assess the available training options and ensure that each enforcement officer receives training appropriate to their needs and experience. Training providers compete for custom from parish councils. The current requirement for training providers and courses to be “approved” by the Secretary of State represents a barrier to entry into this market for training. Non-compulsory private sector-led initiatives to develop quality marks can confer a similar level of trust upon training providers without prohibiting new providers from entering the market. As such, removing the requirement for training providers to be approved by the Secretary of State is expected to improve competition in the training market, to the benefit of parish councils.

Proposed Amendments

90. In Wales, the equivalent regulations concerning fixed penalties do not specify a particular training course that parish council enforcement officers need to attend. Instead, the Welsh regulations simply specify that parish council enforcement officers “must successfully complete a fixed penalty training course”. **We propose to adopt a similar approach in England.**

²⁷ <https://www.gov.uk/guidance/parish-councils-fixed-penalty-notices>

Consultation Question

- 9 Do you agree with the proposal to remove the requirement for training providers for parish council enforcement officers to be approved by the Secretary of State?**

Littering from vehicles

Rationale for change

91. Littering is a criminal offence, and therefore enforcement action (issue of a fine or prosecution) should only be taken when the local authority has evidence against the offender to a criminal standard of proof (“beyond reasonable doubt”). When littering offences take place from a vehicle, councils report that it is difficult to identify the offender with sufficient certainty to take enforcement action.
92. [Section 24 of the London Local Authorities Act 2007](#) (amended in 2012) gives powers to London Councils to issue Penalty Charge Notices to the owner of a vehicle when an enforcement officer is able to show, on the balance of probabilities that litter was thrown from that vehicle. A penalty charge notice is a civil fine which unlike a criminal penalty, does not carry the risk of a criminal prosecution, and therefore does not require the offender to be identified to a criminal standard of proof. One London Borough is currently using these powers and issued 72 penalty charge notices in 2014/15.
93. A number of bodies and individuals have campaigned for some time for similar powers to be made available to all local authorities in England to enable them to take enforcement action more easily against littering offences committed from vehicles. This approach was also endorsed in [the CLG Select Committee report on litter and fly-tipping \(2015\)](#) which recommended that these powers be extended to the rest of England.

Proposal

94. [Section 154](#) of the [Anti-social Behaviour, Crime and Policing Act 2014](#) amends the [Environmental Protection Act 1990](#) to introduce a new section 88A entitled “Littering from vehicles: civil penalty regime” (“S88A”). This section provides the power for regulations to be made in England to tackle littering from vehicles. We propose to bring this power into force and introduce new [regulations](#) to allow councils outside London to also issue a civil penalty notice to the keeper of a vehicle from which litter is thrown, requiring the keeper to pay a civil penalty. The introduction of this new regime would be an efficient use of councils’ resources to tackle littering. It will act as a deterrent because councils will be more likely to take enforcement measures and it may lead to a reduction in littering from vehicles and improvements in roadside amenity and safety.
95. If it is possible for the council to identify the person who actually littered, it will still be able to issue a fixed penalty notice to that person, with the possibility of prosecution remaining if the fixed penalty is not paid. However, if a fixed penalty notice is issued,

the council cannot also issue a civil penalty notice to the keeper of the vehicle for the same offence. If the keeper has already accepted and paid a civil penalty notice in respect of the offence, and subsequently the person who actually littered is identified, then the civil penalty notice should be cancelled and the keeper should be refunded.

96. We propose to allow civil penalty notices to be issued by post/email as well as in person, as issuing in person is not always practical when tackling litter from moving vehicles.
97. The proposal will introduce a new default civil penalty payable equivalent to the existing fixed penalty (currently £75). It will also similarly reflect the fixed penalty regime by giving councils the flexibility to select an alternative fine from a wider range (currently £50 to £80, but potentially subject to change following this consultation), taking into account what they think is appropriate as regards the readiness of people in their area to pay and the levels of fines imposed on prosecution in local Magistrates' Courts. **Should any changes be made to the level of default, minimum or maximum fine for littering following this consultation, we propose to reflect the same changes in the level and range of civil penalties for littering from vehicles as well.**
98. As with fixed penalties experience of other civil penalty schemes (car parking; bus lane; moving traffic or waste receptacle offences etc.) used by councils has demonstrated that, where offenders are offered an option of discharging liability for payment of the full amount of a fixed penalty by early payment of a lesser amount (an early-payment discount), this helps to encourage improved payment rates and avoids the need for costly civil debt recovery proceedings. It should also reassure the public that the new civil penalty is an enforcement tool rather than a revenue generating tool. The proposed regulations specify that a civil penalty notice must be paid within 28 days and we propose to mirror the position in respect of fixed penalties in lieu of prosecution for littering offences by making provision for liability for payment of the full amount to be discharged by payment of a lesser amount within 14 days of receipt of the civil penalty notice, to ensure a consistent enforcement landscape.
99. Since a civil penalty is not an alternative to prosecution, we are also proposing that councils can issue a "late payment notice" if the civil penalty is not paid on time or not paid in full. This does not affect defendants' ability to pursue an appeal against the civil penalty notice. We propose that the amount of civil penalty payable under the late payment notice (the "increased civil penalty") should be the civil penalty payable under the civil penalty notice increased by 100 percent (i.e. the amount of the civil penalty multiplied by 2). This would therefore currently be £160, but may increase in line with any changes to the fixed penalties following this consultation. If this increased civil penalty goes unpaid, then it becomes recoverable through the courts as a civil debt. Councils may also recover any costs awarded by an independent adjudicator which relate to that civil penalty. This approach differs to an unpaid fixed penalty, which would be 'enforced' by a prosecution for the original offence.

100. We propose that, as in London, the keepers of public service vehicles, taxis and private hire vehicles (including minicabs, pedicabs and rickshaws, and Uber vehicles) would be exempt from the civil penalty under this proposal where the litterer was a passenger. Unlike in London however, if it is possible to identify the passenger that was responsible for littering, then the offending passenger could still be issued with a fixed penalty for the littering offence.

101. Those receiving a civil penalty notice would be able to challenge their liability to pay on a number of grounds, including cases where the vehicle has been hired to someone else, or the keeper can prove that the vehicle had been stolen at the time the littering offence was committed. The proposed grounds for appeal are:

- that the littering offence in question did not occur.
- that the recipient of the civil penalty notice (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;
 - because the subject had disposed of the vehicle to another person before the littering offence occurred; or
 - because the vehicle was a stolen vehicle when the offence occurred.
- that the subject was not the keeper of the vehicle at the time of the littering offence because at that time—
 - the subject was engaged in the hiring of vehicles in the course of a business,
 - the vehicle was hired to another person under a hire agreement with the subject, and
 - the hire agreement had the effect that the hirer was the keeper of the vehicle.²⁸
- the subject was not the keeper of the vehicle at the time of the littering offence for another reason.
- the litter authority was not authorised to give the subject a penalty notice because it had already issued a fixed penalty (in lieu of prosecution) or prosecuted someone for the same littering offence.

²⁸ Section 154 of the Anti-social Behaviour, Crime and Policing Act 2014 (section 88A in Environmental Protection Act 1990) defines ‘keeper’ as the person by whom the vehicle is kept at the time when the littering offence in question occurs.

- the subject is not liable to pay the civil penalty because of the exemption for public service vehicles etc. and the offence was committed by a passenger.
- liability to pay the civil penalty has been discharged because a fixed penalty notice (in lieu of prosecution) is issued, or a prosecution for the same offence is begun before the civil penalty is paid.
- the civil penalty exceeds the amount payable under these Regulations.
- the litter authority has failed to observe any requirement imposed on it by the Regulations in relation to the imposition or recovery of the fixed penalty; or.
- there are compelling reasons why, in the particular circumstances of the case, the civil penalty notice should be cancelled (whether or not any of the other ground apply).

102. In the first instance, keepers will be able to make representations in writing against the civil penalty notice to the council. If this does not resolve the matter, they would then have a right to appeal the civil penalty notice to an independent adjudicator, on the grounds which are listed in the [draft regulations](#). The [Traffic Penalty Tribunal England and Wales](#) would act as the independent adjudicator for the civil penalty notice regime, funded via a proportion of each civil penalty notice issued.

103. [Section 88A](#) of the [Anti-social Behaviour, Crime and Policing Act 2014](#) provides that power to issue a civil penalty notice can only be conferred on those councils which are also responsible for keeping land and highways clear of litter and refuse under section 89 of the [Environmental Protection Act 1990](#). **We therefore propose to confer these powers only on district or unitary councils outside London (including the Isles of Scilly).**

104. We do **not** propose to confer the power to issue a civil penalty notice on the following types of authorities:

- National Park Authorities, the Broads Authority, or parish or community councils: although these authorities are currently able to issue fixed penalty notices, we cannot confer on them the power to issue civil penalty notices because they are not subject to the duty to keep land clear of litter and refuse.
- London Borough Councils or the Common Council of the City of London: these authorities already have alternative powers to issue civil penalties to owners of a vehicle for littering from their vehicles under the [London Local Authorities Act 2007](#). We recognise that the two fixed penalty regimes will differ slightly: in particular, littering from a vehicle has been completely decriminalised in London and fixed penalty notices can no longer be issued at all for littering offences committed from a vehicle in London. However, we consider that these differences are relatively minor in comparison to the burden that would be

imposed on London councils if we were to make minor changes to an established system.

- [Highways England](#) : HE is the government company charged with operating, maintaining and improving England's motorways and major A roads. It currently has no enforcement functions, in relation to littering or any other offences. Although [Highways England](#) is responsible for keeping the strategic road network (and a small number of trunk roads) clear of litter and refuse, enforcement against littering offences which are committed on land for which [Highways England](#) is responsible is the responsibility of the relevant district council. To maintain parity, rather than give new enforcement functions to [Highways England](#) in isolation, we propose that district councils should remain responsible for all littering enforcement (criminal or civil) on the Strategic Road Network.

105. In line with the proposals made elsewhere in this consultation, we propose that councils will be allowed to use their income from the new civil penalty notices on any of their functions.

106. The provisions mentioned in the [Transparency](#) section of this consultation document will also apply to these new enforcement powers i.e. councils will be obliged to publish information about their use of enforcement powers under the [INSPIRE Regulations](#) and the [Local Government Transparency Code](#).

107. The proposed new guidance to councils on the use of their enforcement powers will also apply to the exercise of these new powers to issue civil penalty notices for littering from vehicles.

Consultation Questions

10 Do you agree with the proposed exemption for the keeper of public service vehicles, taxis and private hire vehicles when the littering offence is committed by a passenger?

a) If no, why?

11 Should the regulations provide for any other exemptions from liability to pay a civil penalty notice (as opposed to grounds for appeal against a civil penalty notice)?

12 Should councils be able to use the income from civil penalties for littering from a vehicle in the same way as they can spend income from fixed penalties for littering offences? (Y/N)

a. If no, why do you consider that income from the two penalty regimes should be treated differently?

- 13 Should the default amount payable under a civil penalty notice be equivalent to the default amount payable under a fixed penalty notice for a littering offence (reflecting any changes to the default level of fixed penalty notices for littering)? (Y/N)**
- a. If no, why, and at what level should the default amount payable under a civil penalty notice be set?
- 14 Do you agree that, to encourage prompt payment, a late payment notice is issued if the amount payable under the civil penalty notice is not paid within 28 days?**
- a. If not, why?
- 15 Do you agree that the maximum increased civil penalty payable under a late payment notice should be the amount payable under the civil penalty notice increased by 100% (i.e. the amount payable under the civil penalty notice multiplied by 2)? (Y/N)**
- a. If no, why, and by what factor should the civil penalty be increased?
- 16 For local council respondents only: What impact would the introduction of civil penalty notices have on your council? Please consider both costs and benefits, and provide evidence to support your response.**
- 17 For councils in London: We propose that the new powers should only be available to councils outside London, on the basis that London councils already have similar powers under the [London Local Authorities Act 2007](#). Do you agree?**
- a. If not, why?
- 18 For vehicle rental/hire company respondents only: The regulations will provide that a civil penalty can be appealed by a hirer if the vehicle in question was hired to another person with the effect that that person had become the 'keeper' (ie the person by whom the vehicle is kept) at the time of the littering offence. What, if any, familiarisation transitional or implementation costs would you anticipate incurring associated with the introduction of these new civil penalties (e.g. in amending standard contract forms etc.)?**

Summary of Consultation Questions

Levels and Ranges of Fixed Penalties for Littering Offences

- 1 Should fixed penalties for littering offences be increased (Y/N)?
- 2 For local council respondents only: What impact would an increase in these fixed penalties have on your authority? Please consider both costs and benefits, and provide evidence to support your response (e.g. number and level of fixed penalties that you currently issue per year and payment rate, costs of enforcement, prosecutions and implementation of any changes etc.).

Options for Increasing fixed penalties

- 3 Which of these options do you prefer?
 - a. Option 1 - increase the minimum, default and maximum fixed penalties to £60, £95 and £100 respectively.
 - b. Option 2(a) – increase only the maximum fixed penalty to £100
 - c. Option 2(b) – increase only the maximum fixed penalty to £150
 - d. Option 3 - increase the minimum, default and maximum fixed penalty to £60, £100 and £150 respectively.

Please use the free text box to tell us why.

Fixed penalties for graffiti, fly-posting and unauthorised distribution of free literature in a designated area

- 4 Do you agree that changes to the range of and default fixed penalties for littering should be applied in the same way to the fixed penalties for:
 - a. Graffiti (y/n)
 - b. Fly-posting (y/n) and
 - c. The unauthorised distribution of free literature in a designated area (y/n)?

If you answered 'no' to any of these, please use the free text box to explain your reasoning.

How Income from Fixed Penalty Notices can be used by District or Unitary Councils and Parish Councils

- 5 Do you agree that all councils should have the ability to spend their income from environmental offences on “any of their functions”? If not, please use the free text box to explain why.
- 6 For local council and parish council respondents only: Do you currently issue fixed penalty notices for environmental offences, and if so, how do you spend the income from these fixed penalty notices?

Transparency

- 7 Should the [Local Government Transparency Code](#) be amended to make it clear that data on enforcement activities against littering and the other environmental offences should be published?
- 8 For local council respondents only: Do you publish this data already? If so, where?

Training for Parish Council Enforcement Officers

- 9 Do you agree with the proposal to remove the requirement for training providers for parish council enforcement officers to be approved by the Secretary of State?

Littering from Vehicles

- 10 Do you agree with the proposed exemption for the keeper of public service vehicles, taxis and private hire vehicles when the littering offence is committed by a passenger?
 - a) If no, why?
- 11 Should the regulations provide for any other exemptions from liability to pay a civil penalty notice (as opposed to grounds for appeal against a civil penalty notice)?
- 12 Should councils be able to use the income from civil penalties for littering from a vehicle in the same way as they can spend income from fixed penalties for littering offences? (Y/N)
 - a. If no, why do you consider that income from the two penalty regimes should be treated differently?
- 13 Should the default amount payable under a civil penalty notice be equivalent to the default amount payable under a fixed penalty notice for a littering offence (reflecting any changes to the default level of fixed penalty notices for littering)? (Y/N)
 - a. If no, why, and at what level should the default amount payable under a civil penalty notice be set?
- 14 Do you agree that, to encourage prompt payment, a late payment notice is issued if the amount payable under the civil penalty notice is not paid within 28 days?

a. If not, why?

15 Do you agree that the maximum increased civil penalty payable under a late payment notice should be the amount payable under the civil penalty notice increased by 100% (i.e. the amount payable under the civil penalty notice multiplied by 2)? (Y/N)

a. If no, why, and by what factor should the civil penalty be increased?

16 *For local council respondents only:* What impact would the introduction of civil penalty notices have on your council? Please consider both costs and benefits, and provide evidence to support your response.

17 *For councils in London only:* We propose that the new powers should only be available to councils outside London, on the basis that London councils already have similar powers under the [London Local Authorities Act 2007](#). Do you agree?

a) If not, why?

18 **For rental hire companies only:** The regulations will provide that a civil penalty can be appealed by a hirer if the vehicle in question was hired to another person with the effect that that person had become the 'keeper' (ie the person by whom the vehicle is kept) at the time of the littering offence. What, if any, familiarisation transitional or implementation costs would you anticipate incurring associated with the introduction of these new civil penalties (e.g. in amending standard contract forms etc.)?

Annex A - Primary Legislation Providing for Fixed Penalties for Environmental Offences

The primary legislation providing for fixed penalties for the environmental offences covered by the Regulations is as follows:

- Environmental Protection Act 1990 ²⁹
- Clean Neighbourhoods and Environment Act 2005 ³⁰
- Anti-social Behaviour Act 2003 ³¹
- Anti-social Behaviour, Crime and Policing Act 2014 ³²
- Refuse Disposal (Amenity) Act 1978 ³³

²⁹ <http://www.legislation.gov.uk/ukpga/1990/43/contents>

³⁰ <http://www.legislation.gov.uk/ukpga/2005/16/contents>

³¹ <http://www.legislation.gov.uk/ukpga/2003/38/contents>

³² <http://www.legislation.gov.uk/ukpga/2014/12/contents>

³³ <http://www.legislation.gov.uk/ukpga/1978/3/contents>

Annex B – Draft Environmental Offences Regulations 2018

STATUTORY INSTRUMENTS

2018 No.

ENVIRONMENTAL PROTECTION, ENGLAND

The Environmental Offences (Fixed Penalties) (England) Regulations 2018

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes these Regulations in exercise of the powers—

- (a) in sections 34A(12), 47ZB(4) and (5) and 73A(2)(b), (3) and (8) of the Environmental Protection Act 1990⁽³⁴⁾ (and in respect of those sections, the Secretary of State is, in relation to England, the appropriate person as defined in section 29(1A)(a) of that Act),
- (b) in sections 8A(4) and (5) and 9(4A)(b) and (4B) of the Noise Act 1996⁽³⁵⁾ (and in respect of those sections, the Secretary of State is, in relation to England, the appropriate person as defined in section 11(2A)(a) of that Act),
- (c) in sections 88(11) and 97A(1) to (3) of the Environmental Protection Act 1990⁽³⁶⁾ (and in respect of those sections, the Secretary of State is, in relation to England, the appropriate person as defined in section 98(1A)(a) of that Act),
- (d) in sections 43A(4) to (6) and 47(4) of the Anti-social Behaviour Act 2003⁽³⁷⁾ (and in respect of those sections, the Secretary of State is, in relation to England, the appropriate person as defined in section 47(1) of that Act),
- (e) in sections 74(4) and (5) and 75(2)(d) and (3) of the Clean Neighbourhoods and Environment Act 2005⁽³⁸⁾ (and in respect of those sections, the Secretary of State is, in relation to England, the appropriate person as defined in section 81(1) of that Act),

⁽³⁴⁾ 1990 c.43. The definition of “appropriate person” was inserted by section 51 of the Clean Neighbourhoods and Environment Act 2005. Sections 34A, 47ZB and 73A were inserted by sections 45, 48 and 52 of that Act respectively.

⁽³⁵⁾ 1996 c.37. The definition of “appropriate person” was inserted by section 85(2) of the Clean Neighbourhoods and Environment Act 2005. Section 8A was inserted by 82(2) of the Clean Neighbourhoods and Environment Act 2005. Section 42(5) of the Anti-social Behaviour Act 2003 substituted section 9(4) and (4A) to (4F) of the Noise Act 1996 for section 9(4) of that Act. Section 9(4A) and (4B) was amended by the Clean Neighbourhoods and Environment Act 2005.

⁽³⁶⁾ The definition of “appropriate person” was inserted by section 26 of the Clean Neighbourhoods and Environment Act 2005. Sections 88(11) and 97A were inserted by section 19(6) and 24 of that Act respectively.

⁽³⁷⁾ 2003 c.38. Sections 43A and 47(4) were inserted by sections 28(2) and 30(2) of the Clean Neighbourhoods and Environment Act 2005 respectively.

⁽³⁸⁾ 2005 c.16.

- (f) in sections 6(11) and 8(2)(d) and (3) of the Clean Neighbourhoods and Environment Act 2005 (and in respect of those sections, the Secretary of State is, in relation to England, the appropriate person as defined in section 9(2) of that Act),
- (g) in sections 2A(11) and 2C(2)(d) and (3) of the Refuse Disposal (Amenity) Act 1978⁽³⁹⁾ (and in respect of those sections, the Secretary of State is, in relation to England, the appropriate person as defined in section 11(1) of that Act), and
- (h) in sections 5B(12) and 5C(3)(b) and (4) of the Control of Pollution (Amendment) Act 1989⁽⁴⁰⁾ (and in respect of those sections, the Secretary of State is, in relation to England, the appropriate person as defined in section 9(1) of that Act).

In respect of regulations 8 to 13, the Secretary of State has consulted the authorities to which those regulations apply and such other persons as the Secretary of State thought fit or, in the case of section 9(4F) of the Noise Act 1996, considered appropriate, in accordance with—

- (a) section 2C(7) of the Refuse Disposal (Amenity) Act 1978,
- (b) section 5C(8) of the Control of Pollution (Amendment) Act 1989,
- (c) section 73A(7) of the Environmental Protection Act 1990,
- (d) section 9(4F)⁽⁴¹⁾ of the Noise Act 1996, and
- (e) sections 8(7) and 75(7) of the Clean Neighbourhoods and Environment Act 2005.

Title and commencement

2.—(1) These Regulations may be cited as the Environmental Offences (Fixed Penalties) (England) Regulations 2018.

(2) They come into force on ***.

Penalty: prescribed range: offences in relation to commercial etc. waste receptacles and noise

3. The amount of a fixed penalty capable of being specified by—

- (a) a waste collection authority under section 47ZB(2)(a) of the Environmental Protection Act 1990 in respect of an offence under section 47 of that Act, or
- (b) a local authority under section 8A(2)(a) of the Noise Act 1996,

is not less than £75 and not more than £110.

Penalty: prescribed range: offences in relation to litter, distribution of printed matter, and graffiti and fly-posting

4. The amount of a fixed penalty capable of being specified by—

- (a) a principal litter authority under section 88(6A)(a)⁽⁴²⁾ of the Environmental Protection Act 1990,
- (b) a principal litter authority under paragraph 7(4)(a) of Schedule 3A to the Environmental Protection Act 1990, or
- (c) a relevant local authority under section 43A(1)(a) of the Anti-social Behaviour Act 2003,

is not less than [x] and not more than [x].

⁽³⁹⁾ 1989 c.14. The definition of “appropriate person” was inserted by section 39(2) of the Clean Neighbourhoods and Environment Act 2005. Sections 5B and 5C were inserted by section 38 of that Act.

⁽⁴⁰⁾ 1989 c.14. The definition of “appropriate person” was inserted by section 39(2) of the Clean Neighbourhoods and Environment Act 2005. Sections 5B and 5C were inserted by section 38 of that Act.

⁽⁴¹⁾ Section 9(4F) was inserted by section 83(3) of the Clean Neighbourhoods and Environment Act 2005.

⁽⁴²⁾ Section 19(2) of the Clean Neighbourhoods and Environment Act 2005 substituted section 88(6), (6A), (6B) and (7) of the Environmental Protection Act 1990 for section 88(6) and (7) of that Act.

Penalty: lesser amount: offences in relation to litter, distribution of printed matter, graffiti and fly-posting, and audible intruder alarms

5. Where—

- (a) a litter authority acting under section 88(7) of the Environmental Protection Act 1990,
- (b) a principal litter authority acting under paragraph 7(5) of Schedule 3A⁽⁴³⁾ to the Environmental Protection Act 1990,
- (c) a relevant local authority acting under section 43A(3) of the Anti-social Behaviour Act 2003, or
- (d) a local authority acting under section 74(3) of the Clean Neighbourhoods and Environment Act 2005,

makes provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by that authority, that amount must not be less than £50.

Penalty: lesser amount: offences in relation to commercial etc. waste receptacles, noise, and exposing for sale etc. vehicles on roads

6. Where—

- (a) a waste collection authority acting under section 47ZB(3) of the Environmental Protection Act 1990 in respect of an offence under section 47 of that Act,
- (b) a local authority acting under section 8A(3) of the Noise Act 1996, or
- (c) a local authority acting under section 6(10) of the Clean Neighbourhoods and Environment Act 2005,

makes provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by that authority, that amount must not be less than £60.

Penalty: lesser amount: offence of abandoning vehicles

7. Where a local authority acting under section 2A(10) of the Refuse Disposal (Amenity) Act 1978 makes provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by that authority, that amount must not be less than £120.

Penalty: lesser amount: offences in relation to transporting controlled waste and duty of care as respects waste

8. Where—

- (a) a regulation authority acting under section 5B(11) of the Control of Pollution (Amendment) Act 1989, or
- (b) an enforcement authority acting under section 34A(11) of the Environmental Protection Act 1990,

makes provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a period specified by that authority, that amount must not be less than £180.

Use of receipts: offence of abandoning vehicles

9.—(1) This regulation applies to a local authority to which section 2C of the Refuse Disposal (Amenity) Act 1978 (“the Act”) applies.

(2) Any other function of a local authority (in addition to those already specified in section 2C(2)(a) to (c) of the Act) is a function for which the authority may use the amounts it receives in pursuance of notices given under section 2A of the Act.

Use of receipts: offences in relation to transporting controlled waste

10.—(1) This regulation applies to a waste collection authority to which section 5C of the Control of Pollution (Amendment) Act 1989 (“the Act”) applies.

⁽⁴³⁾ Schedule 3A was inserted by section 23 of the Clean Neighbourhoods and Environment Act 2005.

(2) Any other function of a waste collection authority (in addition to those already specified in section 5C(3)(a) of the Act) is a function for which the authority may use the amounts it receives in pursuance of notices given under section 5B of the Act.

Use of receipts: offence of unauthorised deposits of waste etc.

11.—(1) This regulation applies to a waste collection authority to which section 73A of the Environmental Protection Act 1990 (“the Act”) applies.

(2) Any other function of a waste collection authority (in addition to those already specified in section 73A(2)(a) of the Act) is a function for which the authority may use the amounts it receives in pursuance of notices given under section 33ZA, 34A or 46A of the Act.

Use of receipts: offences relating to noise

12.—(1) This regulation applies to a local authority to which section 9(4) of the Noise Act 1996 (“the Act”) applies.

(2) Any other function of a local authority (in addition to those already specified in section 9(4A)(a) to (ab) of the Act) is a qualifying function for which the authority may use the amounts it receives in pursuance of notices given under section 8 of the Act.

Use of receipts: nuisance parking offences

13.—(1) This regulation applies to a local authority to which section 8 of the Clean Neighbourhoods and Environment Act 2005 (“the Act”) applies.

(2) Any other function of a local authority (in addition to those already specified in section 8(2)(a) to (c) of the Act) is a function for which the authority may use the amounts it receives in pursuance of notices given under section 6 of the Act.

Use of receipts: alarm notification offences

14.—(1) This regulation applies to a local authority to which section 75 of the Act applies.

(2) Any other function of a local authority (in addition to those already specified in section 75(2)(a) to (c) of the Act) is a qualifying function for which the authority may use the amounts it receives in pursuance of notices given under section 73 of the Act.

Giving notices: parish or community councils: condition

15. Before a parish or community council may authorise a person to give notices under—

- (a) section 88(1) of the Environmental Protection Act 1990, or
- (b) section 43(1) of the Anti-social Behaviour Act 2003,

the person must successfully complete a course of training suitable for equipping the person to give notices under those sections.

Amendments to the Environmental Protection Act 1990

16.—(1) For subsection (6A)(b) of section 88 (fixed penalty notices for leaving litter) of the Environmental Protection Act 1990 substitute—

“(b) if no amount is so specified, is—

- (i) in England, [x], or
- (ii) in Wales, £75.”.

(2) For paragraph 7(4)(b) of Schedule 3A (free distribution of printed matter on designated land) of that Act substitute—

“(b) if no amount is so specified, is—

- (i) in England, [x], or
- (ii) in Wales, £75.”.

Amendment to the Anti-social Behaviour Act 2003

17. For subsection (1)(b) of section 43A (amount of penalty for graffiti and fly-posting) of the Anti-social Behaviour Act 2003 substitute—

“(b) if no amount is so specified, is—

- (i) in England, [*x*], or
- (ii) in Wales, £75.”.

Revocations

18.—(1) The following provisions of the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007⁽⁴⁴⁾ are revoked—

- (a) in regulation 2—
 - (i) paragraph (1)(a), (b), (c) and (e),
 - (ii) paragraph (2), and
 - (iii) paragraph (3),
- (b) in regulation 3—
 - (i) paragraph (1)(a), (b), (c) and (e),
 - (ii) paragraph (2), and
 - (iii) paragraphs (3) to (5), and
- (c) regulations 4 to 7.

(2) The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012⁽⁴⁵⁾ are revoked.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

⁽⁴⁴⁾ S.I. 2007/175.

⁽⁴⁵⁾ S.I. 2012/1151.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 as the instrument containing provisions supplementing provision in Acts for fixed penalties payable in respect of offences relating to the environment.

The Regulations prescribe the ranges within which the amounts of certain fixed penalties that are capable of being specified by a local authority are required to fall (regulations 2 to 3). The range for littering, free distribution of printed matter on designated land or graffiti or fly-posting in regulation 2(1) is increased by $[x]$. The increased amount is not less than $[x]$ and not more than $[x]$ (regulation 3).

The Regulations also state a minimum lesser amount which an authority may treat as payment of the full amount if paid before the end of a period specified by the authority in relation to certain fixed penalties (regulations 4 to 7).

Regulations 8 to 13 have the effect that the authorities may use the amounts received from certain fixed penalty notices for any of their functions.

The Regulations provide that before a person may be authorised by a parish or community council to give notices of certain fixed penalties, the person must successfully complete a course of training on the giving of those notices (regulation 14).

Regulations 15 and 16 amend the Environmental Protection Act 1990 and the Anti-social Behaviour Act 2003 in relation to England to increase by $[x]$ the amount of the penalty for littering, free distribution of printed matter on designated land or graffiti or fly-posting where a local authority does not specify an amount. The increased amount is $[x]$.

Regulation 17 partially revokes the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007. Regulation 17 also revokes the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012.

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

ENVIRONMENTAL PROTECTION, ENGLAND

The Environmental Offences (Use of Fixed Penalty Receipts) (England) Regulations 2018

Made - - - - ***

Coming into force - - ***

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 96(4)(d) and (5) and 97(1) and (2)(a) of the Clean Neighbourhoods and Environment Act 2005⁽⁴⁶⁾ ("the Act").

The Secretary of State is, in respect of those sections, the appropriate person as defined in section 98(1)(a) of the Act in relation to England.

The Secretary of State has, in respect of regulation 3, consulted the authorities to which these Regulations apply and such other persons as the Secretary of State thinks fit, in accordance with section 96(9) of the Act.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament, in accordance with section 98(4) of the Act.

Title and commencement

1.—(1) These Regulations may be cited as The Environmental Offences (Use of Fixed Penalty Receipts) (England) Regulations 2017.

(2) They come into force on 6th April 2017.

Use of receipts: lower tier authorities

2.—(1) A parish or community council may use the amounts received by it in pursuance of notices under—

- (a) section 88 of the Environmental Protection Act 1990⁽⁴⁷⁾ (fixed penalty notices for leaving litter), and
(b) section 43(1) of the Anti-social Behaviour Act 2003⁽⁴⁸⁾ (penalty notices for graffiti and fly-posting),

for any of its functions.

(46) 2005 c.16.

(47) 1990 c.43.

(48) 2003 c.38.

(2) A parish or community council must give the Secretary of State any information about those amounts that the Secretary of State requires.

Use of receipts: higher tier authorities

3.—(1) This regulation applies in relation to amounts paid to an authority to which section 96(1)(a) and (b) of the Clean Neighbourhoods and Environment Act 2005 applies in pursuance of notices under—

- (a) section 88 and paragraph 7 (fixed penalty notices for free distribution of printed matter on designated land) of Schedule 3A to the Environmental Protection Act 1990;
- (b) section 43(1) of the Anti-social Behaviour Act 2003.

(2) Any other function of an authority (in addition to those already specified in section 96(4)(a) and (b) of the Clean Neighbourhoods and Environment Act 2005) is a qualifying function for which it may use those amounts.

Revocation

4. The Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2007⁽⁴⁹⁾ are revoked.

Signatory text

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations revoke and remake the Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2007.

Regulations 2 and 3 have the effect that lower and higher tier authorities may use the amounts received from certain fixed penalty notices for any of their functions.

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

⁽⁴⁹⁾ S.I. 2007/901.

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⁽⁵⁰⁾.

A draft of these Regulations has been laid before Parliament in accordance with section 161(2ZC) of that Act⁽⁵¹⁾ and approved by a resolution of each House of Parliament.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 88A of the Environmental Protection Act 1990⁽⁵²⁾.

A draft of these Regulations has been laid before Parliament in accordance with section 161(2ZC) of that Act⁽⁵³⁾ 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⁽⁵⁴⁾;

⁽⁵⁰⁾ C.43. Section 88A was inserted by section 154(2) of the Anti-social Behaviour, Crime and Policing Act 2014 (c.12).

⁽⁵¹⁾ Section 161(2ZB) and (2ZC) was inserted by section 154(3) of the Anti-social Behaviour, Crime and Policing Act 2014.

⁽⁵²⁾ C.43. Section 88A was inserted by section 154(2) of the Anti-social Behaviour, Crime and Policing Act 2014 (c.12).

⁽⁵³⁾ Section 161(2ZB) and (2ZC) was inserted by section 154(3) of the Anti-social Behaviour, Crime and Policing Act 2014.

“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).

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—

⁽⁵⁴⁾ S.I. 2013/1783, to which there are amendments not relevant to these Regulations.

- (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⁽⁵⁵⁾;
 - (b) a hackney carriage licensed under section 37 of the Town Police Clauses Act 1847⁽⁵⁶⁾ or section 6 of the Metropolitan Public Carriage Act 1869⁽⁵⁷⁾;
 - (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⁽⁵⁸⁾;
 - (d) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976⁽⁵⁹⁾ (licensing of private hire vehicles);
 - (e) a vehicle licensed under section 5 of the Plymouth City Council Act 1975⁽⁶⁰⁾ (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—

⁽⁵⁵⁾ C.14. Section 1 was amended by Schedule 8 to the Transport Act 1985 (c.67).

⁽⁵⁶⁾ C.89.

⁽⁵⁷⁾ 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.

⁽⁵⁸⁾ C.34.

⁽⁵⁹⁾ C.57. Section 48 was amended by paragraph 16 of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c.54).

⁽⁶⁰⁾ C.xx.

- (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,
- (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⁽⁶¹⁾.

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.

⁽⁶¹⁾ C.22.

(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.

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⁽⁶²⁾;
 - (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).

⁽⁶²⁾ 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⁽⁶³⁾ 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,
- (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),

⁽⁶³⁾ C.18.

- (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⁽⁶⁴⁾.

(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⁽⁶⁵⁾.

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;
- (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 □ to □ 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.

⁽⁶⁴⁾ C.70.

⁽⁶⁵⁾ S.I. 2007/3483.

(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)⁽⁶⁶⁾ 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—

⁽⁶⁶⁾ C.30.

“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⁽⁶⁷⁾ 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)⁽⁶⁸⁾ 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

⁽⁶⁷⁾ C.80.

⁽⁶⁸⁾ 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.