

EXPLANATORY MEMORANDUM TO

THE LITTERING FROM VEHICLES OUTSIDE LONDON (KEEPERS: CIVIL PENALTIES) REGULATIONS 2018

[2018] No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument confers a power on district councils in England (outside London) to require the keeper of a vehicle to pay a fixed (civil) penalty if there is reason to believe that a littering offence has been committed from the vehicle. In this context, district council includes any metropolitan, borough, unitary, or other district councils, including the Council of the Isles of Scilly, which has the statutory duty to collect litter.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

4. Legislative Context

- 4.1 Section 24 of the London Local Authorities Act 2007 (amended in 2012) confers powers on borough councils in London to impose a penalty charge on the owner of vehicles from which litter is thrown, but these powers are not currently available in respect of the rest of England. Section 88A of the Environmental Protection Act 1990 empowers the Secretary of State to confer similar powers on authorities in England. This instrument is the first exercise of that power.
- 4.2 The range within which an authority may specify a penalty amount (£65 to £150) and default penalty amount (£100) in this instrument are aligned with those for the offence of leaving litter (s87 Environmental Protection Act 1990). The ranges and default penalty amounts for littering are set out in the Environmental Offences (Fixed

Penalties) (England) Regulations 2017 which come into force on the same day as this instrument (although the lower end of the range for littering will only increase from £50 to £65 on 1st April 2019).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey, has made the following statement regarding Human Rights:
“In my view the provisions of the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 Littering is a criminal offence, and therefore enforcement action (issue of a fine or prosecution) should only be taken when the council has evidence against the offender to the criminal standard of proof (i.e. beyond reasonable doubt). When littering offences take place from a vehicle, it can be difficult for councils to identify the offender with sufficient certainty to take enforcement action.
- 7.2 Section 24 of the London Local Authorities Act 2007 (amended in 2012) gives powers to London councils to issue Penalty Charge Notices to the owner of a vehicle when an enforcement officer is able to show, to the civil standard of proof (i.e. balance of probabilities) that litter was thrown from that vehicle. A penalty charge notice is a civil fine which unlike a criminal penalty, does not carry the risk of a criminal prosecution, and therefore does not require the offence to be proven to a criminal standard of proof.
- 7.3 This instrument confers powers on litter authorities (defined in Regulation 3) to issue penalty charge notices to the keeper of a vehicle when the council has reason to believe, to the civil standard of proof, that litter was thrown from that vehicle on the council’s “relevant land” (land that it is required to keep clear of litter and refuse under section 89 of the Environmental Protection Act 1990). To avoid a double jeopardy effect, this instrument also provides that a council may not issue a civil penalty notice against the keeper if a fixed penalty (in lieu of prosecution) is or has been issued in respect of the same littering offence.
- 7.4 Public service vehicles, taxis and private hire vehicles are exempt from liability for a civil penalty notice if the offence is committed by a passenger. The Regulations also provide for businesses engaged in the hiring of vehicles to appeal a penalty charge notice in connection with one of their vehicles by providing evidence that the vehicle was not being kept by the business at the time of the offence by virtue of the relevant vehicle hire agreement. Those who receive a civil penalty notice will have a right to first make representations to the council under a number of grounds set out in this instrument (e.g. that the person was not the keeper of the vehicle at the time of the offence, or that the offence was not committed etc.) If this does not resolve the matter,

they will then have a right to appeal the civil penalty notice to an independent adjudicator. The Traffic Penalty Tribunal England and Wales has agreed to act as the independent adjudicator for this enforcement regime, funded via a proportion of each civil penalty notice issued.

- 7.5 The default civil penalty notice will be set at the same level as the local fixed penalty for littering offences. Councils can choose to set the level for both the fixed penalty and the civil penalty notice locally, within a range of £65 to £150, with a default of £100.
- 7.6 This instrument provides for penalties to be payable within 28 days. Councils may choose to offer an early-payment incentive, which reduces the civil penalty to £50 if paid within 14 days. If the penalty is still unpaid after 28 days (clock paused during any appeal proceedings), the instrument provides for the penalty to be increased by 100% (ie doubled). If the increased penalty is still unpaid after 56 days, it will be recoverable as a civil debt. This can be registered with the Traffic Enforcement Centre at Northampton Crown Court.

Consolidation

- 7.7 This is not applicable as this instrument is the first one being made under the new section 88A in the Environmental Protection Act 1990.

8. Consultation outcome

- 8.1 The Department issued a consultation document which included the draft instrument on 10 April 2017. This consultation ran for 10 weeks and closed on 18 June.
- 8.2 The consultation document asked for views on the provisions to introduce new powers for councils (outside London) to issue a civil penalty to the keeper of a vehicle when litter is thrown from it, and included an earlier draft of these regulations.
- 8.3 The consultation was specifically flagged for the attention of: local authorities in England (particularly district councils and unitary authorities), National Park Authorities, the Broads Authority, English parish or community councils and the Local Government Association. In addition to this responses were welcomed from the Environmental Non-Governmental Organisations and charities, research institutions, groups or individual with a particular interest in tackling environmental anti-social behaviour and the public.
- 8.4 The department received a total of 181 separate responses. Of these 67 were from councils. We also received three responses from waste or resource partnerships, representing the views of a further 16 councils between them. We also received two responses from parish councils.
- 8.5 The majority of responses agreed with the Government's proposals in respect of the proposed exemptions, level of penalty, and penalty for late payment, and did not suggest any significant changes.

9. Guidance

- 9.1 General guidance on the use of environmental fixed penalty powers by local authorities is already in place, which states that fixed penalties should not be issued when enforcement action would be "inappropriate or disproportionate". The Department for Environment, Food and Rural Affairs intends to consult on improved guidance which will update the existing guidance, to strengthen and clarify the

Government's view on the appropriate use of these and similar enforcement powers and extend it to cover council powers to issue civil penalties for littering from vehicles. Defra intends to consult on the guidance within the next few months, and to have the improved guidance in place before the power to issue civil penalties comes into effect in April 2018.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is expected to be minimal. Businesses which are the registered keepers of vehicles could potentially be affected by this policy if a littering offence is committed from one of their vehicles. This instrument provides an exemption from liability for public service vehicles, taxis and private hire vehicles (including minicabs, pedicabs and rickshaws, and Uber vehicles) if the littering offence is committed by a passenger. It also provides for grounds of appeal against a penalty charge notice for businesses engaged in the hiring of vehicles (on providing evidence that the vehicle was hired to (i.e. 'kept by') someone else that the time of the offence. Businesses which are the registered keepers of company vehicles may face administrative costs in dealing with civil penalties issued to their employees in connection with offences committed from company cars. Vehicle-owning businesses will either have to (a) appeal the civil penalty on one of the grounds set out in the Instrument; or (b) pay the penalty and then recover it from the employee. Businesses that are the registered keeper of vehicles commonly used by employees or hirers normally have existing processes in place to cover option (b) in the employee's/hirers terms and conditions in connection with their use of the company's vehicle. It is therefore reasonable to expect these businesses to choose the cheaper option (b) to deal with the new civil penalty regime.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument. Defra's economists have undertaken an assessment of cost to business of the proposed changes and this has shown that the cost level is considerably lower than the £1million limit required to trigger the need for an Impact Assessment.
- 10.4 Income from civil penalties for littering from vehicles can be retained by councils (in line with current practice for income from fixed penalties for littering and other related offences), and can be spent on functions under Part 4 of the Environmental Protection Act 1990, or functions relating to graffiti and fly-posting under section 43 of the Anti-social Behaviour Act 2003.

11. Regulating small business

- 11.1 This instrument does not apply to legitimate activities that are undertaken by small businesses. Costs to SMEs have not been separately calculated, but are not expected to be a significant burden on them given the small scale of total business costs. On these grounds, SMEs are not excluded from this SI.

12. Monitoring & review

- 12.1 Not applicable as this instrument is not regulating businesses.

13. Contact

- 13.1 Charlotte Pochin at the Department for Environment, Food and Rural Affairs email: Charlotte.Pochin@defra.gsi.gov.uk can answer any queries regarding the instrument.