

# London Councils' Transport & Environment Committee

## Consultation on Setting the Levels of Penalty Charge Notices for Offences Relating to Builders' Skips

Item no: 08

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**Summary:** The London Local Authorities and Transport for London Act 2013 provides for Penalty Charge Notices (PCNs) to be payable for offences relating to builders skips. To date these charges have not been set. London Councils has been approached by the London Borough of Croydon and asked to set these charges. Past practice requires London Councils to consult on the levels of penalty.

**Recommendations:** The Committee is asked to:

- Agree that London Councils consults on the levels of PCNs for offences relating to builders skips, as set out in the London Local Authorities and Transport for London Act 2013.

## **Consultation on setting the levels of penalty charge notices for offences relating to builders skips**

### **Background**

1. The London Local Authorities and Transport for London Act (LLA&TfLA) 2013 provides for penalty charge notices (PCN) to be payable for offences relating to builders skips.
2. Specifically, the offences set out in Section 9(3) are as follows:
  - a. a builder's skip is deposited on a highway without a permission granted under section 139 of the 1980 Act (control of builders' skips);
  - b. a builder's skip has been deposited on a highway in accordance with a permission granted under the said section 139 but the owner of the skip does not secure that—
    - i. the skip is properly lighted during the hours of darkness;
    - ii. the skip is marked or lighted in accordance with regulations made under the said section 139 requiring builders' skips to be so marked or lighted;
    - iii. the skip is clearly and indelibly marked with the owner's name and with his telephone number or address;
    - iv. the skip is removed as soon as practicable after it has been filled;
    - v. each of the conditions subject to which the permission was granted is complied with;
  - c. the owner of a builder's skip who, under subsection (2) of section 140 of the 1980 Act (removal of builders' skips), is required to remove or reposition the skip or cause it to be removed or repositioned has failed to comply with the requirement as soon as is practicable.
3. The levels for these offences have not yet been set. London Councils has been approached by the London Borough of Croydon and asked to set these charges.

### **Background detail on fixed penalty notices (FPNs) and penalty charge notices (PCNs)**

4. A PCN is a penalty paid when an individual is in contravention of regulations e.g. traffic, parking and waste which are under civil enforcement. The recipient of a PCN can make representations against the penalty to the local authority, and can appeal a rejection of representations to an independent adjudicator. Any failure to pay can be pursued by the local authority through the County Court. This is a similar mechanism to that currently undertaken with parking enforcement.
5. FPNs are payable for a range of offences, including moving traffic offences (e.g. speeding and driving through red lights), as well as anti-social behaviour such as littering, spitting and public disorder offences. A fixed penalty notice is a conditional offer – one can accept guilt, pay the fixed penalty, and close the matter; or reject the fixed penalty notice and be summoned to court. There is no formal route of appeal.
6. The LLA&TfLA 2003 already enables boroughs to set FPN levels for highways obstruction offences, which includes offences relating to builders skips. By setting the PCN levels provided for by the LLA&TfLA 2013, boroughs would be able to use a decriminalised route for these offences.
7. Section 9(2) of the LLA&TfLA 2013 states that Part 4 of the LLAA 2007 applies to offences relating to builders skips; that is to say, that TEC acts as the joint committee, and has the duty to set penalty charge levels for these offences.
8. Past practice requires London Councils to consult on the levels of the penalty.
9. The highways authority is responsible for issuing PCNs. This means that both boroughs and TfL will be able to issue PCNs for these offences, and TEC would be setting the PCN level for both authorities.

10. If TEC decides to set the PCN levels, each borough would then need to pass a resolution at full Council in order to adopt the PCN levels in the borough.

### **Proposed levels of penalty charge notice for offences relating to builders skips**

11. It is proposed that the PCN level for offences relating to builders skips is £130, payable within 28 days.
12. Under Section 61(3)(a)(iv) of the 2007 Act, the penalty charge must be reduced by the “specified proportion” if paid within 14 days. It is proposed that if paid within 14 days, the penalty charge is reduced by half to £65.
13. These penalty charge levels are in line with other obstruction of the highway offences which are enforced using a fixed penalty notice route, such as pitching booths or stalls on a highway, depositing material on the carriageway and wilful obstruction of the highway.

### **Consultation with boroughs and other stakeholders**

14. Past practice requires London Councils to consult on the proposed levels of the PCN.
15. The proposed public consultation will be web-based. If agreed by Members, London Councils will write to and invite comments from London boroughs as well as other stakeholders with an interest in the area covered by the consultation, including TfL; skip companies and industrial trade bodies; cyclist, pedestrian and disability groups; and the freight trade.
16. The proposed public consultation would last six weeks.
17. The results of the consultation exercise will be reported to members at the TEC meeting of 18 June 2015. If TEC approves the penalty charge levels, London Councils would then write to the Secretary of State who can review the proposed levels. If 28 days passes without a response, the PCN levels would be set. Boroughs would then have to pass a resolution at full Council to introduce the PCN levels in their area. London Councils would provide more information to boroughs on this at that stage.

### **Recommendations**

18. The Committee is asked to:
- Agree that London Councils consults on the level of PCN for offences relating to builders skips.

### **Financial Implications**

19. There are no financial implications to London Councils arising from this report. If the Committee at a subsequent meeting decides to adopt the PCN levels, the Parking and Traffic Appeals Service would need to ensure it can accept appeals on offences relating to builders skips.

### **Legal Implications**

20. There are no legal implications to London Councils at this stage. However, if a PCN for offences relating to builders skips is agreed and approved by TEC, it will become available to all highways authorities seeking to enforce them.

## **Equalities Implications**

21. If TEC agrees to consult on setting a PCN level, an equalities impact assessment will be undertaken and will form part of the report to TEC in June, alongside the consultation results.