



Littering from Vehicles Policy

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1.0 Introduction

- 1.1 Mid Devon District Council (MDDC) is committed to reducing litter on roadsides and verges and will take enforcement action against those who litter from their vehicles.
- 1.2 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 penalty powers for littering from vehicles
- 1.3 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 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.
- 1.4 Under section 89(1) of the EPA 1990 the District Council, as the local authority, has a general duty to keep land in its area clear of litter.

2.0 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)
- "FPN" means Fixed Penalty 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

3.0 Fixed Penalty notices (FPN) and enforcement

- 3.1 MDDC may give a penalty notice, requiring payment of a FPN, to a person who is the keeper of a vehicle if it has reason to believe that a littering offence has been committed in respect of the vehicle on land within the MDDC area.
- 3.2 MDDC may cancel a penalty notice at any time by informing the recipient in writing.
- 3.3 A penalty can be issued either on the spot or through the post depending on the circumstances and type of offence.
- 3.4 Penalty notices will be issued when District Officers observe offences whilst on patrol or following an approach by members of the public willing to stand as witness in any subsequent Court action. MDDC may take enforcement action

based on CCTV evidence, provided the CCTV evidence is in accordance with RIPA¹

- 3.5 A penalty notice must not be given:
 - 3.5.1 After the end of the period of 35 days beginning with the day on which the littering offence in question occurred;
 - 3.5.2 If a FPN for the criminal offence of leaving litter under section 88 (1) of The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 has been given to a person in respect of the same offence (whether or not he/she is the vehicle's keeper); or
 - 3.5.3 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).
- 3.6 If MDDC issue a FPN 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 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.
- 3.7 Section 9 of this policy (exemptions) set out circumstances in which a person is not liable to pay a fixed penalty.
- 3.8 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.

4.0 Penalty amounts and payment

- 4.1 The amount of a fixed penalty set by MDDC under Section 88(6A) of the EPA 1990 is £150. In keeping with littering FPN, this will be subject to a 50 % reduction if paid within 7 days.
- 4.2 If a fixed penalty is not paid in full within 28 days, the amount of the fixed penalty increases by 100% with effect from the day after the last day of the fixed penalty payment period.

¹ 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

5.0 Challenges to the Penalty Notice

- 5.1 The littering regulations confers a right on the person who is given a penalty notice to challenge it within 28 days of the penalty notice being issued. A person to whom a penalty is given may make written representations to MDDC on grounds as set out in the littering regulations. These grounds are set out in Section 10 in this document.
- 5.2 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.
- 5.3 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 representation.
- 5.4 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.
- 5.5 If the adjudicator concludes that one or more of the grounds in regulation 14 applies, the adjudicator must allow the appeal.²

6.0 Recovery of unpaid amounts

- 6.1 MDDC will recover any unpaid amount of the fixed penalty and any related costs awarded by an adjudicator:
- 6.1.1 as a civil debt, or
- 6.1.2 as if payable under a county court order, if the county court so orders.

7.0 Authorised Officer

- 7.1 MDDC authorises the District Officers to issue penalty notices.

8.0 Use of receipts by Mid Devon District Council

- 8.1 Any surplus³ income from these penalties will be ring-fenced to be spent on the Council's statutory functions of keeping relevant land clear of litter and refuse, and on enforcement against littering or graffiti.

² The adjudicator is the Traffic Penalty Tribunal

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

9.0 Exemptions

9.1 Public service vehicles and licensed taxis are exempt from FPN's, these are defined as:

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

10.0 Representation and Appeals - Grounds of representation

10.1 A person who receives a FPN may make written representations on one or more of the grounds A to L as set out below:

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 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 of the person 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).

Appendix A - Littering from Vehicle timescales

One Working Day

Add littering offences to the current sheet in the littering folder.

For Littering 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 (i.e. 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/littering 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).

At 15 Days

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