

Report of the Strategic Director of Place to the meeting of the Executive Committee to be held on 11 June 2019

**Subject: Litter from Vehicles Offences – Penalty Charge Notices for
Vehicle Keepers**

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Summary statement:

The Executive is asked to approve the introduction of a new Penalty Charge Notice (PCN) which will be issued to registered keepers of vehicles for littering offences under the Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018.

The Executive is asked to set the PCN level at £100 reduced to £80 for early payment.

In addition, The Executive is asked to support a proposal to increase the existing litter Fixed Penalty Notice (FPN) for leaving litter from £80 fixed to £100 reduced to £80 for early payment.

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Portfolio: Healthy People and Places

**Overview & Scrutiny Area:
Regeneration & Environment**

1. SUMMARY

- 1.1 The Executive is asked to approve the introduction of a new Penalty Charge Notice (PCN) which will be issued to registered keepers of vehicles for littering offences under the Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018.
- 1.2 The Executive is asked to set the PCN level at £100 reduced to £80 for early payment.
- 1.3 In addition, The Executive is asked to support a proposal to increase the existing litter Fixed Penalty Notice (FPN) for leaving litter from £80 fixed to £100 with a reduction to £80 for early payment.

2. BACKGROUND

- 2.1 Under the Environmental Protection Act 1990, Section 87, Council Officers currently issue Fixed Penalty Notices (FPNs) for the offence of leaving litter where litter is dropped from a vehicle, but only where the person dropping the litter can be identified. This is a criminal offence.
- 2.2 Environmental Enforcement Team Officers regularly receive complaints of people dropping litter from vehicles. This includes reports from members of the public. Where a report is received about a litter from vehicle offence, a DVLA check is undertaken and the registered keeper is identified. A letter is sent to the keeper asking them to provide details of the offender. Where the offender is identified a FPN is issued. Where the offender cannot be identified no further action can be taken.
- 2.3 Where offenders cannot be identified this can be frustrating as nobody can be held accountable for the offence. It can also undermine the public's confidence in the Council's ability to take enforcement action and deal with such offences.
- 2.4 Under the new Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018, the registered keeper of the vehicle can be held responsible for the litter from vehicle offence and a Penalty Charge Notice (PCN) can be issued to the registered keeper of the vehicle. This removes the need to identify precisely who threw the litter before enforcement action can be taken. This is a civil penalty.
- 2.5 A civil penalty is a civil fine which unlike a criminal penalty does not carry the risk of a criminal prosecution. 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.
- 2.6 Regulation 6 of the Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 sets out how the amount of a fixed penalty is to be determined. The amount of a penalty for littering from a vehicle will be the same as the amount specified by the authority for fixed penalty notices for leaving litter.

2.7 It is therefore proposed that the level for the PCN is set at £100 reduced to £80 for early payment.

3. OTHER CONSIDERATIONS

3.1 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 FPN 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 FPN is unpaid. Failure to pursue unpaid penalties will undermine the threat of enforcement, and their effectiveness as a deterrent.

3.2 To issue a civil penalty for littering from a vehicle, authorised officers have to be satisfied that, on the balance of probabilities, litter was thrown from that vehicle. If a civil penalty is not paid on time, the penalty amount automatically doubles. The Council can recover unpaid amounts as a civil debt or via county court order. If the debt is not recovered, the case will be dealt with by enforcement agents and the costs incurred will increase.

3.3 Enforcement authorities can set fixed penalties for environmental offences within the ranges specified in the Environmental Offences (Fixed Penalties) (England) Regulation 2017.

3.4 From 1 April 2018 littering offences can range from £50 to £150, with a default penalty of £100 if no local level has been set. Councils therefore have significant flexibility to set penalties at an appropriate level to reflect local circumstances, including local ability to pay and expected enforcement costs.

3.5 In order to encourage prompt payment, Regulation 6 provides for an early payment discount to be offered if the penalty is paid within 14 days. Payment of this ‘lesser amount’ within 14 days discharges the person’s liability to pay the full penalty amount. The ‘lesser amount’ must not be less than £50.

3.6 A number of Local Authorities have been contacted to establish their level of fines for littering from vehicle offences as follows:

Local Authority	Maximum Fine (£)	Discount for Early Payment (£)
East Riding	150	100
Selby	75	50
Doncaster	150	100
Wakefield	75	50
Kirklees	150	100
North Lincs	80	50
Hambleton	100	75
Rotherham	80 fixed	n/a
Barnsley	75 fixed	n/a
Sheffield	75	50
Tamworth	100	85
Leeds	100	80
Calderdale	80 fixed	n/a

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 The resources and systems required to administer and process the PCNs for littering from vehicle offences are almost identical to the systems used by Parking Services to deal with PCNs issued for parking contraventions. Officers from the Councils Parking Services Team are currently liaising with their software provider to provide a solution that will allow littering PCNs to be processed in a similar manner to parking PCNs at minimal cost. It is estimated that it will take the software provider approximately 16 weeks to develop the software and reconfigure existing systems in order to process litter PCNs.
- 4.2 If a civil penalty is not paid on time, the penalty amount automatically doubles. The Council can recover unpaid amounts as a civil debt or via county court order. If the debt is not recovered, the case will be dealt with by enforcement agents and the costs incurred will increase.
- 4.3 A targeted educational, advertising and marketing campaign will raise public awareness of the issues. This will involve liaising with the Councils Marketing & Communications team to use the existing allocated budget to develop material designed to increase awareness around responsible disposal of household waste and reducing fly tipping. In addition, existing social media such as the Councils Facebook page and Bradford Council website will be used to promote these messages.
- 4.4 The Council is a member of the Keep Britain Tidy (KBT) group and as such will have access to KBT posters and campaign material at discounted cost.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 It is recognised that the reporting of such offences can be open to abuse and fraudulent complaints can be made by the public. In order to ensure the Council only takes enforcement action where offences are committed, the Council will only consider reports from members of the public where video evidence is submitted that clearly identifies the offence.
- 5.2 Failure to take appropriate enforcement action against people that drop litter may undermine the public's confidence in the Council's ability to take enforcement action and deal with such offences

6. LEGAL APPRAISAL

- 6.1 The Council has a responsibility to investigate, clean up and take appropriate enforcement action in relation to littering offences.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

There are no equality and diversity implications apparent within the context of the report.

7.2 SUSTAINABILITY IMPLICATIONS

Preventing littering contributes positively towards the sustainable agenda.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

The content of the report does not have a negative climate change impact.

7.4 COMMUNITY SAFETY IMPLICATIONS

There are no community safety implications.

7.5 HUMAN RIGHTS ACT

There are no known Human Rights Act implications.

7.6 TRADE UNION

There are no staffing implications arising from this report.

7.7 WARD IMPLICATIONS

Enforcement action would take place across the district and all Wards would be covered under the new legislation. This will hopefully help to reduce the amount of littering across the district, when applied as part of a wider Environmental Enforcement strategy.

7.8 IMPLICATIONS FOR CORPORATE PARENTING

There are no implications for Corporate Parenting

7.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESSMENT

None

8. NOT FOR PUBLICATION DOCUMENTS

None

9. OPTIONS

9.1 Penalty Charge Notices for littering from vehicles

Option One

The Executive may determine to adopt the new powers, enabling Penalty Charge Notices (PCNs) to be issued for littering from vehicle offences.

Should The Executive determine to adopt the legislation, it will need to provide guidance on the preferred level of the PCN and any concession for early payment, in accordance with the information contained in paragraphs 3.4 to 3.6.

Option Two

The Executive may determine not to seek the adoption of the new powers that allow Penalty Charge Notices to be issued for littering from vehicle offences.

9.2 Fixed Penalty Notices for littering

Option One

The Executive may determine to increase the existing FPN for litter from £80 to £100 reduced to £80 for early payment.

Option Two

The Executive may determine not to increase the existing litter FPN for leaving litter.

10. RECOMMENDATIONS

- 10.1 That the existing litter Fixed Penalty Notice (FPN) for leaving litter be increased from £80 fixed to £100 with a reduction to £80 for early payment.
- 10.2 That the new powers to issue Penalty Charge Notices (PCNs) for litter from vehicle offences under the Littering from Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 be adopted and that this is set at the maximum of £100 reduced to £80 for early payment.

11. APPENDICES

None

12. BACKGROUND DOCUMENTS

None