



## **Littering from vehicles**

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## **Introduction**

We are committed to reducing litter on our roadsides and verges and we want to enforce against those who litter from their vehicles. We recognise that it can be particularly difficult for District officers to identify which person in the vehicle committed the offence. The new powers allow the Council hold the keeper of a vehicle responsible for littering offences committed from it.

The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 (SI 2018/171) came into force on 1 April 2018 to introduce new fixed civil penalties (FCNs) for littering from vehicles. This allows local authorities outside London to issue civil penalty notices to the keeper of a vehicle from which litter is thrown. We want to use these powers for the reasons stated below

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.

Under section 89(1) of the EPA 1990 Mid Devon District Council as a local authority has a general duty to keep land in its area clear of litter.

### **1. Interpretation**

"The EPA 1990" means the Environmental Protection Act 1990

"Littering Regulations" means The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 (SI 2018/171)

"PCN" means Penalty Charge Notice

"MDDC" means Mid Devon District Council

"RUCS regulations 2019) means road user charging schemes (penalty Charges adjudication and Enforcement) (England) regulations 2013

"Electronic address" means any number or address used for the purposes of sending or receiving documents or information by electronic means

### **2. Civil Fixed penalty notices and Enforcement**

2.1 MDDC may give a penalty notice, requiring payment of a fixed civil penalty, to a person who is the keeper of a vehicle provided that MDDC has reason to believe that a littering offence has been committed in respect of the vehicle on land within Mid Devon area

2.2 Mid Devon District Council may cancel a penalty notice at any time by informing the recipient in writing.

2.3 A Penalty can either be issued on the spot or through the post depending on the circumstances and type of offence.

2.4 Penalty notices may be issued when District Officers observe offences whilst on patrol, on a pure chance basis whilst engaged on other duties, or following an approach by members of public willing to stand as witness in any subsequent Court action. MDDC is willing to take enforcement action on the basis of CCTV evidence provided the CCTV evidence is in accordance with RIPA<sup>1</sup>

2.5 A penalty notice must not be given—

2.5.1 after the end of the period of 35 days beginning with the day on which the littering offence in question occurred,

2.5.2 If a fixed penalty notice for the criminal offence of Leaving litter (under 88(1) has been given to a person in respect of the same offence (whether or not he is the vehicle's keeper), or

2.5.3 If a prosecution has been brought against a person under section 87 of the EPA 1990 (Offence of littering) in respect of the same offence (whether or not the person is the vehicle's keeper and whether or not the prosecution has concluded or was successful).

2.6 If MDDC issue a civil penalty notice and the recipient provides evidence as to the identity of the litterer, MDDC will consider whether this is a sufficiently compelling reason to cancel the original civil penalty. MDDC will also (separately) decide whether sufficient evidence has been provided to pursue criminal enforcement action (a fixed penalty notice or prosecution) against the alleged litterer.

2.7 Section 8 (exemptions) sets out circumstances in which a person is not liable to pay a fixed penalty.

2.8 There are detailed rules contained in the Litter Regulations as to the contents of a penalty notice. MDDC will produce standard template notices in accordance with these rules

### **3. Penalty amounts and payment**

3.1 The amount of a fixed penalty is the amount specified by MDDC under Section 88(6A) (a) of the EPA 1990 for the fixed penalty for the criminal offence of leaving litter. MDDC has set this sum at £150

The discount for early payment is:

3.2 If a fixed penalty is not paid in full within the fixed penalty payment period, the amount of the fixed penalty increases by 100% with effect from the day after the last day of the fixed penalty payment period.

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<sup>1</sup> RIPA (Regulation of Investigatory Powers Act) is a law enacted in the United Kingdom in 2000 to govern the interception and use of electronic communications

## **4. Challenges to the Penalty Notice**

4.1 The Littering Regulations confers a right on the person who is given a penalty notice to challenge it within 14 days of the FPN being issued. A person to whom a penalty is given may make written representations to MDDC in writing on grounds as set out in the Littering regulations. These grounds are Section 9 in this document

4.2 If MDDC accepts that one or more of the grounds in regulation 14 of the Littering Regulation applies, it must cancel the penalty notice and inform the person who made the representations of the cancellation in writing.

4.3 If MDDC does not accept that one or more of the grounds in regulation 14 applies, it must give a notice of rejection to the person who made the representations.

4.4 A person who is given a notice of rejection may appeal against it to an adjudicator and the appeal must be made to an adjudicator within the period of 28 days beginning with the day on which the notice of rejection is given although the adjudicator may allow an appeal out of time.

4.5 If the adjudicator concludes that one or more of the grounds in regulation 14 applies, the adjudicator must allow the appeal.<sup>2</sup>

## **5. Recovery of unpaid amounts**

5.1 Mid Devon District Council may recover any unpaid amount of the fixed penalty and any related costs awarded by an adjudicator—

5.1.2 as a civil debt, or

5.1.3 as if payable under a county court order, if the county court so orders.

## **6. Authorised Officer**

Mid Devon District Council authorise its District Officers to issue penalty notices.

## **7. Use of receipts by Mid Devon District Council**

Any surplus<sup>3</sup> income from these penalties will be ring-fenced to be spent on your statutory functions of keeping relevant land and clear of litter and refuse, and on enforcement against littering, graffiti and so on.

## **8. Exemptions**

8.1 Public service vehicles and licensed taxis

8.2 The kinds of vehicle exempt from fixed penalty are –

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<sup>2</sup> The adjudicator is the Traffic Penalty Tribunal

<sup>3</sup> An amount of something left over when requirements have been met; an excess of production or supply

- 8.3 Public service vehicle, within the meaning of section 1 of the Public Passenger Vehicles Act 1981
- 8.4 A hackney carriage licensed under section 37 of the Town Police Clauses Act 1847
- 8.4.1 Or section 6 of the Metropolitan Public Carriage Act 1869.
- 8.4.2 Vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976(e) (licensing of private hire vehicles).

## 9. Representation and Appeals

### Grounds of representation

A person who receives a fixed penalty notice may make written representations on one or more of grounds A to L set out below apply :-

**Ground A** – the littering offence did not occur.

**Ground B** – the person was not the keeper of the vehicle at the time of the littering offence because they became the keeper of the vehicle after the littering offence occurred. Such representation must include the name and address of the other person from whom the vehicle was acquired.

**Ground C** – the person was not the keeper of the vehicle at the time of the littering offence because the person had disposed of the vehicle to another person before the littering offence occurred. Such a representation must include the name and address to whom the vehicle had been disposed of, or a statement that the name and address of that person is not known

**Ground D** – the person was not the keeper of the vehicle at the time of the littering offence because the vehicle was a stolen vehicle when the littering offence occurred. Such a representation must include the crime reference number, insurance claim number or other evidence of the vehicle's theft.

**Ground E** – the person was engaged in the hiring of vehicles in the course of a business at the time of the littering offence, and was not the keeper of the vehicle at that time by virtue of the hire agreement. Such representation must include a statement signed by or on behalf of the person to the effect that at the time of the littering offence the vehicle was hired to a named person under a vehicle hire agreement and provide a copy of the vehicle hire agreement.

**Ground F** – the person was not the keeper of the vehicle at the time of the littering offence for a reason not mentioned in Grounds B to E.

**Ground G** – Mid Devon District Council are not authorised to give the person a penalty notice.

**Ground H** – the person is not liable to pay the fixed penalty by virtue of Regulation 12 (public service vehicles and licensed taxis).

**Ground I** – the liability to pay the fixed penalty has been discharged in the circumstances set out in Regulation 13 (penalty already given to a person in respect of the same offence).

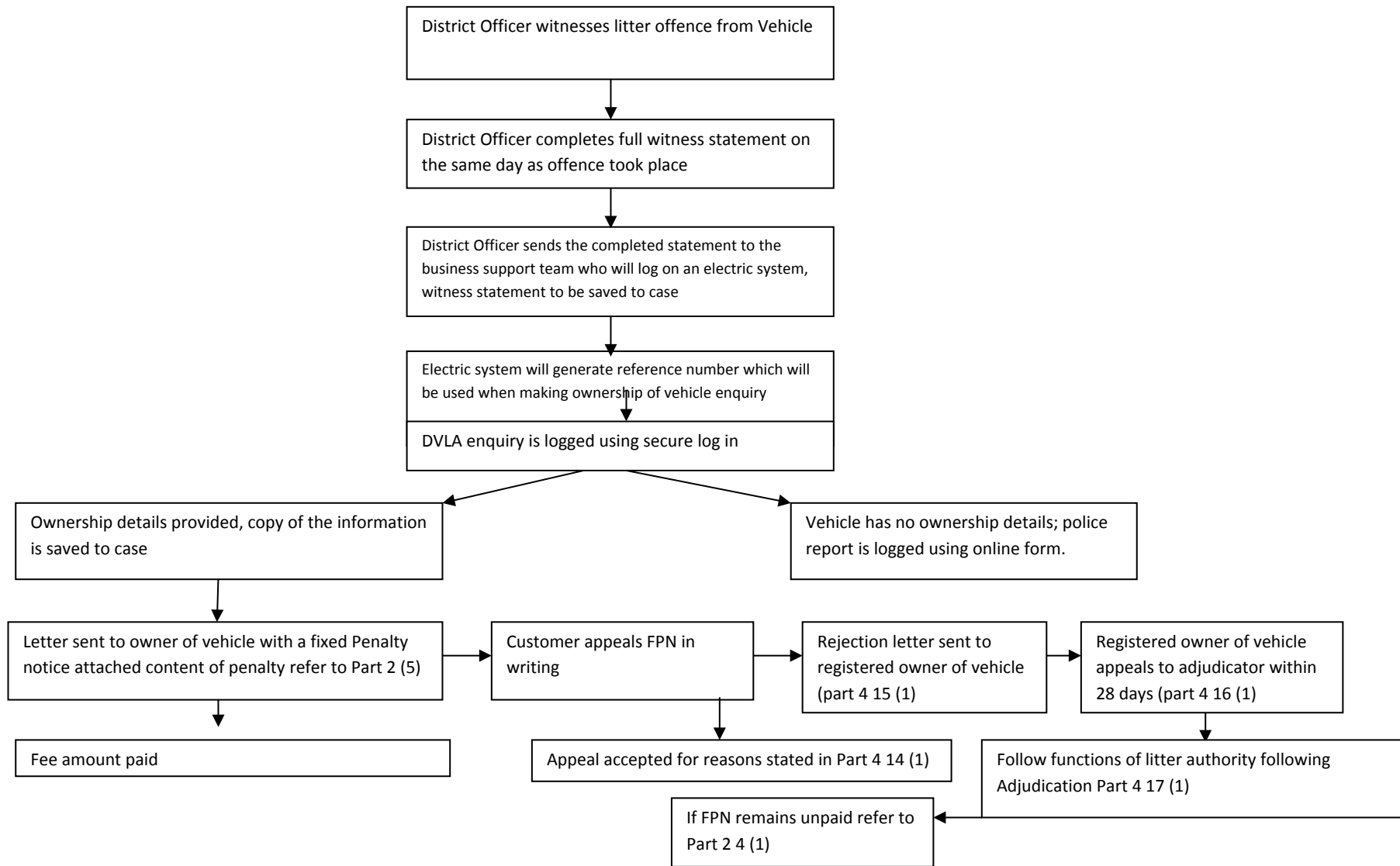
**Ground J** – the fixed penalty exceeds the amount payable under the Regulations.

**Ground K** – Mid Devon District Council has failed to observe any requirement imposed on it by the regulations in relation to the imposition or recovery of the fixed penalty.

**Ground L** – 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).

## **10. Publicity and Associated Enforcement**

Mid Devon District Council communications will highlight the anti-social aspects of Littering and to announce the new powers. Part of such communications plan will be the publicising of successful enforcement. When communications are published the Council will adhere to the Data Protection Act 2018.





**Littering from Vehicle timescales**

1 Working day

- Add littering offences to the current sheet in the littering folder.
- For fly-tipping issues, if not already on Idox, log via MDDC website. Update Idox record.
- If witnessed personally, take photographic evidence and complete a written report or e-mail.
- If witnessed by a member of the public, take a witness signed statement from them including what was actually witnessed and not just circumstantial evidence (and obtain photos if available).

Within 7 Working days

- A local authority may make an enquiry using the Driver & Vehicle Licensing Agency (DVLA's) Web Enabled Enquiry (WEE) system to request a vehicle keeper's details (at time of event) after witnessing or receiving reports regarding an alleged littering or fly-tipping offence from a stationary or moving vehicle.
- The enquiry via the WEE system must be made within 7 days of the date of event (ie the date of the alleged incident).
- Ensure there is sufficient evidence in existence, prior to accessing the WEE system, to ensure a successful prosecution and retain this evidence for subsequent audit inspections (on Idox for fly-tipping issues).
- The member of staff making the WEE system enquiry must see this evidence for themselves.
- If CCTV footage showing waste being dumped from a vehicle is being relied upon, this must be unambiguous and seen by the member of staff making the WEE system enquiry.
- If a vehicle registration number plate or any documentation is found in amongst fly-tipped waste, **no** enquiries can be made via the WEE system as it is purely circumstantial.
- Once vehicle keeper's details are received, send letter enclosing a Fixed Penalty Notice (FPN).

15 Days

- If payment is not received after fourteen days, issue a reminder letter.