

LEISURE & ENVIRONMENT COMMITTEE

26 JUNE 2018

LITTERING FROM VEHICLES – CIVIL PENALTY

1.0 Purpose of the Report

1.1 To seek Members' approval to adopt the provisions of The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 which will facilitate the issuing of Civil Penalties to the registered keeper of a vehicle from which littering has taken place.

2.0 Introduction

2.1 Section 87 of the Environmental Protection Act 1990 establishes the offence of leaving litter. The maximum penalty, upon conviction in a court is a fine of £2,500. Offenders may, as an alternative to prosecution, be offered the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty, currently £150 in Newark & Sherwood.

2.2 Littering from vehicles is a significant problem across the UK, as the examination of any road-side verge will confirm. In Newark, where littering from a vehicle is witnessed by an enforcement officer or other reliable witness, and the offender can be identified, a fixed penalty notice will normally be issued. Under Section 87 of the Environmental Protection Act, the identity of the offender must be established to a level of proof beyond a reasonable doubt. This can be difficult, particularly in a moving vehicle where the witness may not get a clear view of the offender and where that offender may be one of a number of occupants of the vehicle.

3.0 Background

3.1 In order to address this difficulty, whilst not attacking the fundamental burden of proof required in the criminal court, the Government has enacted provisions that will allow the authority to deal with this issue on a civil basis and will enable a Civil Penalty to be made against the registered keeper of the vehicle from which littering has taken place, removing the need to positively identify the actual offender. The new legislation, the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 came into force on 1 April this year. As the name suggests, this is an extension to legislation that has been in force in London, since 2007.

3.2 The Civil Penalty Notice that can be issued to the registered keeper of a vehicle is a civil fine which, unlike a criminal penalty, does not carry the risk of a criminal conviction. However, this provision is not intended as a means of "watering down" and decriminalising the primary offence of dropping litter; a fixed penalty notice backed up by the threat of a criminal prosecution will still be the preferred enforcement option where the offender, including an offender in a vehicle, can be positively identified.

3.3 There are a number of safe- guards built into the legislation.

- A registered keeper cannot be issued with a Civil Penalty if he/she is already subject to a criminal fixed penalty/prosecution for the same littering incident.

- A registered keeper cannot be issued with a Civil Penalty if another individual is the subject of a criminal fixed penalty/prosecution for the same littering incident.
- A registered keeper cannot be issued with a Civil Penalty if, at the time of the littering incident, they were operating a vehicle hire business and the vehicle was hired out under a hire agreement.
- The Regulations do not apply to public service vehicles, hackney carriages and private hire vehicles in circumstance where the offence was committed by a passenger.

- 3.4 The amount of the Civil Penalty is set, by the legislation, to be the same as the amount the local authority has resolved to charge for a criminal fixed penalty under section 88 of the Environmental Protection Act 1990 – including any early payment discounts the authority may have resolved to make. In the case of Newark & Sherwood District Council, this amount is currently set at £150, with a reduction to £75 if paid within 14 days. Unlike a criminal fixed penalty, if the Civil Penalty is not paid (subject to exhausting the appeals process mentioned below) within 28 days, the penalty increases by 100%, to £200. The Civil Penalty amount is recoverable as a civil debt.
- 3.5 Under the new legislation, the recipient of a Civil Penalty has a two-stage right of appeal against the issuing of the penalty notice. In the first instance, appeal against the notice may be made by a written representation to the Council. This appeal must be made within 28 days of receipt of the Civil Penalty Notice. The Council may choose either to uphold or reject the appeal. Where the Council decides to reject the appeal, the Council must serve a notice of rejection upon the person making the representation within 30 days beginning on the day that the representation is received. The rejection notice must state the Council's decision and detailed reasons for rejection and it must state that the person has a further right of appeal to the Adjudicator, together with details of the form and manner in which the appeal may be made and that the Adjudicator has the power to award costs against the appellant. The recipient of the notice must then be allowed a further 28 days to pay the penalty, or make a further appeal.
- 3.6 Where a Civil Penalty Notice has been upheld, has not been appealed and remains unpaid, civil debt recovery proceedings may be commenced. There are a total of twelve grounds (Grounds A to L) upon which an appeal may be made, these are listed in **Appendix 1** to this report.
- 3.7 A person served with a rejection notice may then appeal to an Adjudicator, normally within 28 days. The legislation indicates that the Adjudicator for the littering Civil Penalty Notice is the same as that appointed to adjudicate in appeals relating to parking matters, that is, the Nottinghamshire Traffic Penalty Tribunal.
- 3.8 The Adjudicator, upon consideration of the circumstances of the case, must allow the appeal if she/he is satisfied that one of the twelve prescribed grounds for appeal applies. Where the appeal is allowed, the Adjudicator may give written directions to the Council which the adjudicator considers appropriate for the purpose of giving effect to the adjudicator's decision. In these circumstances, the Council must abide by the Adjudicator's decision.

- 3.9 Where the Adjudicator believes that there are compelling reasons why the Civil Penalty Notice should be cancelled, even although none of the twelve grounds for appeal apply, she/he may write to the Council with a recommendation that it is cancelled. In these circumstances, the Council must consider any observations made by the Adjudicator, but need not cancel the penalty. Where such a recommendation is made, the Council must inform both the appellant and the Adjudicator, within 35 days, whether the Council accepts the Adjudicator's recommendation and, where it does, that the Civil Penalty Notice is cancelled, and where it does not, the reason for not accepting the recommendation. No further appeal can be made against the Council's decision.
- 3.10 Under regulation 10 of the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 a litter authority may authorise a person (an "authorised officer") to perform on its behalf any of the functions conferred on it by regulation 4 (penalty notices). The authorisation must be in writing.

4.0 Proposals

- 4.1 The new powers contained within The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 are a useful addition to the Council's existing enforcement powers against littering. It is, therefore, proposed to put in place a mechanism to adopt these powers in Newark & Sherwood.
- 4.2 The process to be adopted by a local authority for the internal appeals procedure is not specified within the legislation and Councils are therefore permitted to decide upon a procedure that best suits local needs.
- 4.3 It is proposed that first stage appeal will normally be accepted by way of written representation and will be considered by a Council officer at the level of Business Manager or above. This would normally be the Business Manager – Public Protection, but in the event of the Business Manager – Public Protection being the officer who has witnessed the littering offence, or being on leave, an alternative Business Manager will be selected. The appointed Business Manager will, however, have the discretion to accept representations by other means, for example verbally, if this would further the aims of natural justice. The appointed Business Manager will prepare a written decision notice, together with reasons, in order to advise the appellant of the Council's decision, should the appeal be rejected.
- 4.4 As detailed in paragraph 3.5 above, the second stage of the appeal process open to the recipient of a Civil Penalty Notice is to the Traffic Penalty Tribunal. It is, therefore, proposed that this Council enters into a formal agreement with the Nottinghamshire Traffic Penalty Tribunal to act as this Council's Adjudicator. It is also noted that an adjudicator has power to award costs against a person appealing against the decision set out in the notice of rejection.
- 4.5 It is further proposed, as a civil penalty is recoverable as a civil debt, that details of the recipient of the penalty notice will be forwarded to the Council's Debt Recovery Team for recovery through the Council's established debt recovery procedures. The amount of the civil penalty (£200 if the recipient has failed to pay in a timely manner) is relatively small and it may not be cost effective to recover such a debt in all circumstances. However, the reasons for such penalties arise due to a criminal act (albeit not necessarily by the recipient of the civil fixed penalty notice) and the integrity of the punishment system for littering will

be compromised if rigorous efforts are not made to recover these debts. For this reason, it is proposed that such debts will only be written off in exceptional circumstances, the decision will not be made purely on a cost- benefit basis and will be referred to a Business Manager for approval before any decision is made to write off such a debt.

4.6 The amount of the Civil Penalty Notice under this legislation (and thus, the amount of the criminal Fixed Penalty Notice for littering) will be £100 and that this amount is reviewed annually as part of the existing Fees & Charges process.

4.7 It is further proposed that the new powers, if adopted, will be brought into force in Newark & Sherwood on 1 August 2019 or when all working processes have been set up and the Tribunal Appeals procedure has been agreed with the Nottinghamshire Traffic Penalty Tribunal as Adjudicator, whichever is later. This will be preceded by information and publicity to make the public aware of these new powers prior to implementation.

4.8 Finally, it is proposed that officers with appropriate experience and training will be authorised in writing under this legislation to carry out such enforcement duties.

5.0 Equalities Implications

5.1 No adverse impacts on Equality have been identified in the drafting of this report. The Councils adopted policy on the issue of criminal fixed penalty notices will be applied to the issue of civil fixed penalty notices under this legislation.

6.0 Financial Implications

6.1 There is likely to be a relatively small income associated with this new power, although this may be offset by the costs associated with administering the civil debt recovery process. It is not proposed to set a specific income budget as it is not desirable have a target for fixed penalty charges. The regulations require, as they do for existing criminal fixed penalty notices for littering, that any income is ring-fenced and may only be used to fund litter enforcement activities.

7.0 Community Plan – Alignment to Objectives

7.1 Dropped litter, including that dropped from vehicles, has a significant adverse impact on the amenity of the general environment, it is disheartening to the population in general, is expensive for the Council to clean away, and encourages the view within certain groups within the population that other environmental crimes, such as fly-tipping and graffiti, will be tolerated. Any legislation that encourages those who have it within their power to prevent littering from vehicles, such as the registered keeper, is to be welcomed.

7.2 Objective one of the Council's Community Plan is 'Improve the cleanliness and appearance of the local environment'. The actions proposed will help to deliver this objective

8.0 RECOMMENDATIONS that:

(a) Members agree to adopt the powers contained in The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 as detailed in sections

4.3 to 4.7 above, to facilitate the issuing of Civil Penalties to the registered keepers of a vehicles from which littering has taken place; and

- (b) Officers of suitable experience and training are authorised in writing under this legislation to carry out such enforcement duties.**

Reasons for Recommendations

By doing so, the Council's will be able to make registered keepers responsible for the actions of their passengers, thereby reducing littering and the consequent clean-up cost to the Council.

Background Papers

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

For further information please contact Alan Batty, Business Manager – Public Protection on 655467.

Matthew Finch
Director – Communities & Environment