

EXPLANATORY MEMORANDUM TO
THE PENALTY CHARGES ENFORCEMENT (LONDON) REGULATIONS 2012
2012 No. 1234

1. This explanatory memorandum has been prepared by London Councils on behalf of all London local authorities and is laid before Parliament by Command of Her Majesty.

2. Purpose of the regulations

2.1 These regulations enable London Borough Councils to take enforcement action in relation to unpaid penalty charges arising under Part 4 of the London Local Authorities Act 2007 (“the 2007 Act”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The regulations are made under section 64(1) of the 2007 Act. Because there were no orders in force immediately before commencement of Part 4 of the 2007 Act under section 82(3) of the Traffic Management Act 2004 and regulations under section 78(2) of the Road Traffic Act 1991 are no longer in force, these regulations are required under section 64(1) in order to achieve the policy objective (see section 64(6) of the 2007 Act).

4.2 Sections 61 to 67 of the 2007 Act set out a framework for a civil enforcement regime which applies to a number of existing enactments, and can be applied in the future, by primary legislation, to others. The enforcement regime is very similar to the regime for traffic enforcement which has been established under Part 6 of the Traffic Management Act 2004.

4.3 The enactments to which the civil enforcement regime applies are as follows:

Section 23 of the 2007 Act: this section, when read with Part 4 of the 2007 Act, enables London Borough Councils to serve penalty charge notices for breaches of regulations made by the council under sections 20 and 22 of the 2007 Act (regulations relating to receptacles for waste).

Section 24 of the 2007 Act: this section decriminalises the offence of littering from vehicles (the offence of littering is contained in section 87 of the Environmental Protection Act 1990). When read with Part 4 of the 2007 Act, section 24 enables London Borough Councils to serve penalty charge notices on

the owner of the vehicle in question. It should be noted that section 17 of the London Local Authorities Act 2012 rectifies an error in section 24.

4.4 **Part 2 of the London Local Authorities Act 2012** comprising of sections 3 and 4, enables penalty charge notices issued under the 2007 Act to be served by police community support officers and accredited persons and allows London Borough Councils and police community support officers to require persons to give their name and address.

4.5 **Clause 10 of the London Local Authorities and Transport for London (No 2) Bill [HL]** would enable penalty charge notices to be served under the 2007 Act in relation to certain offences under the Highways Act 1980 relating to builders' skips.

5. Territorial Extent and Application

5.1 The regulations apply to Greater London.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 London Borough Councils were concerned that there was not an appropriate enforcement mechanism for various waste enforcement and littering offences, and for that reason promoted the Bill which became the 2007 Act. The idea was to focus upon behaviour which was seen to be "low level" crime and not necessarily suited to a criminal regime, much in the same way that parking offences were decriminalised in London by the Road Traffic Act 1991, bus lane offences in the London Local Authorities Act 1996 and other traffic offences in the London Local Authorities and Transport for London Act 2007. In the case of littering from vehicles, there is the added rationale that enforcement is easier by virtue of number plate recognition, and imposition of liability on the owner of the vehicle.

7.2 The 2007 Act establishes the main framework for the penalty charge regime. The regulations add the final piece of the jigsaw, by enabling the councils to deal with non-payment of penalty charges in the county court. The regulations do not create any new offences, but enable councils (and Transport for London in one case) to enforce civil penalties in the courts in relation to contraventions of existing legislation. There are three separate subject areas in respect of which the penalty charge notice regime established under Part 4 of the 2007 Act applies or will apply:

7.3 **Penalty charge notices for breaches of regulations made by a London Borough Council under sections 20 and 22 of the 2007 Act (regulations relating to receptacles for waste):** by virtue of these sections, London Borough Councils can make regulations relating to the placement of waste in receptacles. By virtue of section 23 of the 2007 Act and Part 4 of the 2007 Act, the councils can already serve penalty charge notices for

contraventions of the waste regulations. The new regulations would enable the councils to serve charge certificates where penalty charges remain unpaid, and allow enforcement in the county court. In the meantime, the councils are able, under a notice served under sections 46 and 47 of the Environmental Protection Act 1990, to make requirements of people to place waste in receptacles for collection, and can enforce a breach of the requirement by prosecution in the magistrates' court or by fixed penalty notice. It is because of defects in that system that the councils promoted the provisions in the 2007 Act. The 2007 Act provisions did not and will not replace the provisions of section 46 but will provide an alternative method of dealing with the issue.

7.4 Penalty charge notices for the offence of littering from a vehicle: this provision was intended to make it easier to enforce against the offence of littering in cases where the litter is dropped from a vehicle. The current offence of littering under section 87 of the Environmental Protection Act 1990 is triable on summary conviction and is also subject to the fixed penalty notice provisions of section 88 of that Act. The decriminalisation of the offence as regards vehicles has not come into effect yet; it was supposed to have been achieved by section 24 of the 2007 Act; but that section will be rectified by section 17 of the London Local Authorities Act 2012. Until that section comes into force, littering from a vehicle is still a criminal offence. But when it does come into force, the offence will become decriminalised. The regulations are required so as to ensure that the mischief remains capable of being dealt with.

7.5 Penalty charge notices for certain offences under the Highways Act 1980 relating to builders' skips: these offences are to be subject to the penalty charge regime in Part 4 of the 2007 Act once the current London Local Authorities and Transport for London (No 2) Bill [HL] attains Royal Assent. Clause 10 will have the effect of decriminalising certain offences under the Highways Act 1980 relating to builders' skips. The offences are currently triable on summary conviction and are subject to the fixed penalty notice provisions of sections 8 to 11 of the London Local Authorities and Transport for London Act 2003.

7.6 Each council will be able to choose whether to adopt the provisions in its borough. It is expected that there will be a small rise in the number of enforcement actions each year.

8. Consultation outcome

8.1 There was no period of formal public consultation by London Councils in relation to the regulations. However, as part of the statutory procedure required before deposit of private Bills in Parliament, every London Borough passed a resolution in a quorate full Council meeting to approve the promotion of the Bill, and a further resolution after deposit to confirm its participation. Every meeting was publicly advertised to the public beforehand, in a local newspaper in circulation in each borough, in pursuance of section 239 of the Local Government Act 1972 and section 87 of the Local Government Act 1985.

9. Guidance

9.1 London Councils published information about the 2007 London Local Authorities Act soon after its enactment, including an explanation of the new civil enforcement regime. A more detailed update was sent in September 2009 to: London borough lead members for environment; the Association of London Cleansing Officers; the London Enviro-enforcement Benchmarking Group; the London Environment Directors' Network and the Association of Councils Secretaries and Solicitors (London Branch).

9.2 London Councils has been providing ad hoc advice for borough lead members and officers on the new regime, and will be issuing additional guidance to boroughs and the general public once these regulations are made.

10. Impact

10.1 Most littering offences are dealt with by way of fixed penalty notices, so it is unlikely that there will be a significant effect on the magistrates' courts as a result of the penalty charge notices for littering from vehicle offences. London's Parking and Traffic Appeals Service (PATAS) and the county court centre, which would be designated to deal with charge certificates, will be affected, as this will be a new subject for them to deal with. It is however not expected that there will be a significant number of cases, and that these will be a small fraction compared with other subjects such as parking, bus lane and other moving traffic contraventions.

10.2 Similarly, the penalty charge notices relating to builders' skips will potentially see a minor decrease in cases being dealt with by the magistrates court and a relatively minor increase in cases being dealt with by PATAS and the county court.

11. Regulating small business

11.1 The Order does not change the way in which small businesses are handled.

12. Monitoring & review

12.1 London Borough Councils will be required under Schedule 4 to the 2007 Act to keep an account of their income and expenditure in respect of the administration and enforcement of the penalty charge provisions and must report any action taken by them annually to the Secretary of State in relation in respect of any deficit or surplus in their accounts.

13. Contact

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