

Report sponsor: Strategic Director of Corporate Resources
Report author: Acting Head of Democracy

Constitutional Amendments

Purpose

- 1.1 This report seeks to amend the Council Constitution, in order to provide the necessary authorisation for officers to discharge powers granted under the Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018.
- 1.2 The regulations allow Penalty Notices to be issued to the keeper of a vehicle, from which litter has been thrown. The proposed change follows two recent cases prosecuted under Section 87 of the Environmental Protection Act 1990, in which sufficient evidence could not be produced, to prove an offender's guilt beyond reasonable doubt in this type of case.

Recommendation

- 2.1 To grant authority to the Director of Public Protection and Streetpride to appoint authorised or proper officers for the purposes of enforcement of the Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018.
- 2.2 To authorise the Monitoring Officer to make appropriate amendments to the Scheme of Delegations within the Council Constitution.

Reasons

- 3.1 To ensure legislation granting powers to officers within the Scheme of Delegations is up to date and accurate.

Supporting information

- 4.1 The Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018 allow local authorities to issue a Penalty Notice to the keeper of a vehicle from which litter is thrown. The keeper of a vehicle (under Section 88A of the Environmental Protection Act 1990), is the person by whom the vehicle is kept at the time when the littering offence in question occurs and is presumed to be the person in whose name the vehicle is registered.

- 4.2 These Regulations are to be used in the event the officer does not know the identity of the person who dropped the litter (such as the vehicle driving away before it can be stopped and the person questioned), as they allow the Penalty Notice to be served on the registered keeper of the vehicle, even if the identity of the suspect is unknown and automatically make the registered keeper liable.
- 4.4 Prior to Legal Services and Environmental Protection becoming aware of the Regulations, the Officers were using the provisions under section 87 of the Environmental Protection Act 1990 for this type of case. Section 87 provides that a person who drops litter on local authority land commits an offence and can be issued with a Penalty Notice and/or prosecuted. While a Penalty Notice may be issued where the Officer has reason to believe that the offence has been committed, a successful prosecution will require evidence sufficient to prove the offender's guilt beyond reasonable doubt.
- 4.5 Two of these cases (namely littering from vehicle dealt with under section 87) have been before the Magistrates' Court in September 2019, and both were dismissed due to the Court stating there was "no evidence that the driver who allegedly dropped the cigarette was this Defendant". It is therefore evident that these Regulations need to be adopted and applied for this type of case, as the Courts are not accepting the standard litter prosecution route.

Public/stakeholder engagement

- 5.1 The proposals contained in the report have been prepared in consultation with colleagues in Environmental Protection and Legal Services.

Other options

- 6.1 To maintain existing arrangements using provisions under section 87 of the Environmental Health Act 1990.

Financial and value for money issues

- 7.1 The amount to be paid under the Penalty Notice is £75, if paid within 28 days, or £50 if paid within 14 days. If a penalty is not paid within 28 days, the amount automatically doubles. As this is a civil fine rather than a criminal penalty, in the event that the person does not respond to or pay the Penalty Notice, it is recovered as a civil debt or under a County Court money judgement.
- 7.2 Income from payments can only be spent on functions relating to litter and refuse (including keeping land and highways clear of litter and refuse, and enforcement against littering and littering from vehicles), graffiti and fly-posting, controlling and enforcing against the unauthorised distribution of free literature.

Legal implications

- 8.1 As detailed at 4.1 to 4.5

Other significant implications

9.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Florence Harper, Solicitor	29 October 2019
Finance		
Service Director(s)	Emily Feenan, Director of Legal, Procurement and Democratic Services	15 November 2019
Report sponsor	Paul Simpson, Strategic Director of Corporate Resources	15 November 2019
Other(s)		

Background papers:	None
List of appendices:	None