



Department  
for Environment  
Food & Rural Affairs

# Modification to the Code of Practice on Litter and Refuse: Guidance on effective enforcement

April 2018



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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 the Litter Strategy for England to publish improved guidance to promote proportionate and responsible enforcement.

## Introduction

2. This consultation seeks your views on proposals by the Department for Environment, Food and Rural Affairs, to modify the Code of Practice on Litter and Refuse to incorporate guidance on the proportionate and effective use of fixed penalties (civil and criminal) against littering and related offences.
3. This will fulfil the following commitment, given in the Litter Strategy (April 2017):

Subject to consultation, we also intend to issue stronger guidance to enforcement authorities on the use of these enforcement powers. That guidance will make clear that fixed 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 penalties for these offences as a means to generate income.<sup>1</sup>

## Scope of this consultation

4. This consultation applies to litter authorities in England which:
  - a. Are subject to one or both of the duties in section 89(1) and (2) of the Environmental Protection Act 1990, to keep relevant land clear of litter and refuse, and to keep the highways clean; and
  - b. Have the power to issue fixed penalty notices for littering and/or related environmental offences including littering from vehicles, the unauthorised distribution of free printed literature on designated land, graffiti, or fly-posting.
5. It is also relevant to the use of fixed penalty powers more generally, particularly those for related environmental offences such as abandoned vehicles, fly-tipping, nuisance parking, and (civil) offences related to domestic waste receptacles.

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<sup>1</sup> [Litter Strategy for England](#) section 4.2.1

## Who should read this consultation?

6. 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
7. 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

8. This consultation will run for 5 weeks from February 2018. 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

9. Or you can send your comments by email to [litter@defra.gsi.gov.uk](mailto:litter@defra.gsi.gov.uk)

## Confidentiality and data protection information

10. A summary of responses to this consultation will be published on the Government website at: [www.gov.uk/defra](http://www.gov.uk/defra). The summary will include a list of organisations that responded **but not** personal names, addresses or other contact details.
11. 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](http://www.gov.uk/defra).
12. 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.

13. 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.
14. 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>.
15. 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>.
16. If you have any comments or complaints about the consultation process, please address them to:
17. Consultation Co-ordinator  
8A  
8<sup>th</sup> Floor, Nobel House  
17 Smith Square,  
London, SW1P 3JR.
18. Or email: [consultation.coordinator@defra.gsi.gov.uk](mailto:consultation.coordinator@defra.gsi.gov.uk)

# Background

## Environmental enforcement

19. Councils and a number of other land managers are responsible for taking enforcement action against a range of “environmental offences” include littering, graffiti, fly-posting, and other offences which harm public spaces.<sup>2</sup>

20. In most cases, these environmental offences attract a criminal penalty. However, councils and other enforcing authorities may choose to issue fixed penalty notices (on the spot fines) as an alternative to prosecution. This reduces burdens on the justice system by avoiding the need for the majority of these cases to be heard in court, and also enables offenders to avoid a criminal record.

21. 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. By far the majority of enforcement activity against offences such as littering is via fixed penalty notices, rather than prosecution.<sup>3</sup>

22. In some circumstances, certain councils also have powers to issue civil penalties:

- To the keeper of a vehicle from which litter is thrown; or
- In respect of certain domestic waste receptacle offences.

These civil penalties are issued in their own right, rather than in lieu of prosecution. If these penalties are not paid, the council may recover the sum owed through the county court as a civil debt.

## Level of penalties

23. From April 2018, the maximum level of fixed penalties that councils will be able to impose for littering, the unauthorised distribution of free printed literature in a

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<sup>2</sup> Prosecution or fixed penalty notice (ie criminal offences): littering; unauthorised distribution of free printed material in a designated area; graffiti; fly-posting; industrial/commercial waste receptacle offences, nuisance parking; abandoning a vehicle; audible intruder alarms (failure to nominate a keyholder or provide keyholder details); Noise Act 1996 offences; failure to provide a waste transfer note or waste carrier licence; fly-tipping.

Civil penalties (ie no criminal liability): domestic waste receptacle offences; littering from vehicles (from April 2018)

<sup>3</sup> 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))

designated area, graffiti and fly-posting will increase from £80 to £150. The default penalty for these offences will also increase from £75 to £100.

24. Subject to Parliamentary approval, from April 2018 district and unitary councils will also gain new powers to issue civil penalties to the keepers of vehicles from which litter is thrown.

25. The following table shows the levels of fixed and civil penalties that councils may impose for different offences (from April 2018):

<b>Offence</b>	<b>Default penalty</b>	<b>Minimum full penalty</b>	<b>Maximum full penalty</b>	<b>Minimum discounted penalty</b>
<a href="#"><u>Littering</u></a>	£100	£50 (rising to £65 from April 2019)	£150	£50
<a href="#"><u>Graffiti</u></a>	£100	£50 (rising to £65 from April 2019)	£150	£50
<a href="#"><u>Fly-posting</u></a>	£100	£50 (rising to £65 from April 2019)	£150	£50
<a href="#"><u>Unauthorised distribution of free literature on designated land</u></a>	£100	£50 (rising to £65 from April 2019)	£150	£50
<a href="#"><u>Alarm noise: failure to nominate key-holder or to notify local authority of key-holder's details</u></a>	£75	£50	£80	£50
<a href="#"><u>Nuisance parking</u></a>	£100	£100	£100	£60
<a href="#"><u>Abandoning a vehicle</u></a>	£200	£200	£200	£120
<a href="#"><u>Fly-tipping</u></a>	£200	£150	£400	£120
<a href="#"><u>Failure to produce a waste transfer note</u></a>	£300	£300	£300	£180



<a href="#">Industrial and commercial waste receptacle offences</a>	£100	£75	£110	£60
<a href="#">Noise exceeding permitted level - domestic premises</a>	£100	£75	£110	£60
<a href="#">Noise exceeding permitted level - licensed premises</a>	£500	£500	£500	£500 - no discount allowed
<a href="#">Domestic waste receptacle offences</a> (civil penalty)	£60	£60	£80	£40
<a href="#">Littering from a vehicle</a> (civil penalty)	£100	£65	£150	£50

## Use of income

26. Since April 2017, the income that councils receive from these penalties has been (in most cases) ring-fenced for spending on their functions relating to the original offence. The following table shows the functions on which councils may spend this income:

Offence	FPN money can be spent on functions relating to:
Litter, graffiti, fly-posting, unauthorised distribution of free printed material on designated land	Litter and refuse (including keeping land and highways clear of litter and refuse, and enforcement against littering and littering from vehicles),  graffiti and fly-posting  controlling and enforcing against the unauthorised distribution of free literature
Nuisance parking	Road traffic, litter and refuse
Abandoning a vehicle	Road traffic, litter and refuse
Fly-tipping	There are no restrictions on how councils can use this income

Noise exceeding permitted levels - domestic premises	Statutory noise nuisance, noise at night and audible intruder alarms
Noise exceeding permitted levels - licensed premises	Statutory noise nuisance, noise at night and audible intruder alarms
Alarm noise - no keyholder	Statutory noise nuisance, noise at night and audible intruder alarms
Failing to show waste documents	Waste on land

27. Other authorities with enforcement powers must use the income from fixed penalties as follows:

- National Park authorities can use FPN receipts for their own litter enforcement.
- The Broads authority can use FPN receipts for functions relating to litter and anti-social behaviour.
- The Environment Agency must pay its FPN receipts to the Secretary of State.
- The police must pay receipts from FPNs issued by PCSOs to their local authority.

## Proportionate enforcement

28. As set out in the Litter Strategy, there are many public misconceptions about enforcement activity against littering and related offences. Media coverage of enforcement activity, such as the recent BBC Panorama programme, *Inside the Litter Police*, often focusses on enforcement activity which is perceived as disproportionate, which undermines public confidence in its legitimacy.<sup>4</sup>

29. When exercising their enforcement powers, councils are acting in a quasi-judicial capacity, and we are clear that these powers must be exercised in such a way as to uphold public confidence in a fair judicial system. Fixed penalty notices or civil penalty notices should therefore 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. 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. Where councils choose to use a third-party enforcement service, they should use an approach which is not based on targets

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<sup>4</sup> <http://www.bbc.co.uk/programmes/b08mk133>

on the number of fines issued or revenue raised as this practice undermines public confidence in and support for a fair judicial system.

30. We want to support councils in implementing a proportionate and responsible approach to enforcement against littering and other related environmental offences, so that it operates as an effective deterrent and retains the support of the wider public. We have therefore committed to issuing improved guidance to councils on the use of their enforcement powers.
31. Taking proportionate and effective enforcement action against littering and related offences is a practical step that councils and other litter authorities can take to help them in delivering their statutory duties to keep relevant land clear of litter and refuse, and to keep the highways clean, so far as is practicable.<sup>5</sup> As well as influencing the behaviour of those against whom enforcement action is taken, the use of proportionate enforcement can also help to deter others from committing offences which cause damage to local environmental quality. In turn, this will assist litter authorities in keeping their relevant land clear of litter and refuse.
32. We therefore propose to incorporate this improved guidance into the statutory Code of Practice on Litter and Refuse, to which councils and other land managers must have regard when discharging their duty to keep their relevant land clear of litter and refuse, so far as is practicable.
33. This new section 1A of the Code relates particularly to the use of fixed penalty notices in lieu of prosecution for the offences of littering (s87 EPA 1990), and the unauthorised distribution of free literature (para X Schedule 3A EPA 1990), and the use of civil penalties to penalise the keeper of a vehicle from which litter is thrown (s88A EPA 1990). As set out in Part 2 of the Code of Practice (Advisory standards for graffiti and fly-posting), duty bodies are also encouraged to manage the problems of graffiti and fly-posting as part of compliance with their section 89 duties. This guidance will therefore also be relevant to enforcement against these offences. More broadly, it sets out the policy framework within which the Government believes that litter authorities should be exercising all their environmental enforcement powers, including how to approach, carry out and review enforcement activity.
34. The proposed guidance represents good practice, and is based on a number of existing sources:

[Fixed penalty notices: issuing and enforcement by councils](#)

[Enforcement officers: issuing fixed penalty notices](#)

[Statutory guidance to local authorities on the civil enforcement of parking contraventions](#)

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<sup>5</sup> [Environmental Protection Act 1990, section 89](#)

## Consultation questions

We welcome the views of local councils (enforcing authorities) on the proposed guidance.

In particular:

- 1 **Are any aspects of the guidance unclear?** (Please identify relevant paragraph numbers, and suggest how it could be clarified.)
- 2 **What changes, if any, will you need to make to existing practices in order to comply with the new guidance?**
- 3 **What do you estimate would be the costs of making any changes in order to comply with the guidance?**
- 4 **Do you foresee any savings attributable to compliance with the guidance?**

# Proposed modification to the Code of Practice on Litter and Refuse: Section 1A – Effective enforcement

## Modification to Code of Practice on Litter and Refuse – Effective enforcement

### Contents

1. This guidance is published by the Secretary of State for Environment, Food and Rural Affairs under s89(7) of the Environmental Protection Act 1990 and is a modification to the Code of Practice on Litter and Refuse issued in 2006. The Code of Practice on Litter and Refuse provides practical guidance how to discharge the duties imposed on litter authorities to keep relevant land clear of litter and refuse, and on local authorities and the Secretary of State to keep clean those public highways for which they are responsible, as set out in the Environmental Protection Act 1990 under section 89(1) and (2).
2. Appropriate, effective and proportionate use of enforcement powers will help land-managers to comply with their duties to keep relevant land clear of litter and refuse, and to keep relevant highways clean. Enforcement should strike the balance between national consistency, local circumstances, and fairness and effectiveness.
3. This modification to the Code:
  - a. updates the Code in respect of the changes to fixed penalty levels, and the new civil penalties for littering from vehicles, that result from the introduction of the Environmental Offences Regulations (Fixed Penalties) (England) Regulations 2017 and the Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018;
  - b. relates particularly to the use of fixed penalty notices in lieu of prosecution for the offences of littering (s87 EPA 1990), and the unauthorised distribution of free literature (para 9 Schedule 3A EPA 1990), and the use of civil penalties to penalise the keeper of a vehicle from which litter is thrown (s88A EPA 1990);
  - c. advises the relevant authorities of the procedures that they must follow, the procedures to which they must have regard, and the procedures that the Government recommends they follow when enforcing against littering and related offences;
  - d. sets out the policy framework within which the Government believes that litter authorities should be exercising their environmental enforcement powers, including how to approach, carry out and review enforcement activity;
  - e. contains information for members of the public, as well as local authorities, about environmental offences and their enforcement.
4. As set out in Part 2 of the Code of Practice (Advisory standards for graffiti and fly-posting), duty bodies are also encouraged to manage the problems of graffiti and fly-posting as part of compliance with their section 89 duties. This guidance will therefore also be relevant to enforcement against these offences.

5. This part of the Code of Practice is good practice guidance. Where it says that something must be done, this means that it is a requirement in either primary or secondary legislation. Where a statute imposes a duty on a local authority, a failure to comply will constitute a breach of statutory duty. If there appear to be differences between primary or secondary legislation and this Code, the legislation always takes precedence.
6. **Section 89(10) of the EPA stipulates that local authorities must have regard to the information contained in the Code of Practice on Litter and Refuse**, of which this modification forms part. It should be read alongside any guidance and further modifications to the [Code of Practice on Litter and Refuse](#) subsequently issued by the Government (available on the GOV.uk website).<sup>6</sup>

### **Enforcement action – prosecution and other penalties**

7. Fixed penalties can provide enforcement agencies with an effective and visible way of responding to environmental crimes, and provide a lower-cost alternative to prosecution. There is no obligation on an enforcing authority to offer an alleged offender the option of paying a fixed penalty. Equally an alleged offender may choose not to accept or pay a fixed penalty, and choose instead to defend the case in court (at the risk of being liable for a potentially higher penalty on conviction). Since issuing a fixed penalty notice is an alternative to prosecution, if an alleged offender does not pay a fixed penalty, the enforcing authority should be prepared to prosecute them for the original offence. Failure to follow up on unpaid fixed penalty notices will undermine their effectiveness as an enforcement tool. Therefore the authority must ensure it collects enough evidence which can be used in court that is reliable and credible.
8. In some circumstances, where criminal proceedings would be considered disproportionate, civil penalties are available to maintain the deterrent threat of enforcement. Civil penalties are not an alternative to prosecution, and an unpaid penalty notice may be recovered by the enforcing authority as a civil debt, or as if under an order of the county court. Since there is no opportunity for the recipient of a civil penalty to defend their case in court, authorities using these civil penalties must also provide an appeals process (as set out in the relevant regulations).
9. In all cases, enforcing authorities have discretion about whether to take enforcement action in a particular case, and they may consider that other forms of sanctions or education may be more effective and appropriate in some cases. The overriding objective of enforcement action against environmental offences is to educate the offender and change their behaviour, and to deter others from committing the same offence. With this in mind, some enforcing authorities have successfully offered alternatives to formal enforcement action (such as completion of a stop-smoking programme as an alternative to a fixed penalty for littering cigarette ends).
10. The use of litter-picking as a sanction in itself must be handled with care, to avoid creating a perception that anyone seen litter-picking must be serving some form of penalty, which could deter law-abiding citizens from volunteering to take part in these activities. Community Payback is therefore best used in circumstances in which

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<sup>6</sup> <https://www.gov.uk/government/publications/code-of-practice-on-litter-and-refuse>

community volunteers are unlikely to be operating, such as tackling issues on private land, or to address particularly persistent or large-scale problems.

11. Fixed penalty notices should only be used for the offence for which they were created. Failing to abide by this rule may make prosecution for the original offence problematic as, if a fixed penalty notice goes unpaid, it could be open to challenge in the court. This in turn could create further problems for an authority if it had employed such practice over a period of time.<sup>7</sup>

## Policy Objectives

12. Taking proportionate and effective enforcement action against littering and related offences is a practical step that councils and other litter authorities can take to help them in delivering their statutory duties to keep relevant land clear of litter and refuse. As well as influencing the behaviour of those against whom enforcement action is taken, the use of proportionate enforcement can also help to deter others from committing offences which cause damage to local environmental quality. In turn, this will assist litter authorities in keeping their relevant land clear of litter and refuse.
13. The principles of the [Regulators Code](#) apply to enforcement action carried out by local authorities. An effective environmental offences enforcement regime is one that is proportionate, consistent, targeted, transparent and accountable.
  - 1) Any person exercising a regulatory function to which this section applies must have regard to the principles in subsection (2) in the exercise of the function.
  - 2) Those principles are that—
    - a. regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
    - b. regulatory activities should be targeted only at cases in which action is needed.
  - 3) The duty in subsection (1) is subject to any other requirement affecting the exercise of the regulatory function.<sup>8</sup>
14. In particular, councils should not be taking enforcement action against people for petty or insignificant breaches. Similarly, enforcement action may be better targeted at problem areas, rather than applied across a whole local authority area.
15. Enforcement authorities should communicate to the community their reasons for their use of enforcement, and make it clear that enforcement is about supporting the achievement of a clean and attractive local environment: in no circumstances should enforcement be considered a means to raise revenue. Any perception that enforcement activity is being used intentionally to generate income is likely to undermine the legitimacy of the enforcement regime in the eyes of the local community, which in turn may diminish the deterrent effect.

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<sup>7</sup> This guidance relates to the use of enforcement powers under Part IV of the Environmental Protection Act 1990 to help keep land and highways clear of litter and refuse. Separate guidance is available on the use of other powers such as [Community Protection Notices](#) (pg 38) or civil penalties for domestic waste receptacle offences [hyperlink to be inserted]. Councils and other land managers must have regard to any relevant guidance when exercising their enforcement powers.

<sup>8</sup> Legislative and Regulatory Reform Act 2006 section 21

16. Enforcement authorities should not view their enforcement regime in isolation. In addition to taking enforcement action, litter authorities should aim to reduce the commission of littering and other environmental offences through clear, well-designed communications, and the provision, regular emptying and maintenance of bins.

17. Enforcement authorities should also publish, promote and explain their enforcement policies openly, so that the public can understand their approach. This should include details of:

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

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

19. It is recommended that enforcement authorities look into the benefits of consistent, and possibly collaborative, approaches to enforcement with neighbouring authorities.

### **Financial Objectives**

20. The receipts from fixed penalties for environmental offences may be retained by litter authorities in accordance with the relevant legislation, and may only be spent in accordance with that legislation. Different rules on the use of receipts apply, depending on the enforcing authority and the offence:

### **Councils**

21. Offence

Penalty receipts may be spent on functions relating to:

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[Litter / Graffiti / Fly-posting](#)

[/ Unauthorised distribution](#)

[of free printer material on](#)

[designated land / littering from a vehicle](#)

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Litter and refuse (including keeping land and highways clear of litter and refuse, and enforcement against littering and littering from vehicles), graffiti and fly-posting, controlling and enforcing against the unauthorised distribution of free literature



21. Offence

Penalty receipts may be spent on functions relating to:

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[\(civil penalty\)](#)

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[Nuisance parking](#) Road traffic, litter and refuse

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[Abandoning a vehicle](#) Road traffic, litter and refuse

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[Fly-tipping](#) There are no restrictions on how councils can use income

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[Noise exceeding permitted levels - domestic premises](#) Statutory noise nuisance, noise at night and audible intruder alarms

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[Noise exceeding permitted levels - licensed premises](#) Statutory noise nuisance, noise at night and audible intruder alarms

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[Alarm noise - no keyholder](#) Statutory noise nuisance, noise at night and audible intruder alarms

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[Failing to show waste documents](#) Waste on land

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**Other authorities:**

22. National Park authorities can use fixed penalty notice receipts for their own litter enforcement.

23. The Broads authority can use fixed penalty notice receipts for functions relating to litter and anti-social behaviour.

24. The Environment Agency must pay its fixed penalty notice receipts to the Secretary of State.

25. The police must pay receipts from fixed penalty notice issued by PCSOs to their local authority.

## **Funding enforcement activity**

26. Raising revenue should never be an objective of enforcement.
27. As far as is possible, enforcement should be self-financing, and neither national nor local taxpayers should be expected to meet any deficit. Any surplus income must only be spent in accordance with the provisions set out in the relevant enabling statute. We recognise that, for good governance purposes, enforcement authorities may need to forecast enforcement revenue in advance, but authorities should not set targets for revenue or number of penalties issued.
28. Enforcement authorities should run their enforcement operations efficiently, effectively and economically. Enforcement authorities should set fixed penalties, within the range specified in the Environmental Offences (Fixed Penalties) (England) Regulation 2017, at an appropriate level to reflect local circumstances, including local ability to pay.

## **Training and Professionalism**

29. If the service is to command public confidence and respect, it is essential to give enforcement staff at all levels the skills and training to do their jobs effectively, whether they are employed directly by the enforcing authority, or by a contractor. For parish council enforcement officers, it is a legal requirement that they attend a suitable training course.<sup>9</sup> Training should be seen as a legitimate and important aspect of running costs.
30. The office processes involved are important and staff carrying them out need similar levels of skill, training and professionalism as the more visible on-street enforcement officers. Enforcement authorities should provide enough staff for the volume of work. They should also make sure that those staff (whether employed directly by the authority or by a contractor to deal with informal challenges) have the skills, training, authority and resources to give the public a high-quality, professional, efficient, timely and user-friendly service.
31. Authorities that outsource any area of environmental offences enforcement to private companies should ensure that the contractor meets the same standards as would be expected of the authority itself.
32. Enforcement officers should wear a uniform or badge, and carry a Police and Criminal Evidence Act (PACE) Notebook for recording evidence to support a fixed penalty or prosecution. It is best practice for enforcement officers to carry identification e.g. a warrant card.

## **Dual Function Civil Enforcement Officers**

33. Environmental enforcement officers may be authorised to carry out other functions in addition to environmental enforcement, for example, parking enforcement duties.<sup>10</sup>

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<sup>9</sup> Environmental Offences (Fixed Penalties) (England) Regulations 2017, regulation 12

<sup>10</sup> 'Dual Function Civil Enforcement Officers', Department for Transport (2016), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/609788/statutory-guidance-local-authorities-enforcement-parking-contraventions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/609788/statutory-guidance-local-authorities-enforcement-parking-contraventions.pdf)

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

### **Collecting evidence**

34. The enforcing authority will need to provide evidence of the offence either from direct observation, or report including details of:

- a. the offence
- b. the date and time
- c. the location
- d. the name and address of the offender
- e. the age of the offender
- f. the offender's appearance
- g. the weather and light conditions at the time
- h. the enforcement officer's identification number
- i. the fixed penalty number.

35. If an offence occurs in which litter is thrown or dropped from a vehicle, additional relevant details should be noted, in order to cross match with the details from the DVLA's database, including;

- a. the make of the vehicle
- b. the model
- c. the colour

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

36. Enforcing authorities may take enforcement action on the basis of CCTV evidence, or evidence supplied by members of the public provided that, in the enforcing authority's opinion, the evidence is sufficient to meet the standards of proof relevant to the offence or contravention in question. In the case of criminal offences such as littering, a successful prosecution will require evidence sufficient to prove the offender's guilt beyond reasonable doubt. While a fixed penalty may be issued where the authorised officer has "reason to believe" that the offence has been committed, it will still be necessary to submit evidence proving the offence beyond reasonable doubt in order to prosecute the offender if the fixed penalty is unpaid. Failure to pursue unpaid penalties will undermine the threat of enforcement, and their effectiveness as a deterrent.

37. In the case of civil contraventions (including penalties issued to the keeper of a vehicle from which litter is thrown), the evidence must prove the offenders' guilt on the balance of probabilities.

38. Any photographs, video footage and notes by the enforcement officer about the circumstances should be kept as further evidence that the offence took place and to help resolve any disputes.

39. Enforcing authorities should provide their staff with the appropriate equipment, training and guidance to collect such evidence in the circumstances that the authority has prescribed.

40. Authorities should disclose their evidence at the earliest possible opportunity.

### **Keeping records**

41. In order to operate a fair and effective and enforcement system, enforcing authorities will need to keep records of:

- a. all penalty notices issued, and decisions taken at each stage from issue through to payment or prosecution;
- b. any representations received against each penalty notice;
- c. the evidence on which each penalty notice is based, in case the case goes to court.

### **Issuing fixed penalty notices in lieu of prosecution**

42. A fixed penalty notice in lieu of prosecution should only be issued when all of the following apply:

- a. an offence has been committed
- b. a fixed penalty notice is a proportionate response in the circumstances (see below for circumstances under which a fixed penalty notice should not be issued)
- c. there is sufficient evidence of the offender's guilty to support prosecution if the fixed penalty is unpaid
- d. the offender understands why the fixed penalty notice is being issued
- e. the enforcement officer believes that the name and address given by the offender are correct.

43. A fixed penalty notice must be issued to the person who has committed the offence. Where possible, a fixed penalty notice should be issued on the spot. Alleged offenders should be made aware of an offence at the time, and given an opportunity to rectify it (if appropriate). If necessary, a fixed penalty notice can also be issued by post.

44. A fixed penalty notice in lieu of prosecution must state all of the following:

- a. the alleged offence, for example, "littering"
- b. details about the offence, for example, what sort of litter was dropped
- c. where and when the offence took place
- d. the fine imposed (and if there's a discount for paying early)
- e. how the fine can be paid.

45. A fixed penalty notice in lieu of prosecution should state all of the following:

- a. how the penalty notice has been issued (in person or by post)
- b. when the fine must be paid by (this must be at least 14 days from the date of issue)

46. A fixed penalty notice should not conflate the amount of the fixed penalty (which can be up to £150) with the potential fine that could be imposed by a court on conviction for the offence (potentially up to £2,500).

47. If the enforcing authority operates an informal challenge process for fixed penalties issued in lieu of prosecution, the fixed penalty notice should also include instructions on how to bring a challenge, including:

- a. how, when and where to challenge
- b. what happens if the challenge is successful (ie no further action will be taken and the fixed penalty notice will be cancelled)
- c. what happens if the challenge is rejected and the offender doesn't pay (the offender should be prosecuted, unless the enforcing authority has other compelling reasons to cancel the fixed penalty notice)
- d. how to complain.

### **When not to issue a fixed penalty notice in lieu of prosecution**

48. Fixed penalty notices should not be issued if any of the following apply:

- a. there is no criminal liability – for example if the offender is a child under the age of 10 (the child's parents should be informed instead)
- b. enforcement action is inappropriate or would be disproportionate for the offence – for example, if the offender is vulnerable or the offence is trivial and it would not be in the public interest to prosecute
- c. prosecution is more suitable – for example, if:
  - the offence is major, e.g. racist or other forms of abusive graffiti, or deliberate smashing of glass
  - the offence is committed by a persistent offender
  - the offender is violent or aggressive
- d. A littering offence is accidental - for example if something falls from someone's pocket. In order to maintain public trust in the legitimacy of enforcement action against littering, fixed penalties for littering should only be issued where there is evidence of an intent to drop litter. It is not in the public interest to issue a fixed penalty notice where there is not clear evidence that the individual intended to cause litter. Alleged offenders should also be given the chance to pick up the litter before a fixed penalty is issued, and they should be warned that a penalty will be issued if they refuse to do so.

### **Persistent offenders**

49. Some people commit environmental offences deliberately and often, and may also fail to pay the fixed penalties issued against them. A person can be classed as a 'persistent offender' if there are multiple recorded offences by the individual and the penalties for these have not been paid, represented against or appealed against within the relevant time frame, or their representations and appeals have been rejected but they have still not paid (or been prosecuted). In such circumstances, a further fixed penalty is unlikely to be appropriate and enforcement authorities should consider prosecuting.

### **Issuing fixed penalty notices on private land**

50. It is an offence to drop litter on any land within the area of a principal litter authority which is open to the air on at least one side, and to which the public have access (with or without payment). This includes private land to which the public have access.

51. There are no explicit powers of entry associated with enforcement against littering. Before entering private land to take enforcement action in connection with littering offences committed on that land, enforcement officers should consider whether the landowner's consent is required. Enforcing authorities may wish to discuss their

approach to enforcement with the owners of large areas of private land to which the public routinely have access (e.g. shopping centres, retail parks, transport hubs etc.).

### **Getting the offender's details**

52. It is an offence if an alleged offender fails to provide their name and address in order for a fixed penalty to be issued. The police may be called to assist if the offender refuses to provide their details, or provides false details. A police community support officer (PCSO) may detain the offender for up to 30 minutes before a police constable arrives, and a further fixed penalty may be issued if a person refuses to supply their details, or provides false details.

### **Issuing civil penalties for littering from vehicles**

53. A penalty notice for littering from a vehicle must state all of the following:

- a. The circumstances alleged to constitute the littering offence in question, including the registration mark (if known) of the vehicle concerned
- b. How long they have to pay the penalty (28 days from the date the penalty notice is given)<sup>11</sup>
- c. The amount of the penalty if paid within 28 days
- d. That the amount of the fixed penalty will double if not paid within 28 days
- e. That the enforcing litter authority may recover any fixed penalty not paid within 28 days in court
- f. [If applicable] details of any early-payment discount available if the penalty is paid within 14 days (including the amount of the discounted penalty, which must not be less than £50)
- g. Details of how to pay (the name and address of the person to whom payment must be made, and the permissible methods of payment)
- h. That the recipient has a right to make representations to the enforcing litter authority
- i. The grounds on which representations may be made; and
- j. In general terms, how an appeal to an adjudicator can be made.

### **Using the DVLA's database**

54. The Driver and Vehicle Licensing Agency (DVLA) vehicle keeper database may be used to establish the ownership of vehicles used in connection with the commission of criminal offences, including littering.

55. For the purposes of issuing a civil penalty to the keeper of a vehicle from which litter is thrown, the "keeper" to which the penalty notice should be issued is the person by whom the vehicle is kept at the time when the littering offence in question occurs. In the case of a registered vehicle this is to be presumed, unless the contrary is proved, to be the registered keeper.

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<sup>11</sup> In the case of penalty notices issued by first-class post to an address in the UK, the notice is taken to be given on the second working day after posting (fifth working day in the case of an address outside the UK). If the notice is sent electronically, it is taken to be given on the working day immediately following the day on which it was sent.

## **Enforcement against Young People**

### **Children**

56. Fixed penalties are issued in lieu of prosecution. A valid fixed penalty therefore cannot be issued to a child under 10, as they are below the age of criminal responsibility. Enforcement authorities may contact the child's parents to make them aware of the offence.

### **Juveniles (aged 10-17)**

57. Fixed penalties may be issued to young people between the ages of 10 to 17. As a matter of good practice, it is recommended that enforcement officers issuing fixed penalties to juveniles should:

- a. always be in uniform
- b. never touch a young person
- c. approach from the front, not behind
- d. identify themselves and offer formal identification
- e. ideally work in pairs

### ***Juveniles aged 10 to 15***

58. Fixed penalties may be issued on-the-spot to 10 to 15-year-olds if:

- a. the offender is known to the enforcement officer; and
- b. the offender's school has agreed to the use of fixed penalties.

59. Enforcement authorities should notify the offender's parents, guardian or school as soon as possible.

60. If the enforcement officer does not know the offender, or the school has not agreed to the use of fixed penalties, officers should obtain the young person's details, and details of their parents or legal guardian in order to make further enquiries. If it is subsequently decided that a fixed penalty is suitable, it should be issued to the offender in person with a parent or legal guardian present. If the fixed penalty must be issued by post, the offender's parent or legal guardian should be notified at the same time.

### ***Juveniles aged 16 to 17***

61. Enforcement officers should obtain all of the following details from the offender:

- a. name
- b. address
- c. age
- d. date of birth

62. They should also obtain the name and address of a parent or legal guardian of the offender.

63. The young offender should be informed that this information will be shared with their local youth offending team.

64. If it is necessary to interview a young person under 17 under caution, an appropriate adult must be present.

### Payment options

65. Enforcement authorities should offer people a range of facilities for paying penalty notices. Where they provide payment centres these should be safe and accessible. Enforcement authorities should ensure that any payment facility (particularly telephone and online payments) can confirm any amount outstanding if part payment only has been received.

66. If there are unusual delays with the postal system, authorities should make allowances for late payments made by post when considering whether a payment was received within the statutory period. Enforcement authorities may wish to keep the envelope that the payments came in, as the franking can be used as evidence of the date of posting.

67. A fixed penalty notice is deemed 'paid' as soon as it is received by the enforcement authority. The enforcement authority should promptly close the case. An authority's systems should accurately record the day on which it receives payments so that no further enforcement action is taken.

68. If a fixed penalty notice is issued in lieu of prosecution, recipients must be given 14 days to pay before any prosecution proceedings can be brought.

69. Recipients of civil penalty notices have 28 days from the date of receipt in which to make the payment, otherwise the penalty will double. If a civil penalty notice is issued by post, the enforcing authority should use first class post, and it is deemed to have been received on the second working day after posting (or the fifth working day, if sent to an address outside the UK).

70. To encourage prompt payment, enforcing authorities may offer recipients a reduction in the penalty if paid before this deadline. The period during which a discount for early payment is offered must be no more than 14 days and to avoid confusion, it is recommended that it should not be more than 10 days. The minimum discounted penalty is set out in the relevant legislation:

### 71. Offence

	<b>Default penalty</b>	<b>Minimum full penalty</b>	<b>Maximum full penalty</b>	<b>Minimum discounted penalty</b>
<a href="#">Littering</a>	£100	£50 (increasing to £65 from 1 April 2019)	£150	£50
<a href="#">Graffiti</a>	£100	£50 (increasing to £65 from 1 April 2019)	£150	£50



## 71. Offence

	<b>Default penalty</b>	<b>Minimum full penalty</b>	<b>Maximum full penalty</b>	<b>Minimum discounted penalty</b>
<a href="#"><u>Fly-posting</u></a>	£100	£50 (increasing to £65 from 1 April 2019)	£150	£50
<a href="#"><u>Unauthorised distribution of free literature on designated land</u></a>	£100	£50 (increasing to £65 from 1 April 2019)	£150	£50
<a href="#"><u>Alarm noise: failure to nominate key-holder or to notify local authority of key-holder's details</u></a>	£75	£50	£80	£50
<a href="#"><u>Nuisance parking</u></a>	£100	£100	£100	£60
<a href="#"><u>Abandoning a vehicle</u></a>	£200	£200	£200	£120
<a href="#"><u>Fly-tipping</u></a>	£200	£150	£400	£120
<a href="#"><u>Failure to produce a waste transfer note</u></a>	£300	£300	£300	£180
<a href="#"><u>Industrial and commercial waste receptacle offences</u></a>	£100	£75	£110	£60
<a href="#"><u>Noise exceeding permitted level - domestic premises</u></a>	£100	£75	£110	£60
<a href="#"><u>Noise exceeding permitted level - licensed premises</u></a>	£500	£500	£500	£500 - no discount allowed

72. Discounts for early payment may also be offered for civil penalty notices:

Contravention	Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty
Littering from a vehicle	£100	Equivalent to local fixed penalty for littering offences £65 - £150		£50
<a href="#">Domestic waste receptacle offences</a>	£60	£60	£80	£40

73. Enforcing authorities may choose to send recipients of penalty notices a reminder letter. Again, it is recommended that these are sent out no earlier than 7 days from the date the penalty was issued. The reminder letters should inform the recipient of the following:

- a. how much they must pay
- b. when they must pay by
- c. what happens if they don't pay
- d. how they can make representations (civil penalties) or challenge the notice (penalties in lieu of prosecution)

74. Enforcing authorities may also choose to offer recipients the option of paying in instalments if they cannot afford the full amount.

### Providing a quality service

75. Enforcement authorities remain responsible for the whole enforcement process, whether they contract out part of it or not, and should provide a sufficient number of suitably trained and authorised officers to consider representations on their merits in a timely and professional manner. Enforcement authorities should not contract out the consideration of representations or challenges against penalties.

76. It is good practice for all challenges or representations to be considered by the service manager, or equivalent, who has delegated authority to consider them. All challenges or representations should be addressed to them and not the person that issued the penalty notice.

77. Enforcement authorities should make sure that their processes for handling representations, challenges, and appeals are efficient, effective and impartial.

Processes must comply with all relevant primary legislation and regulations.<sup>12</sup> Authorities are encouraged to seek independent quality assurance of their environmental offences enforcement processes.

78. Enforcement authorities should deal with offenders promptly and professionally. Authorities are encouraged to set time and quality targets for dealing with queries, in addition to any statutory time limits and those set out in this Guidance. As good practice they should publish information about their enforcement activity (see section 8).
79. Enforcement authorities should offer individuals flexible and efficient ways to contact them, including e-mail and telephone. They should ensure there is an adequate audit trail to rebut any accusations of unfairness.

### **Considering challenges / representations and appeals**

80. The process of considering challenges, representations and defence of appeals is a legal process that requires officers dealing with these aspects to be trained in the relevant legislation and how to apply it. They should be well versed in the collection, interpretation and consideration of evidence; writing clear but concise case-specific responses to challenges, enquiries and representations; presenting the authority's case to adjudicators.
81. Enforcement authorities have a duty not to fetter their discretion. They should approach the exercise of discretion objectively and without regard to any financial interest in the penalty or decisions that may have been taken at an earlier stage in proceedings. Authorities should formulate (with advice from their legal department) and then publish their policies on the exercise of discretion. They should apply these policies flexibly and judge each case on its merits. An enforcement authority should be ready to depart from its policies if the particular circumstances of the case warrant it.
82. It is in the interests of the authority and the individual to resolve any dispute at the earliest possible stage. Authorities should take account of the enforcement officer's actions in issuing the fixed penalty notice but should always give challenges and representations a fresh and impartial consideration.
83. Authorities should ensure that their legal departments are involved in establishing a processing system that meets all the requirements of the law. They should also consult them about complex cases.

### **The exercise of discretion**

84. The exercise of discretion should, in the main, rest with back office staff as part of considering challenges against fixed penalty notices and representations that are made to the local authority. This is to protect enforcement officers from allegations of inconsistency, favouritism or suspicion of bribery. It also gives greater consistency in the enforcement of environmental offences regulations. However, councils should recognise

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<sup>12</sup> See in particular Part 4 of the Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

the role of councillors to raise issues on behalf of their ward constituents, and more generally, for councillors to scrutinise the manner in which the broader policy operates.

85. The enforcement authority should have clear policies, instructions and training available on how to exercise such authority. These policies should form the basis for staff training and should be published.

### **Challenges against fixed penalty notices (i.e. informal challenges)**

86. This section applies to challenges to fixed penalty notices issued in lieu of prosecution for criminal offences, including littering, and unauthorised distribution of free literature etc.

87. Although there is no formal right of appeal against a fixed penalty notice issued in lieu of prosecution, if an alleged offender does not accept liability for the offence, there is no requirement on them to pay the fixed penalty. The assumption should always be that if a fixed penalty is unpaid, the case should be prosecuted, giving the alleged offender the opportunity to defend their case in court. To prevent unnecessary cases reaching the courts, it is therefore good practice for enforcing authorities to operate an informal challenge process against fixed penalty notices. As such, there are no fixed grounds on which a challenge may be made.

88. An authority has a discretionary power to cancel a fixed penalty notice at any point during the process. It can do this even when an undoubted contravention has occurred if the authority deems it to be appropriate in the circumstances of the case. Under general principles of public law, authorities have a duty to act fairly and proportionately and are encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest.

89. If the enforcing authority operates an informal challenge process for fixed penalty notices, it should ensure that, whatever ways are available to lodge an informal representation, there is an adequate audit trail of the case, showing what decision was taken and why.

90. If the enforcing authority does choose to offer an informal challenge process, the grounds on which representations may be made should be published and be made available to the public. Such grounds might include, but are not limited to:

- a. if the person issued with the penalty was not the person that committed the offence – this might be the case if someone challenged for an offence has given someone else's details;
- b. if the person issued with the fixed penalty notice brings forward evidence that could undermine any later prosecution;
- c. if evidence is provided that the person issued with a fixed penalty notice is in some way vulnerable and the enforcement of the fixed penalty notice would not be in the public interest;
- d. if evidence is provided that enforcement would, for any other reason, not be considered to be in the public interest.

91. Consideration should take into account the authority's own guidelines for dealing with extenuating, or mitigating circumstances. If the evidence or circumstances (including

mitigating circumstances) provide grounds for cancelling the fixed penalty notice, then the enforcement authority should do so and let the individual know. If the enforcement authority considers that there are no grounds for cancellation, it should tell the individual and explain its reasons.

92. It is also considered important that anyone who wants to take advantage of an appeals process is not disadvantaged by doing so. Where an authority offers a discount for early payment of a fixed penalty notice it should still be offered in the event of an unsuccessful appeal, providing that the appeal is lodged before the close of any relevant early payment window.

93. Authorities should always make it clear that an individual who has an informal challenge rejected may still choose not to pay the fixed penalty and instead defend their case in court.

### **Formal challenges against civil penalty notices for littering from vehicles**

94. The recipient may dispute the issuing of a civil penalty notice at two stages:

- a. Once a civil penalty notice has been served, an individual has up to 28 days to make a formal representation to the authority based on any one or more of the grounds for appeal set out in Regulation 14 of the Littering from Vehicles Outside London (Civil Penalties: Keepers) (England) Regulations 2018; and
- b. If a representation is rejected by the enforcing authority, the individual may appeal against the Notice of Rejection to an independent adjudicator.

95. Enforcement authorities should maintain a clear separation between the staff that decide on the issuing and processing of PCNs and the staff that decide on representations, especially in cases referred back by the adjudicators, to ensure that decisions are seen to be impartial. Authorities should run fair and efficient systems for assessing formal challenges.

96. Enforcement authorities should ensure that only fully trained staff make decisions on challenges, on the facts presented, and be specific on which officers have the authority to cancel penalty notices. Elected members and unauthorised staff should not play any part in deciding the outcome of individual challenges or representations.

97. Officers dealing with formal representations should be familiar with all aspects of environmental offences enforcement, particularly the legal nature of the process, so that they can judge whether or not a representation falls within the statutory grounds or the authority's guidelines for exceptional cases. Fair and efficient systems for carrying out this work should ensure that the number of cases going to an adjudicator is minimised – so saving the authority time and expense – without allowing people to evade an appropriate penalty.

98. Representations must be made in writing. The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 set out 12 formal grounds on which representations may be made:

99. A person to whom a penalty notice is given may make written representations to the litter authority if it appears to the person that one or more of the following grounds apply;

1. Ground A is that the littering offence in question did not occur.
  2. Ground B is that the person became the keeper of the vehicle after the littering offence occurred.
  3. Ground C is that the person had disposed of the vehicle to another person before the littering offence occurred.
  4. Ground D is that the vehicle was a stolen vehicle when the littering offence occurred.
  5. Ground E is that the person;
    - a. was engaged in the hiring of vehicles at the time of the littering offence, and
    - b. was not the keeper of the vehicle at that time by virtue of a vehicle hire agreement.
  6. Ground F is that the person was not the keeper of the vehicle for a reason not mentioned in grounds B to E.
  7. Ground G is that the litter authority was not authorised to give the person a penalty notice.
  8. Ground H is that the person is not liable to pay the fixed penalty by virtue of regulation 12 (Public service vehicles and licensed taxis etc.).
  9. Ground I is that liability to pay the fixed penalty has been discharged in the circumstances set out in regulation 13 (Discharge of liability where action taken against person who littered).
  10. Ground J is that the fixed penalty exceeds the amount payable under these Regulations.
  11. Ground K is that the litter authority has failed to observe any requirement imposed on it in relation to the imposition or recovery of the fixed penalty.
  12. Ground L 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 A to K apply).<sup>13</sup>
100. Authorities must consider representations made on these grounds. The enforcement authority should acknowledge receipt of the representation and explain the process, including what supporting evidence must be supplied, and when a decision notice will be dispatched.
101. The enforcement authority should consider representations as quickly as possible and serve notice of its decision on the person making the representations, within a maximum of 56 days of the service of the representations, whether or not it accepts that the ground in question has been established.
102. An enforcement authority which accepts a representation must cancel the penalty notice and refund any sum already paid. Cancellation does not prevent the authority from serving another penalty notice for the same litter offence to another person.

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<sup>13</sup> Regulation 14

103. If it is possible for the council to identify the person who actually littered, it may still choose to issue a fixed penalty notice for littering 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 person who threw the litter is identified after a civil penalty notice has been issued, but before it has been paid, the council may choose to cancel the civil penalty and decide (if it has sufficient evidence) to issue a fixed penalty or prosecute the litterer. If a civil penalty notice has already been paid or recovered in respect of the offence, and subsequently the person who actually littered is identified, then any liability on the part of the litterer for the original littering offence has already been discharged and no enforcement action (fixed penalty, nor prosecution) may be taken against the litterer.
104. An enforcement authority which rejects a representation must serve a notice stating that the penalty must be paid unless an appeal is made to an adjudicator. The enforcement authority must in a notice of rejection set out the general form and manner in which an appeal can be made and explain that the adjudicator has the power to award costs against either party.
105. The adjudicator may also, where an appeal is allowed, give written directions to the litter authority which the adjudicator considers appropriate for the purpose of giving effect to their decision.
106. An adjudicator may (despite not allowing an appeal) give a written recommendation to the litter authority that it cancels the penalty notice if the adjudicator is satisfied that there are compelling reasons why, in the particular circumstances of the case, the penalty notice should be cancelled.
107. An adjudicator must dismiss an appeal if the adjudicator concludes none of the grounds set out in regulation 14 of the Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 apply, or there are no compelling reasons why the penalty notice should be cancelled.
108. The enforcement authority should give the recipient clear and full reasons for its decision on a representation, in addition to the minimum required information. Failure to explain such a decision may be seen as maladministration. If, following an unsuccessful representation, an authority decides to offer a new discount period for prompt payment, it should set out the dates.
109. Enforcement authorities should respond promptly to adjudicators concerning appeals and meet time limits set by legislation or the adjudicator's judicial powers.
110. There should be a motivation for authorities to work to keep cases out of the court, where possible, as this is time consuming for all parties and can be expensive. By encouraging payment, this avoids a costly and burdensome process of prosecution.

### **Non-payment of fixed penalty notices - prosecuting offenders**

111. Should a fixed penalty notice go unpaid then the normal course of action will be to prosecute for the original offence in the magistrates' court. An enforcement authority must wait 14 days after issuing a fixed penalty notice before taking legal action, and must begin legal proceedings within 6 months of the offence.

112. Failure to pursue unpaid notices will discredit the use of fixed penalties in the locality, and will lead to declining rates of payment. The need to pursue unpaid fixed penalty notices must be considered in the development of an enforcement strategy and the necessary resources made available. It is not acceptable for an authority to decide after a fixed penalty notice has been issued that it does not have the resources to prosecute if the notice is unpaid.

### **Non-payment of (civil) penalty notices**

113. Should a penalty notice be unpaid after the 28-day payment period has expired and no representations against the penalty notice have been made to the enforcing authority, then the penalty will automatically double (ie increase by 100%). At this point, it becomes a civil debt due to the authority and is enforceable through a streamlined version of the normal civil debt recovery process in the county court.

### **Reporting**

114. Reporting is an important part of accountability. Enforcement authorities should report regularly and consistently to help the public understand and accept enforcement and council use of taxpayers' money. In addition it provides management information for internal performance evaluation and comparison with other councils. Monitoring also helps the authority to identify where it needs to improve.

115. The Government believes that in principle all data held and managed by local authorities should be made available to local people unless there are specific sensitivities to doing so (e.g. protecting vulnerable people or commercial and operational considerations). The Government also expects local authorities to be transparent about how they spend taxpayers' money and the services they deliver. It is a statutory requirement for local authorities covered by the Transparency Code to comply with [Part 2 of the Local Government Transparency Code 2015](#) which sets out the minimum data that local authorities should be publishing.

116. We consider that as good practice local authorities should publish the following information about their enforcement activity (for each of the environmental offences, including the new civil penalties for littering from vehicles):

- a. number of (a) fixed penalties notices and (b) civil penalty notices issued
- b. number of (a) fixed penalty notices and (b) civil penalty notices cancelled
- c. number of (a) fixed penalty notices and (b) civil penalty notices paid
- d. number of (a) fixed penalty notices and (b) civil penalty notices paid at discount rate
- e. number of prosecutions undertaken following non-payment of a fixed penalty notice (whether the case is concluded or not)
- f. number of prosecutions undertaken for environmental offences for which a fixed penalty notice was not offered



- g. number of civil penalty notices cancelled following an appeal made to an adjudicator
- h. number of civil penalty notices pursued as civil debts following non-payment
- i. 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.)
- j. total net income from (a) fixed penalty and (b) civil penalty notices for each of the environmental offences, and net income from civil penalty notices for littering from vehicles
- k. total spent on enforcement activity against (a) environmental offences and (b) littering from vehicles offences

117. Where external contractors are used, the full text of such contracts/legal agreements, should be placed in the public domain by the council - to provide additional scrutiny and reassurance that such contracts are not being used as a revenue raiser. The Local Government Transparency Code already requires that councils falling under the Code publish contracts over £5,000 and discourages the use of commercial confidentiality clauses to prevent such publication. As best practice, the Government would also encourage an annual breakdown of fines and revenue, which could be done through an annual scrutiny review.

### **Use of income from fixed penalties and penalty notices for littering from vehicles**

118. Councils may spend the income from fixed penalties issued for littering offences on their functions relating to litter (including keeping their relevant land clear of litter and refuse, keeping relevant highways clean, and enforcement against littering), and on enforcement against graffiti and fly-posting offences.

119. This spending may include spending on communications and education to abate littering, or on the provision of bins and other street litter disposal infrastructure.

### **Appraising Enforcement**

120. Enforcement authorities should monitor their environmental offences policies, enforcement regimes and associated regulatory framework (including fixed penalty levels). They should appraise them when reviewing their local plans, local development framework or community strategy and make recommendations for improvements to members. Enforcement authorities should keep abreast of developments in neighbouring authorities and look into the benefits of consistent, and possibly collaborative, approaches to enforcement.

121. Appraisals should take account of any relevant information that has been collected as part of the environmental offences enforcement process, in particular about the practical effectiveness of the scheme. They will benefit from interviews with enforcement officers, who are in a unique position to identify changes to environmental offences patterns, and with office staff, who see challenges and representations and the reasons for them.

122. Enforcement authorities should consult locally on their policies when they appraise them. Enforcement authorities should maintain regular dialogue and joint activity where appropriate with on-street contractors.

123. The appraisal should take account of:

- a. existing and predicted levels of offending;
- b. availability of relevant infrastructure, such as bins;
- c. adequacy, accuracy and quality of signage and other communications;
- d. level of enforcement necessary for compliance;
- e. levels of penalties;
- f. payment and prosecution rates;
- g. the need to resource the operation effectively and ensure that staff are appropriately trained; and
- h. impact on the accumulation rates of litter.

124. Enforcement authorities should judge the performance of contractors and staff according to how far desired objectives have been achieved. Outcome indicators might include compliance statistics, the number of appeals, and the localised impact that enforcement appears to have had on relevant offending and the accumulation rate of litter. Performance management of enforcement staff, including rewards or penalties, should never be based on the volume of penalties issue, nor on a fixed amount of revenue to be raised. Enforcement authorities should have a Service Level Agreement for enforcement operations “in house”, incorporating the specification terms and conditions required by the client department, just as for a contract with an external service provider. Any such Service Level Agreement should reflect these principles.

125. Where external contractors are used, private firms should not be able to receive greater revenue or profits just from increasing the volume of penalties, since this runs contrary to the overall aim of reducing the number of offences committed.

## **Annex A – Relevant Legislation**

### **Fixed Penalties – Index of Legislation**

126. The main legislation and regulations providing for fixed penalties for the environmental offences is as follows:

- Environmental Protection Act 1990 <sup>14</sup>
- Clean Neighbourhoods and Environment Act 2005 <sup>15</sup>
- Anti-social Behaviour Act 2003 <sup>16</sup>
- Refuse Disposal (Amenity) Act 1978 <sup>17</sup>

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<sup>14</sup> <http://www.legislation.gov.uk/ukpga/1990/43/contents>

<sup>15</sup> <http://www.legislation.gov.uk/ukpga/2005/16/contents>

<sup>16</sup> <http://www.legislation.gov.uk/ukpga/2003/38/contents>

<sup>17</sup> <http://www.legislation.gov.uk/ukpga/1978/3/contents>

- Environmental Offences (Fixed Penalties) (England) Regulations 2017 <sup>18</sup>
- Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 <sup>19</sup>

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<sup>18</sup> <http://www.legislation.gov.uk/uksi/2017/1050/contents>

<sup>19</sup> <http://www.legislation.gov.uk/ukdsi/2018/9780111163818/contents>