



Department
for Environment
Food & Rural Affairs

Consultation on statutory litter enforcement guidance

Date: March 2024

We are the Department for Environment, Food and Rural Affairs. We are responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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Introduction

Littering and other environmental offences can result in all kinds of waste being left in the environment. Dealing with it imposes significant costs on the public purse. It can also be harmful to human health and wildlife, can encourage pests and odours, and can otherwise interfere with people's enjoyment of the environment. This waste may also not be recycled resulting in valuable resources being lost to the economy.

Taking proportionate and effective enforcement action against people who intentionally or carelessly damage their local environment by littering is a practical step litter authorities can take to change behaviour and deter others from offending. In 2019, we provided improved guidance on effective enforcement to give more direction to litter authorities on the proportionate and effective use of civil and criminal sanctions against littering and related offences.

Over recent years we have bolstered the enforcement powers of litter authorities, such as by raising the upper limit on various fixed penalty notices in 2023 as part of the Prime Minister's Anti-Social Behaviour Action Plan. In both this plan and the Environment Improvement Plan, we committed to putting our 2019 enforcement guidance on a statutory footing, in part due to reports of councils using such penalties to raise revenue despite the 2019 guidance making clear this should never happen. This will give those to which it applies a clear and explicit duty to have regard to it when exercising their litter enforcement functions ensuring proportionate and appropriate enforcement action is taken against littering.

We are using this consultation to understand how litter authorities have used the 2019 enforcement guidance and the impact of putting it on a statutory footing.

Audience

This is a targeted consultation and we are inviting responses from 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/ or
- b. Have the power to take enforcement action in respect of littering, including issuing fixed penalty notices for littering and civil penalties for littering from vehicles, and the unauthorised distribution of free printed literature on designated land.

We are also inviting responses from certain other organisations including those involved in environmental enforcement, members of the research community and waste industry, non-governmental organisations and bodies representing the interests of local government.

Litter and fly-tipping are devolved matters and the proposed changes will have effect in England only.

Duration

This targeted consultation will run for 6 weeks. This is in line with the Cabinet Office's 'Consultation Principles' which advises government departments to adopt proportionate consultation procedures. The consultation opens on **Thursday 14th March 2024** and closes on **Thursday 25th April 2024**.

Responding to this consultation

Please respond to this consultation in the following ways:

Online using the MS Form at this link: <https://forms.office.com/e/MnYDFyH4uG>

By email: litter@defra.gov.uk

Or in writing to: Statutory litter enforcement guidance consultation, Ground Floor Seacole Building, 2 Marsham Street, London, SW1P 4DF

If you choose to respond by post, please ensure your response is received by the closing date of the consultation and include a return address.

After the consultation

We will provide an update to all respondents on the findings of this consultation and next steps.

Information in response to this consultation may be subject to release to the public or other parties in accordance with the access to information laws (these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances.

If you click on 'Yes' in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. The reason for this is that your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances. If you click on 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available.

Defra is the data controller in respect of any personal data that you provide, and [Defra's Personal Information Charter](#) gives details of your rights in respect of the handling of personal data.

Compliance with the consultation principles

This consultation is being conducted in line with Consultation Principles set out in the Cabinet Office guidance, which can be found at: <https://www.gov.uk/Government/publications/consultation-principles-guidance>. If you have any comments or complaints about the consultation process, please address them to: consultation.coordinator@defra.gov.uk

Or in writing to:

Consultation Co-ordinator Defra 2nd Floor Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX.

Background

Dealing with litter places a significant burden on our local councils, costing the taxpayer hundreds of millions of pounds each year at the price of investment in other local services. It can also be harmful to human health and wildlife and living in a littered environment makes people feel less safe in their communities, discouraging people from going outside, and damaging local pride. Poor local environment quality can also discourage inward investment and may suppress property prices, damaging local economic growth. Defra-commissioned research found that 61% of the public think that litter and dog fouling are a problem in their area.

Taking proportionate and effective enforcement action against littering 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. 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 littering.

Enforcement options for littering include prosecution in a magistrates' court which can lead to a criminal record and a fine of up to £2,500 on conviction, or issuing a fixed penalty notice. The majority of enforcement activity against offences is via fixed penalty notices, rather than prosecution. Councils also have powers to issue civil penalties to the keeper of a vehicle from which litter is thrown. It is up to litter enforcing authorities to decide whether to take enforcement action in any individual case and, if so, the most appropriate course of action.

In 2019, to support councils and others in implementing a proportionate and responsible approach to enforcement against littering and other related environmental offences, we published improved guidance on the use of their enforcement powers and incorporated this guidance into the Code of Practice on Litter and Refuse.

In July 2023, to further help councils in their fight against litter, we increased the upper limits for fixed penalty notices from £150 to £500. In addition, we have also laid regulations to ringfence receipts from litter and fly-tipping fixed penalty notices for enforcement and clean-up activities. We are not seeking any further comments on these policies in this consultation.

When exercising enforcement powers, we have been clear that litter authorities must do so in such a way as to uphold public confidence. Enforcement action should therefore only be taken 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 current guidance states that, among other things, under no circumstances should councils use fixed penalty notices or civil penalty notices as a means to generate income. It also explains that where councils choose to use a third-party enforcement service, they should ensure that the third party fulfils all the requirements set down for the authority itself and that private firms should not be able to receive greater revenue or profits just from increasing the volume of penalties. In 2022, Defra ministers wrote to councils to remind them of this.

Statutory enforcement guidance

We now wish to place our 2019 enforcement guidance on a firm statutory footing. It will apply to all litter authorities including district councils, unitary local authorities, the broads authority, national park authorities and parish or community councils. All litter authorities will have a clear and explicit duty to have regard to it when exercising their litter enforcement functions. These enforcement functions include prosecution or the issuance of a fixed penalty notice for dropping litter, prosecution or the issuance of a fixed penalty notice for the unauthorised distribution of free printed materials and issuing the keeper of a vehicle with a civil penalty for litter dropped from their vehicle. Litter authorities will need to explain their rationale for not following the statutory guidance. This includes where a court requests an explanation for them not doing so during subsequent prosecution for littering, or other legal challenge.

We are using this consultation to understand how litter authorities have used the 2019 enforcement guidance and the impact of putting it on a statutory footing. We are proposing minor changes to the guidance to reflect recent research and policy developments, including the Anti-Social Behaviour Action Plan which set out our expectations that councils should make greater use of their enforcement powers. The guidance will also include a statement advising that whilst it is not statutory for enforcement against other environmental crimes, such as fly-tipping, it should still be relevant. We have provided a version of the proposed statutory guidance with tracked changes recorded so amendments to the guidance are visible.

Consultation Questions

About you

1. **Would you like your response to be confidential?**

Yes

No

2. **If you answered 'Yes' to question 1, please give your reasons and state clearly what information you would like to be kept confidential (please see section 'After the consultation' above for more information).**

3. **What is your name?**

4. **What is your email address?**

5. **Which of the options below best describes you?**

*Please tick one option. If multiple categories apply to you, please choose the one which **best describes you** and which you are representing in your response.*

Local authority

Other litter authority

Business representative/Trade body

Charity or social enterprise

Community group

Academic/ consultancy/ research

Other: *please identify the type of organisation here* _____

6. **If you are responding on behalf of an organisation, what is its name?**

Section A.

7. How well do you know the current effective enforcement guidance? (For reference, the Part 1A: enforcement guidance is available from this webpage:

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

- Very well
- Fairly well
- Not very well
- Not at all
- Other

If other, please specify:

8. When did you last use or refer to the guidance?

- Within the last week
- Within the last month
- Within the last three months
- Within the last six months
- Within the last year
- Over a year ago
- Never
- Other

If other, please specify:

Section B.

Please only complete this section if you are a litter authority, or are familiar with how litter authorities use and are impacted by the enforcement guidance.

9. Will you (or do you believe litter authorities will) need to make any changes to existing practices to comply with the guidance becoming statutory?

- Yes
- No
- Other

If other, please specify:

10. If you answered Yes to question 9, what would these changes be?

11. If you answered Yes to question 9, do you estimate there will be any costs as a result of making these changes?

- Yes
- No
- Other

If other, please specify:

12. If you answered Yes to question 11, please indicate what these costs will be?

13. Do you foresee making (or do you believe litter authorities will make) any savings as a result of the guidance becoming statutory?

- Yes
- No
- Other

If other please specify:

14. If you answered Yes to question 13, please provide examples of areas where savings would be made?

15. If you answered Yes to question 13, please indicate what the value of these savings will be?

Section C.

16. Do you have any recommendations around how the guidance could be amended or improved, or any other comments on the guidance?

Proposed Statutory Enforcement Litter Guidance:

Department for Environment, Food and Rural Affairs

~~Part 1A — Effective enforcement Code of practice for litter and refuse~~

Litter enforcement guidance

xxxx 2024

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Who is This Guidance For?

This guidance on littering enforcement is issued under section 88B of the Environmental Protection Act 1990. All litter authorities must have regard to it when exercising any of their enforcement functions under sections 87 to 88A or schedule 3A of the Environmental Protection Act 1990 or any functions exercised in connection with these sections. This covers prosecution or the issuance of a fixed penalty notice for dropping litter, prosecution or the issuance of a fixed penalty notice for the unauthorised distribution of free printed materials and issuing the keeper of a vehicle with a civil penalty for litter dropped from their vehicle.

For the purposes of enforcement, 'litter authorities' includes district councils, unitary local authorities, the Broads authority, national park authorities and parish or community councils.

This guidance, which replaces guidance previously issued under Part 1A of the Code of Practice on Litter and Refuse, explains best practice for litter enforcement to help litter authorities take proportionate and effective enforcement action against people who intentionally or carelessly damage their local environment by littering. It makes clear that in no circumstances should enforcement activity be considered a means to raise revenue. Additional guidance for parish councils on issuing fixed penalty notices is also available on gov.uk¹.

Although local authorities are not required by law to have regards to this guidance for the enforcement of other environmental crimes such as fly-tipping, graffiti and fly-posting, many of the principles explained in this guidance will still apply. We therefore encourage litter authorities to consider this guidance when taking enforcement action in response to other environmental crimes.

Separate guidance is available on the household waste duty of care fixed penalty notice² as well as other powers such as community protection notices³ or civil penalties for domestic waste receptacle offences⁴. Councils and other land managers are advised to check any relevant guidance when exercising their enforcement powers.

¹ <https://www.gov.uk/guidance/parish-councils-fixed-penalty-notices>

² <https://www.gov.uk/government/publications/household-waste-duty-of-care-fixed-penalty-notice-guidance/guidance-for-local-authorities-on-household-waste-duty-of-care-fixed-penalty-notices>

³ <https://www.gov.uk/government/news/new-guidance-on-the-use-of-the-anti-social-behaviour-crime-and-policing-act-2014>

⁴ <https://www.gov.uk/guidance/household-waste-bins-when-and-how-councils-may-issue-fixed-penalties>

11A.0 Litter enforcement action – ~~prosecution and other penalties~~

A.1 Littering normally means improperly discarding any materials and leaving them behind. As a guideline, a single sack of rubbish, and anything larger, should usually be considered fly-tipping rather than litter. It is important that this guideline is applied across local authorities to ensure that enforcement functions are carried out consistently.

11A.1A Littering and the unauthorised distribution of free printed material⁵, ~~graffiti, fly-posting, the breach of the waste duty of care and the breach of a PSPO~~ are ~~all~~ criminal offences, for which enforcing authorities may bring prosecutions in the magistrates' courts, or may issue fixed penalties in lieu of prosecution. If a littering offence is committed from a vehicle, litter authorities (district councils in England outside London) may issue a civil penalty which carries no criminal liability to the keeper of the vehicle from which the offence is committed. (See paragraphs 11A.5 to 11J.9 for more information on the relationship between these criminal and civil penalties.) Litter authorities in London may issue a penalty charge notice if a littering offence is committed from a vehicle under Section 24 of the London Local Authorities Act (LLAA) 2007.

11A.2 Fixed penalties can provide enforcing authorities with an effective and visible way of responding to environmental crimes and provide an ~~lower-cost~~ alternative to prosecution in the magistrates' courts. There is no obligation on an enforcing authority to offer an alleged offender the option of paying a fixed penalty. Equally, as a fixed penalty offers an option to discharge liability for an offence, 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 subject to a criminal record and 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 sufficient evidence which can be used in court, is reliable and credible.

11A.3 In some circumstances, (domestic waste receptacle offences, and keeper liability for littering from vehicles), where criminal liability ~~may would~~ be considered disproportionate, civil penalty ~~ies notices~~ are available to maintain the deterrent threat of enforcement. Civil penalty notices are not an alternative to prosecution, ~~and, a~~ an unpaid civil 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 a formal process for considering representations and appeals against these penalties (as set out in the relevant regulations).

11A.4 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 if the case is pursued through the courts after a fixed penalty notice goes

⁵ Schedule 3A Environmental Protection Act 1990

unpaid. This in turn could create further problems for an authority if it had employed such practices over a period of time.

~~11A.5~~ 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 an e-learning littering course or completion of a stop-smoking programme as an alternative to a fixed penalty for littering cigarette ends).

11A.6 Community Payback (previously ‘community service’) is the work carried out by offenders who have an Unpaid Work requirement as part of their community sentence. It can be offered by the courts as an alternative to a custodial sentence. Community Payback is therefore not available as a sanction for littering offences, but may be available in cases of serious fly-tipping or criminal damage. ~~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.~~

~~11B.0~~ Policy objectives

~~11B.1~~ Taking proportionate and effective enforcement action against littering, and other related offences, is a practical step that enforcing authorities ~~can~~ should 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 all duty bodies in keeping their relevant land and highways clear of litter and refuse.~~

~~11B.2~~ 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. Section 21 of the Legislative and Regulatory Reform Act 2006 states:

21(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.⁶

(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.

⁶ For a list of these regulatory functions, see the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (as amended).

(3) The duty in subsection (1) is subject to any other requirement affecting the exercise of the regulatory function.

~~41B.3 Enforcing authorities are expected to combine enforcement with education in order to change behaviour. Given the quasi-judicial nature of the enforcement process, enforcing authorities will need to balance the need for consistency with an approach which remains targeted and proportionate. A blanket 'zero-tolerance' approach when issuing penalties is unlikely to achieve this. As stated in the Prime Ministers Anti-Social Behaviour Action Plan⁷, we want to see councils take a much tougher approach to this form of anti-social behaviour. We remain clear that the use of on-the-spot penalties (such as Fixed Penalty Notices) should never be used to target accidental littering, or to punish those who are trying to do the right thing when education would be the better approach. But taking proportionate and effective enforcement action against people who intentionally or carelessly damage their local environment is a practical step authorities can take to change behaviour and deter others from offending".~~

41B.4 In particular, enforcement action should not be taken if it would be disproportionate to the offence, for example against accidental littering or those who are trying to do the right thing where education would be the better approach. Paragraph 41I.7 sets out further guidance on when a fixed penalty may not be appropriate. Enforcement action may also be better targeted at specific problem areas or times, rather than applied across a whole local authority area.

41B.5 Enforcing 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. In addition, it is crucial that councils are transparent about why a fixed penalty has been issued and they must be satisfied that the fixed penalty notice in question is appropriate and proportionate to the circumstances. 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.

41B.6 Enforcing authorities should not view their enforcement regime in isolation. In addition to taking enforcement action, enforcing authorities should aim to reduce the commission of littering and other environmental offences through clear, well-designed communications, education and the provision, regular emptying and maintenance of bins.

41B.7 Enforcing 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

⁷ <https://www.gov.uk/government/publications/anti-social-behaviour-action-plan>

- 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.

Enforcing authorities may also choose to make clear their policies on when a fixed penalty should not be issued. It is recommended that enforcing authorities explore the benefits of consistent, and possibly collaborative, approaches to enforcement with neighbouring authorities.

11C.0 Financial objectives

11C.1 The receipts from fixed penalties for environmental offences may be retained by enforcing 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:

Table 1 – Local authorities

| Offence | Penalty receipts may be spent on functions relating to: |
|--|--|
| <u>Littering</u> | <u>Enforcement against littering, including:</u> <ul style="list-style-type: none"> • <u>employment (either direct or through a third party) of authorised officers</u> • <u>enforcement data collection, analysis and publication</u> • <u>purchasing equipment to aid enforcement, for example CCTV and signage</u> • <u>other related investigation and enforcement costs</u> <u>Clean-up of littering, including</u> <ul style="list-style-type: none"> • <u>collecting and disposing of litter and refuse</u> • <u>restoration of land affected by littering</u> • <u>Providing litter-picking equipment to volunteering groups.</u> |
| Graffiti Fly-posting Unauthorised distribution of free printed material on designated land Littering from a vehicle (civil penalty) | <u>Any functions relating to litter and refuse, graffiti, fly-posting, and/or controlling and enforcing against the distribution of free literature, as described in section 96 of the <u>Clean Neighbourhoods and Environment Act 2005.</u></u> |

| | |
|---|--|
| Nuisance parking | Road traffic, litter and refuse |
| Abandoning a vehicle | Road traffic, litter and refuse |
| <u>Fly-tipping and “breach of household waste duty of care”</u> | <u>Enforcement against fly-tipping, including:</u> <ul style="list-style-type: none"> <u>employment (either direct or through a third party) of authorised officers</u> <u>enforcement data collection, analysis and publication, including but not limited to reporting to WasteDataFlow</u> <u>purchasing equipment to aid enforcement, for example CCTV and signage</u> <u>other related investigation and enforcement costs</u> <u>Clean-up of fly-tipping, including:</u> <ul style="list-style-type: none"> <u>collecting and disposing of fly-tipped waste</u> <u>restoration of land affected by fly-tipping.</u> Waste on land |
| Household waste duty of care | Waste on land |
| Failing to show waste documents | <u>Any functions relating to Wwaste on land, as described in part 2 of the EPA 1990.</u> |

Other authorities:

~~41C.2~~ National Park authorities can use fixed penalty notice receipts for their own litter enforcement.

~~41C.3~~ The Broads authority can use fixed penalty notice receipts for functions relating to litter and anti-social behaviour.

~~41C.4~~ The Environment Agency must pay its fixed penalty notice receipts to the Secretary of State.

~~41C.5~~ The police must pay receipts from fixed penalty notices issued by Police Community Support Officers to their local authority.

~~41D.0~~ Funding enforcement activity

~~41D.1~~ Raising revenue should never be an objective of enforcement.

~~11D.2 Local authorities 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. This may include spending on communications and education to abate littering, or on the provision of bins and other street litter disposal infrastructure. The Government believes that revenue received through payment of litter and fly-tipping related fixed penalty notices should be reinvested in expanding or improving councils' enforcement functions and cleaning up the consequences of this antisocial behaviour. The activities on which local authorities can spend income from these fixed penalty receipts are therefore restricted by law⁸ to functions relating to enforcement and clean up as set out in Table 1.~~

~~11D.3 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 the effectiveness of enforcement activity should be measured in terms of improved environmental cleanliness, and authorities should not set targets for revenue or number of penalties issued.

~~11D.4~~ Enforcing authorities should run their enforcement operations efficiently, effectively and economically. Enforcing authorities must set fixed penalties, within the ranges specified in the Environmental Offences (Fixed Penalties) (England) Regulations ~~2017~~ 2023. They should select an appropriate level to reflect local circumstances, including local ability to pay.

~~11E.0~~ Training and professionalism

~~11E.1~~ 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.⁹ Training should be seen as a legitimate and important aspect of running costs.

~~11E.2~~ 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) have the skills, training, accountability, authority and resources to give the public a high-quality, professional, efficient, timely and user-friendly service.

~~11E.3~~ Authorities that outsource any area of environmental offences enforcement to

⁸ [The Waste Enforcement \(Fixed Penalty Receipts\) \(Amendment\) \(England and Wales\) Regulations 2023](http://www.legislation.gov.uk/id/ukdsi/2023/9780348254716)

⁹ Environmental Offences (Fixed Penalties) (England) Regulations 2017, regulation 12

private companies should ensure that the contractor and its employees meet the same standards as would be expected of the authority itself.

11E.4 Authorised persons carrying out enforcement activity on behalf of an enforcing authority (“enforcement officers”) should be identifiable from their dress code or badge, and carry a Police and Criminal Evidence Act (PACE) Notebook, or an equivalent electronic device, for recording evidence to support a fixed penalty or prosecution. Enforcement officers should also carry identification and evidence of their formal authorisation to issue penalty notices e.g. a warrant card.

11F.0 Dual function civil enforcement officers

11F.1 Enforcement officers may be authorised to carry out other functions in addition to environmental enforcement (for example, parking enforcement duties), or vice versa¹⁰. 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.

11F.2 Staff or contractors authorised to issue fixed penalties in lieu of prosecution for littering or other offences will need separate written authorisation to issue civil penalties for littering from vehicles.

11G.0 Collecting evidence and standards of proof

11G.1 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. As part of the fly-tipping toolkit, the National Fly-Tipping Prevention Group has produced a guide on how local authorities can present robust cases to court, in accordance with the Environmental Offences Directive Guideline which also applies to littering. Two supporting documents produced alongside this guide are available on request and include a checklist for enforcement officers and a template charging decision form¹¹. Failure to pursue unpaid penalties will undermine the threat of enforcement, and their effectiveness as a deterrent.

11G.2 To issue a civil penalty for littering from a vehicle, enforcement officers have

¹⁰ ‘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/publications/civil-enforcement-of-parking-contraventions/guidance-for-local-authorities-on-enforcing-parking-restrictions>

¹¹ <https://www.keepbritaintidy.org/sites/default/files/FlyTipping-Toolkit-Cases%20-%20How%20to%20present%20robust%20cases%20to%20courts.pdf>

to ~~have reason to believe that be satisfied that, on the balance of probabilities,~~ litter was thrown from that vehicle and it was thrown on relevant land for which the litter authority ~~'s relevant land~~ holds the duty to keep clear or litter and refuse.

11G.3 The enforcing authority will need to provide evidence of the offence either from direct observation or report including details of:

- a. the offence, including a description of the littered item(s)
- 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

11G.4 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
- d. the vehicle's registration

11G.5 The opening from which the litter was thrown (e.g. driver's side window) should also be noted when practicable.

11G.6 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.

11G.7 Any photographs, video footage and notes taken by the enforcement officer about the circumstances should be kept as further evidence that the offence took place and to help resolve any disputes.

11G.8 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.

11G.9 Enforcing authorities should disclose evidence at the earliest possible opportunity.

11H.0 Keeping records

11H.1 In order to operate a fair and effective 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 ~~and/or~~ prosecution;

- b. any disputes of liability for the alleged offence, or formal representations against a (civil) penalty notice and any applicable appeal;
- c. the evidence on which each penalty notice is based, for if the case goes to court.

41H.2 Enforcing authorities must ensure that the retention, storage, sharing or disclosure of any personal data is compliant with data protection laws. the General Data Protection Regulation (GDPR).

41I.0 Issuing fixed penalty notices in lieu of prosecution

41I.1 A fixed penalty notice in lieu of prosecution should only be issued when all of the following apply:

- a. the enforcement officer has reason to believe that 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 alleged offender's guilt to support prosecution if the fixed penalty is unpaid
- d. the alleged offender understands has received an adequate explanation of why the fixed penalty notice is being issued
- e. the enforcement officer believes that the name and address given by the recipient are correct

41I.2 A fixed penalty notice in lieu of prosecution must be issued to the person who is alleged to have committed the offence. Where possible, a fixed penalty notice should be issued on the spot and alleged offenders should be made aware of an offence at the time. If necessary, a fixed penalty notice can also be issued by post.

41I.3 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 amount of the penalty to be paid (and if there's a discount for paying early)
- e. how the penalty can be paid
- f. when the penalty must be paid by (this must give the recipient at least 14 days from the date of issue) in order to discharge the alleged offender's liability to be prosecuted

41I.4 A fixed penalty notice in lieu of prosecution should state how the penalty notice has been issued (in person or by post).

41I.5 A fixed penalty notice in lieu of prosecution should not conflate the amount of the fixed penalty (which for littering may be up to £150 £500) with the potential fine that could be imposed by a court on conviction for the offence (which for littering could be up to £2,500).

41I.6 If the enforcing authority operates a process for alleged offenders to dispute their liability for the offence to which the fixed penalty relates, the fixed penalty notice

should also include instructions on how to use that process, including:

- a. how, when, and where to send any relevant information
- b. what happens if the dispute is successful (i.e. no further action will be taken and the fixed penalty notice will be cancelled)
- c. what happens if the dispute 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

~~11~~I.7 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 or legal guardian should be informed instead). See section 11K.0 below for further detail on enforcement against young people.
- b. enforcement action is inappropriate or would be disproportionate for the offence – for example, if the offender is vulnerable or it would not be in the public interest to prosecute (see section 11B.0 above)
- c. prosecution is more suitable – for example, if:
 - the offence is major, e.g. ~~racist or other forms of abusive graffiti or fly-posting~~; deliberate smashing of glass; or the scale and effect of the offence merits prosecution
 - the offence constitutes racially or religiously aggravated criminal damage under section 30 of the Crime and Disorder Act 1998;
 - the offence is committed for reward, e.g. the offender is a registered waste carrier
 - the offence is committed by a persistent offender (see paragraph 11I.8 below)
 - the offender is violent or aggressive
- d. If 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, enforcement action should only be taken where there is evidence of an intent to drop and leave litter. It is not in the public interest to take enforcement action if there is not clear evidence that the individual intended to cause litter.
- e. If the behaviour in question does not fall within the terms of the offence for which the fixed penalty is available. For example, littering fixed penalties should not be issued for fly-tipping offences or waste receptacle breaches (for which other specific fixed or civil penalty powers are available), or to try to sidestep or circumvent the "harm to local amenity" test in the legislation for household waste receptacle breaches.

Persistent offenders

44I.8 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 two or more recorded offences by the individual. In such circumstances, a further fixed penalty is unlikely to be appropriate and enforcement authorities should consider prosecuting (if it is in the public interest to do so).

Issuing fixed penalty notices on private land

44I.9 It is an offence to drop litter on any land within the area of a principal litter authority which is open to the air¹². This can include private land, although it is **not** an offence to drop litter with the landowner's consent¹³.

44I.10 There are no explicit powers of entry associated with issuing fixed penalties against littering. To avoid any question over an enforcement officer's right to carry out their function on private land, before entering private land to issue a fixed penalty in connection with littering offences committed on that land, enforcement officers should, where practicably possible, engage and consult landowners/occupiers to obtain their consent. This will also help to establish whether the landowner/occupier has given permission for litter to be dropped on their land (in which case, no offence is committed.)⁷ 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.) in advance of any enforcement activity being undertaken there.

44I.11 If a landowner/occupier seeks to prevent access to their land by authorised enforcement officers but has not given explicit consent to littering on their land, enforcing authorities should consider whether enforcement against offences committed on that land is in the public interest, particularly if the "victim" is unwilling to support the enforcement activity taking place. Any enforcement officer that remains on or re-enters land once the landowner/occupier has asked them to leave may be committing trespass.

44I.12 _____ The validity of any enforcement action against the offender (either prosecution, or issue of an FPN) is not affected by whether either the offender or the enforcement officer has a legal right to access or enter onto the land on which the offence was committed.

Getting the offender's details

44I.13 It is an offence if an alleged offender fails to provide their appropriate details, such as name and address, in order for a fixed penalty to be issued for the offences of littering, ~~or~~ unauthorised distribution of free printed material and some other environmental

¹² But where land is considered to be "open to the air" by virtue of section 86(13) EPA 1990, i.e. because it is covered but open on at least one side, an offence of littering can only be committed on that land if the public have access (with or without payment) to that land (section 87(3) EPA 1990).

¹³ Consent may only be given in relation to depositing litter in a watercourse, lake or pond if the same person owns all the surrounding land and the surrounding land must not discharge water into other land except by public sewer. (section 87(4B) EPA 1990).

offences¹⁴. 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. If a person refuses to supply their details, or provides false details, they may be liable on summary conviction to a fine not exceeding level 3 on the standard scale of the Environmental Offences Directive Guideline.

11J.0 Issuing civil penalties for littering from vehicles

Introduction

11J.1 The Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 enable district councils in England (outside London), and the Council for the Isles of Scilly, to issue a civil penalty notice to the keeper of a vehicle from which litter is thrown¹⁵. In this context, “district” includes authorities which may call themselves district, metropolitan, borough, unitary or any other name: it simply means the council for the district. London boroughs have similar but separate powers under the London Local Authorities Acts 2007 and 2012.¹⁶

11J.2 Under the Regulations, and in this guidance, enforcing authorities with the power to issue these civil penalties are known as “litter authorities”.

11J.3 A civil penalty is a civil fine which unlike a criminal penalty, does not carry the risk of a criminal prosecution.

11J.4 The ‘keeper’ of a vehicle is presumed to be the ‘registered keeper’, but evidence may be provided by showing that the vehicle was ‘kept’ by another person at the relevant time: the liability to pay the civil penalty rests with the keeper of the vehicle at the time of the offence.

Relationship between civil penalties for littering from vehicles and fixed penalties in lieu of prosecution

11J.5 Only one penalty, either a civil penalty, or a fixed penalty in lieu of prosecution may be issued in respect of any one littering offence. Either type of penalty may be

¹⁴ It is not an offence to fail to provide name and address details to an enforcement officer in connection with enforcement under a Public Spaces Protection Order (Anti-social Behaviour, Crime and Policing Act 2014, section 68).

¹⁵ SI 2018/171 <http://www.legislation.gov.uk/uksi/2018/171/contents/made>

¹⁶ London Councils has provided guidance to London boroughs on the use of these powers. <https://www.londoncouncils.gov.uk/download/file/fid/893>

cancelled by the enforcing authority at any time before it is paid (see section 11N.0 below for further information on cancelling penalties).

11J.6 If a civil penalty notice is issued but is then cancelled it before it is paid, a fixed penalty notice in lieu of prosecution may still be issued in respect of the same offence.

11J.7 If a civil penalty notice is issued and it is paid, no further enforcement action ((either a fixed penalty notice or prosecution) may be taken against anybody for the same littering offence.

11J.8 If a civil penalty is issued but, before it is paid either:

- prosecution proceedings are brought against anyone; OR
- a fixed penalty notice in lieu of prosecution is issued in respect of the same offence,

the vehicle keeper's liability to pay the civil penalty notice is discharged and the civil penalty notice cannot be pursued further. This applies whether or not any prosecution is successful.

11J.9 Therefore, if a civil penalty notice is issued and the recipient then provides evidence as to the identity of the litterer, the enforcing authority will need to consider whether this is a sufficiently compelling reason to cancel the original civil penalty (see paragraphs 11N.22 to 11N.38). The enforcing authority may also (separately) decide whether sufficient evidence has been provided to pursue criminal enforcement action (a fixed penalty notice or prosecution) against the alleged litterer. However, only one – or no – penalty notice may be issued and pursued in respect of a single littering offence.

Form of civil penalty notices

11J.10 A penalty notice for littering from a vehicle must state all of the following:

- the circumstances alleged to constitute the littering offence in question, including the registration mark (if known) of the vehicle concerned
- how long they have to pay the penalty (28 days from the date the penalty notice is given)¹⁷
- the amount of the penalty if paid within 28 days
- that the amount of the penalty will double if not paid within 28 days
- that the enforcing litter authority may recover any penalty not paid within 28 days in court
- [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)
- details of how to pay (the name and address of the person to whom payment must be made, and the permissible methods of payment)

¹⁷ 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.

- that the recipient has a right to make representations to the enforcing litter authority
- the grounds on which representations may be made; and
- in general terms, how an appeal to an adjudicator can be made

44J.11 The description of the circumstances to constitute the littering offence should include a description of the litter alleged to have been deposited.

Cameras, recording devices and evidence from the public

44J.12 Enforcement action may be taken on the basis of evidence supplied by members of the public provided that, in the opinion of the enforcing authority, the evidence is sufficient to meet the relevant standards of proof. Enforcing authorities may decide to adopt a policy of only issuing a notice based on multiple public reports of litter from the same vehicle, or a pattern of behaviour.

44J.13 If evidence from a recording device (such as a CCTV camera or dash-cam in one of your own vehicles) is intended to be used in appeal proceedings relating to civil penalties for littering from vehicles, the enforcing authority will need to produce the recording(s), and a certificate stating the circumstances in which the record was produced must be provided (signed by a person authorised to do so by the litter authority which installed the device)¹⁸. The recording devices must be able to produce a record of the presence of a particular vehicle on the litter authority's land, and the date and time at which the vehicle is present.

44J.14 If it is intended to use recording devices to gather evidence in this way, enforcing authorities must also ensure that they remain compliant with other relevant legislation, such as the Regulation of Investigatory Powers Act 2000, and the Protection of Freedoms Act 2012.

Using the DVLA's database

44J.15 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. As set out in the Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, a civil penalty may only be issued when a section 87 EPA 1990 criminal offence of littering has been committed from the vehicle.

44J.16 Access to the DVLA Web Enabled Enquiry system is available to all local authorities upon request. Local authorities without existing access should contact the DVLA at: Kadoeservice.support@DVLA.gov.uk

44J.17 For the purposes of issuing a civil penalty to the keeper of a vehicle from

¹⁸ Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, regulation 20

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.

41K.0 Enforcement against young people

41K.1 Enforcing authorities should determine a consistent policy on whether enforcement action will be taken in respect of offences committed by people aged younger than 18, and how such enforcement will be carried out. They should work with both the youth offending team and children’s services in designing this policy.

41K.2 As a matter of good practice, it is recommended that enforcement officers issuing fixed penalties to young people should:

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

Children

41K.3 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 or legal guardian to make them aware of the offence.

Juveniles aged 10 to 17

41K.4 Fixed penalties may be issued to young people between the ages of 10 to 17. Different considerations apply to juveniles aged 10-15, and those aged 16-17.

Juveniles aged 10 to 15

41K.5 Fixed penalties should only be issued on-the-spot to 10 to 15-year-olds, if:

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

41K.6 Enforcement authorities should notify the alleged offender’s parents or legal guardian as soon as possible.

41K.7 If the enforcement officer does not know the alleged 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 alleged offender in person with a parent or legal guardian present. If the fixed penalty must be issued by post, the alleged offender's parent or legal guardian should be notified at the same time.

Juveniles aged 16 to 17

44K.8 Enforcement officers should obtain all of the following details from the alleged offender:

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

44K.9 They should also obtain the name and address of a parent or legal guardian of the alleged offender.

44K.10 The young offender should be informed that this information will be shared with their local youth offending team.

44K.11 If it is necessary to interview a young person under 17 under caution, an appropriate adult must be present.

44L.0 Payment options

44L.1 Enforcing authorities should offer people a range of facilities for paying penalty notices, including provision for accepting payment in cash¹⁹. Where they provide payment centres, these should be safe and accessible. Enforcing authorities should ensure that any payment facility (particularly telephone and online payments) can confirm any amount outstanding if part payment only has been received. The imposition of surcharges for payment by personal credit or debit card is not permissible²⁰.

44L.2 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. Enforcing 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.

44L.3 A fixed penalty notice is deemed 'paid' as soon as it is received by the enforcing authority. The enforcing 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.

44L.4 If a fixed penalty notice is issued in lieu of prosecution, recipients must be

¹⁹ Section 88(3) EPA 1990

²⁰ [Regulation 66](#) Payment Service Regulations 2017

given 14 days to pay before any prosecution proceedings can be brought.

41L.5 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 first-class post, 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).

41L.6 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:

| Offence | Default penalty | Minimum full penalty | Maximum full penalty | Minimum discounted penalty |
|---|-----------------|----------------------|-----------------------------|----------------------------|
| Littering | £100 | £65 | £150 <u>£50</u> | £50 |
| Graffiti | £100 | £65 | £150 <u>£50</u> | £50 |
| Fly-posting | £100 | £65 | £150 <u>£50</u> | £50 |
| Unauthorised distribution of free literature on designated land | £100 | £65 | £150 | £50 |
| Nuisance parking | £100 | £100 | £100 | £60 |
| Abandoning a vehicle | £200 | £200 | £200 | £120 |
| Fly-tipping | £200 | £150 | £400 <u>£100</u> | £120 |
| Household waste duty of care | £200 | £150 | £400 <u>£60</u> | £120 |
| Failure to produce a waste transfer note | £300 | £300 | £300 | £180 |
| Industrial and commercial waste receptacle offences | £100 | £75 | £110 | £60 |

| | | | | |
|---------------------------------|------|------|------|------|
| Failing to show waste documents | £200 | £150 | £400 | £120 |
|---------------------------------|------|------|------|------|

44L.7 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 | £65 | £150 <u>£500</u> (Equivalent to local <u>maximum</u> fixed penalty for littering offences) | £50 |

| Contravention | Default penalty | Minimum full penalty | Maximum full penalty | Minimum discounted penalty |
|------------------------------------|-----------------|----------------------|----------------------|----------------------------|
| Domestic waste receptacle offences | £60 | £60 | £80 | £40 |

44L.8 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 dispute their liability for the offence to which the penalty relates (penalties in lieu of prosecution)

44L.9 Enforcing authorities may also choose, in exceptional circumstances, to offer recipients the option of paying in instalments if they cannot afford the full amount. Until the full amount of a fixed penalty (in lieu of prosecution) is paid, the alleged offender's liability to prosecution is not discharged. Enforcing authorities should make clear when offering payment by instalments what the consequences will be if a payment is missed or the penalty is not paid in full within the time agreed. Payment plans should not offer repayment terms longer than 5 months, since any prosecution for a summary offence such as littering must be brought within 6 months of the alleged offence.

11M.0 Providing a quality service

11M.1 Enforcing authorities remain responsible for the whole enforcement process (including considering disputes of liability for the alleged offence), whether they contract out part of it or not. Authorities that outsource any area of enforcement to private companies should ensure that the contractor fulfils all the requirements set down for the authority itself.

11M.2 Enforcing 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.

11N.0 Considering disputes of liability, representations and appeals

11N.1 Enforcing authorities should make sure that their processes for handling informal disputes of liability for the offence to which a fixed penalty relates, or formal representations and appeals against civil penalties, are efficient, effective and impartial. Decisions must be made on the facts and evidence presented, and processes must comply with all relevant primary legislation and regulations²¹. Authorities are encouraged to seek independent quality assurance of their environmental offences enforcement processes.

11N.2 Enforcing 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 paragraph 11B.6). Fair and efficient systems for carrying out this work should ensure that the number of cases going to prosecution or an adjudicator is minimised – so saving the authority time and expense – without allowing people to evade an appropriate penalty.

11N.3 Enforcing authorities should maintain a clear separation between the staff that decide on the issuing and processing of penalty notices and the staff that decide on disputes of liability/representations, to ensure that decisions are seen to be impartial. It is good practice for all disputes or representations to be considered by the service manager (or equivalent) who has delegated authority to consider them. All such disputes or representations should be addressed to them, and not the person that issued the penalty notice.

11N.4 Enforcing authorities should ensure that only fully trained staff make decisions

²¹ See in particular Part 4 of the Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

on disputes of liability or representations against civil penalty notices, and should be clear on which officers have the authority to cancel penalty notices. Officers dealing with disputes of liability or formal representations against a civil penalty notice 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.

41N.5 Elected members and unauthorised staff should not play any part in deciding the outcome of individual challenges or representations.

41N.6 The process of considering disputes of liability, representations and appeals 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 disputes of liability, enquiries and representations; presenting the authority's case to adjudicators.

41N.7 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 own merits. An enforcement authority should be ready to depart from its policies if the particular circumstances of the case warrant it.

41N.8 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 disputes of liability and representations a fresh and impartial consideration.

41N.9 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.

Exercise of discretion

41N.10 The exercise of discretion should, in the main, rest with back office staff as part of considering disputes of liability, representations and appeals that are made to the enforcing 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.

41N.11 However, the enforcing authority may wish to set out certain situations when an enforcement officer should exercise a degree of discretion, such as circumstances in which a fixed penalty should not be issued. The enforcing 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.

41N.12 Local authorities should also recognise 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.

Handling disputes of liability to pay a fixed penalty issued in lieu of prosecution

41N.13 This section applies to fixed penalty notices issued in lieu of prosecution for criminal offences, including littering, and unauthorised distribution of free literature etc.

41N.14 Because it is offered in lieu of prosecution, there is no formal right of appeal against a fixed penalty notice. If an alleged offender does not accept their 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.

41N.15 Enforcing authorities should be motivated to work to keep cases out of the court where possible, as court processes are time consuming for all parties and can be expensive. To prevent unnecessary cases reaching the courts, it is therefore good practice for enforcing authorities to operate a process through which an alleged offender may offer evidence in mitigation, lines of defence or other relevant information that may not have been available to the enforcing authority at the time the fixed penalty notice was issued, and which may influence the authority's decision whether to issue a fixed penalty or take other enforcement action in that case. As this is an informal process, there are no fixed grounds on which such a challenge may be made.

41N.16 The basis on which an alleged offender might dispute their liability might include, but are not limited to:

- a. if the person issued with the fixed penalty notice was not the person that committed the offence – this might be the case if someone issued with a fixed penalty notice in person has given someone else's details to the enforcement officer
- b. if the person issued with the fixed penalty notice brings forward evidence, a statutory defence or other reasonable excuse 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

41N.17 An authority may cancel a fixed penalty notice at any point. 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.

41N.18 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 as soon as practicably possible.

44N.19 If the enforcing authority operates a process for disputing liability for an offence for which a fixed penalty notice is issued, it should ensure that, whatever routes are offered for alleged offenders to raise such a dispute, there is an adequate audit trail of the case, showing what decision was taken and why.

44N.20 It is also considered important that anyone who wants to take advantage of a process for disputing their liability to pay a fixed penalty 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 dispute, providing that the dispute is lodged before the close of any relevant early payment window.

44N.21 Authorities should always make it clear that an individual whose attempt to dispute their liability for the offence is rejected may still choose not to pay the fixed penalty and instead choose to defend their case in court.

Formal representations and appeals against civil penalty notices for littering from vehicles

44N.22 The process for making representations, and appealing against a civil penalty for littering from a vehicle is set out in the Littering from Vehicles Outside London (Civil Penalties: Keepers) (England) Regulations 2018.²²

44N.23 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

Representations

44N.24 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.

44N.25 A person to whom a penalty notice is given may make written

²² <http://www.legislation.gov.uk/uksi/2018/171/contents/made>

representations to the litter authority if it appears to the person that one or more of the following grounds apply:

- A. Ground A is that the littering offence in question did not occur.
- B. Ground B is that the person became the keeper of the vehicle after the littering offence occurred.
- C. Ground C is that the person had disposed of the vehicle to another person before the littering offence occurred.
- D. Ground D is that the vehicle was a stolen vehicle when the littering offence occurred.
- E. Ground E is that the person;
 - was engaged in the hiring of vehicles at the time of the littering offence, and
 - was not the keeper of the vehicle at that time by virtue of a vehicle hire agreement
- F. Ground F is that the person was not the keeper of the vehicle for a reason not mentioned in grounds B to E.
- G. Ground G is that the litter authority was not authorised to give the person a penalty notice.
- H. 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.).
- I. 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).
- J. Ground J is that the fixed penalty exceeds the amount payable under these Regulations.
- K. 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.
- L. 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)²³.

11N.26 Litter authorities must consider any representations made on these grounds. The litter 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.

²³ Regulation 14

41N.27 The litter 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.

41N.28 A litter 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.

41N.29 A litter authority which rejects a representation must serve a notice stating that the penalty must be paid unless an appeal is made to an adjudicator. A “notice of rejection” must state:

- the litter authority’s decision, and the reasons for it
- that the recipient has a right to appeal to an adjudicator against the litter authority’s decision, within 28 days of the notice of rejection
- the general form and manner in which an appeal can be made, and
- that the adjudicator has the power to award costs against either party²⁴

41N.30 If, following an unsuccessful representation, a litter authority decides to offer a new discount period for prompt payment, it should set out the dates.

41N.31 If a litter authority fails to comply with the requirement to serve a notice of rejection which meets these requirements, it is deemed to have accepted the recipient’s representations and cancelled the penalty notice.

Appeals

41N.32 Regulation 18 of the Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 provides for appeals to be considered by an independent adjudicator appointed to the Traffic Penalty Tribunal. Litter authorities have certain duties to make provision for the adjudication, such as the provision of administrative staff and facilities for adjudicators, and these duties must be discharged by the PATROL (Parking and Traffic Regulations Outside London) Joint Committee. More information about PATROL can be found online at: <https://www.patrol-uk.info/>

41N.33 The Traffic Penalty Tribunal operates a digital by default online appeal system – FOAM (Fast Online Appeal Management). Appellants submit their appeal, authorities respond online and upload evidence and the adjudicator publishes a decision online. In some circumstances, the adjudicator will conduct a telephone hearing with all parties invited to participate. All local authorities outside London that operate civil parking enforcement use this system. A dashboard enables authorities to manage their cases and includes reporting functionality. The tribunal also operates an Assisted Digital Support programme for people who are not able to appeal online.

41N.34 If the adjudicator agrees that one of the grounds set out in regulation 14

²⁴ Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, regulation 15

(paragraph 11N.25 above) applies, the adjudicator must allow the appeal.²⁵

11N.35 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. A litter authority must comply with any such direction as soon as is practicable.

11N.36 An adjudicator may (despite not allowing an appeal) give a written recommendation to the litter authority that it cancel 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. A litter authority must then reconsider whether to cancel the penalty notice, taking account of any observations made by the adjudicator, and within 35 days inform the appellant and the adjudicator in writing of its decision (and reasons for it where a recommendation is not accepted). If a litter authority fails to do so, it is deemed to have accepted the recommendation and to have cancelled the penalty notice.

11N.37 An adjudicator must dismiss an appeal if the adjudicator concludes that 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.

11N.38 Enforcement authorities should respond promptly to adjudicators concerning appeals and meet time limits set by legislation or the adjudicator's judicial powers.

11O.0 Non-payment of fixed penalty notices in lieu of prosecution - prosecuting offenders

11O.1 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 at least 14 days after issuing a fixed penalty notice before initiating a prosecution, and must begin legal proceedings for summary offences within 6 months of the offence (for summary offences).²⁶

11O.2 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.

²⁵ Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018, regulation 16

²⁶ There is no time limit for bringing proceedings in respect of offences that are triable either way, but proceedings for such offences should be brought as soon as possible as courts have discretion to dismiss a summons on the ground of abuse of process where there has been an unjustified delay.

11P.0 Non-payment of civil penalty notices for littering from vehicles

11P.1 If a penalty notice is not paid within 28 days (the fixed penalty payment period) the amount of the penalty doubles automatically, unless the recipient made representations against the penalty notice within that period. At this point, an enforcement notice may be issued to the recipient of the unpaid penalty notice notifying them of the increased penalty.

11P.2 If this increased amount remains unpaid after a further 14 days, the litter authority can recover it as a civil debt or seek an order from the county court for it to be recoverable as if payable under a county court order. Requests for these orders must be filed with the Traffic Enforcement Centre (TEC) at Northampton Crown Court. Existing TEC customers can do this using contravention 75 and their existing prefix – individual identifier. New TEC customers should contact TECInsight@hmcts.gsi.gov.uk for further assistance. The TEC will make the order by registering the request if the relevant requirements are satisfied.

11P.3 Once they have received the registered request the litter authority may draw up the order and serve it on the recipient of the unpaid penalty notice (the respondent). They must attach a witness statement²⁷ for the respondent's use which sets out a limited number of grounds on which they can dispute the court order. The litter authority must serve the order (and the witness statement) on the respondent within 15 days of the date on which the request is registered by the TEC.

11P.4 The TEC's procedure is set out in full in Part 75 of the Civil Procedure Rules and associated Practice Direction 75. A litter authority must follow these procedures when seeking to recover unpaid penalties through the TEC.

11Q.0 Reporting

11Q.1 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.

11Q.2 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.

11Q.3 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):

²⁷ Available at <https://www.gov.uk/government/collections/traffic-enforcement-centre-forms>

- 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

14Q.4 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 good practice, the Government would also encourage an annual breakdown of fines and revenue, which could be done through an annual scrutiny review.

Appraising enforcement

14Q.5 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 making e-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 including, where compliant with data protection laws and the relevant intelligence protocols, the sharing of enforcement data.

Q.5A Enforcing authorities may benefit from capturing incidences of littering and other environmental crimes before, during and after specific enforcement initiatives, to allow them to identify which enforcement tools work best for them as a deterrent.

14Q.6 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 disputes of liability and representations and the reasons for them.

44Q.7 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.

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

44Q.9 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 issued, 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.

44Q.10 Where external contractors are used, private firms should not be able to receive greater revenue or profits just from increasing the volume or level of penalties, since this creates a contrary incentive to the overall aim of reducing the number of offences committed. Litter authorities must have regard to this guidance under s88B(2) EPA 1990, and so must ensure that authorised contractors acting on their behalf do too. If there is a legal challenge based upon the actions of their contractor which diverge from the guidance, (whether raised during a prosecution for littering, or by judicial review of the local authority) a court may require the litter authority, and their contractors, to show they have had regard to the statutory guidance, and to explain their rationale if they have not followed it. If the court concludes that the litter authority has not had regard to the guidance, in breach of their statutory duty, this may be a relevant consideration during a prosecution for the particular case.



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