

SCHEDULES

SCHEDULE 12

Section 58

HOUSEHOLD WASTE: LONDON

- 1 The London Local Authorities Act 2007 is amended as follows.
- 2 In section 20 (regulations relating to receptacles for household waste), in subsection (9), for “46(2) to (6)” substitute “46(2) to (5)”.
- 3 After section 20 insert—

“20A Regulations relating to receptacles for household waste: enforcement

- (1) This section applies where a borough council is satisfied that—
 - (a) a person has failed without reasonable excuse to comply with a requirement imposed by regulations made under section 20(1), and
 - (b) the person’s failure to comply—
 - (i) has caused, or is or was likely to cause, a nuisance, or
 - (ii) has been, or is or was likely to be, detrimental to any amenities of the locality.
- (2) Where this section applies, the borough council may serve a written warning on the person.
- (3) A written warning must—
 - (a) identify the requirement with which the person has failed to comply,
 - (b) explain the nature of the failure to comply,
 - (c) explain how the failure to comply has had, or is or was likely to have, the effect described in subsection (1)(b),
 - (d) if the failure to comply is continuing, specify the period within which the requirement must be complied with and explain the consequences of the requirement not being complied with within that period, and
 - (e) whether or not the failure to comply is continuing, explain the consequences of the person subsequently failing to comply with the same or a similar requirement.
- (4) Where a written warning has been served in respect of a failure to comply that is continuing, the borough council may require the person on whom the written warning was served to pay a penalty charge if satisfied that the person has failed to comply with the requirement identified in the warning within the period specified by virtue of subsection (3)(d).
- (5) Where a person has been required to pay a penalty charge under subsection (4) and that requirement has not been withdrawn on appeal, the borough council may require the person to pay a further penalty charge if satisfied that the failure to comply is still continuing at the end of a relevant

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period which falls within the period of one year beginning with the day the written warning was served.

- (6) For the purposes of subsection (5)—
- (a) a “relevant period” is a period beginning with the day a final notice is served on the person under section 20C(5) in respect of the failure to comply that is continuing and ending with—
 - (i) where the person appeals against the requirement to pay a penalty charge imposed by that final notice, the day on which the appeal that is the final appeal made by the person against the requirement is dismissed or withdrawn;
 - (ii) where the person does not appeal, the day on which the period for appealing expires;
 - (b) there is no relevant period where the person appeals as mentioned in paragraph (a)(i) and the requirement to pay the penalty charge is withdrawn on appeal.
- (7) Where a written warning has been served, whether or not in respect of a failure to comply that is continuing, the borough council may require the person on whom the written warning was served to pay a penalty charge if satisfied that, within the period of one year beginning with the day the written warning was served—
- (a) the person has again failed without reasonable excuse to comply with the requirement identified in the warning and the person’s failure to comply has had, or is or was likely to have, the effect described in subsection (1)(b), or
 - (b) the person has failed without reasonable excuse to comply with a requirement that is similar to the one identified in the warning and the person’s failure to comply has had, or is or was likely to have, the effect described in subsection (1)(b).
- (8) A borough council may require a person to pay a penalty charge under subsection (5) or (7) each time that the borough council is satisfied of the matters mentioned in the subsection.
- (9) A borough council imposing a requirement to pay a penalty charge under subsection (4), (5) or (7) must act in accordance with section 20C.
- (10) In this section and sections 20C and 20D a “penalty charge” means a monetary penalty of an amount determined in accordance with section 20B.

20B Amount of penalty charge that may be imposed under section 20A

- (1) It is to be the duty of the borough councils to set the levels of penalty charges payable to them under section 20A.
- (2) Different levels may be set for different areas in Greater London and for different cases or classes of case.
- (3) The borough councils may make provision for treating a penalty charge which is payable under section 20A as having been paid if a lesser amount is received by the relevant council before the end of a period specified by the borough councils.

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- (4) The Secretary of State may by regulations make provision in connection with the functions conferred on the borough councils under subsections (1) and (3).
- (5) Regulations under subsection (4) may (in particular)—
 - (a) require the levels of penalty charges to fall within a range prescribed in the regulations;
 - (b) restrict the extent to which, and the circumstances in which, the borough councils may make provision under subsection (3).
- (6) The borough councils must publish, in such manner as the Secretary of State may determine, the levels of penalty charges which have been set by the councils in accordance with this section.
- (7) The functions conferred on the borough councils by subsections (1), (3) and (6) are to be discharged by a joint committee within the meaning of Part 4 (see section 60(1)).

20C Penalty charges under section 20A: procedure regarding notices of intent and final notices

- (1) Before requiring a person to pay a penalty charge under section 20A, a borough council must serve on the person notice of intention to do so (a “notice of intent”) in accordance with subsections (2) to (4).
- (2) A notice of intent must contain information about—
 - (a) the grounds for proposing to require payment of a penalty charge,
 - (b) the amount of the penalty charge that the person would be required to pay, and
 - (c) the right to make representations under subsection (3).
- (3) A person on whom a notice of intent is served may make representations to the borough council as to why payment of a penalty charge should not be required.
- (4) Representations under subsection (3) must be made within the period of 28 days beginning with the day service of the notice of intent is effected.
- (5) In order to require a person to pay a penalty charge under section 20A, a borough council must serve on the person a further notice (the “final notice”) in accordance with subsections (6) to (8).
- (6) A final notice may not be served on a person by a borough council before the expiry of the period of 28 days beginning with the day service of the notice of intent on the person was effected.
- (7) Before serving a final notice on a person, a borough council must consider any representations made by the person under subsection (3).
- (8) The final notice must contain information about—
 - (a) the grounds for requiring payment of a penalty charge,
 - (b) the amount of the penalty charge,
 - (c) how payment may be made,

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- (d) the period within which payment is required to be made (which must not be less than the period of 28 days beginning with the day service of the final notice is effected),
- (e) any provision giving a discount for early payment made by virtue of section 20B(3),
- (f) the right to appeal by virtue of section 20D, and
- (g) the consequences of not paying the penalty charge.

20D Appeals and application of provisions of Part 4 of this Act

- (1) Regulations made by the Lord Chancellor under section 62(2) may make provision relating to appeals to an adjudicator against a decision under section 20A to require a person to pay a penalty charge.
 - (2) Until such time as regulations made by virtue of subsection (1) are in force, regulations under section 80 of the Traffic Management Act 2004 are to apply in relation to appeals of the type described in subsection (1) with such modifications as are prescribed in regulations made by the Secretary of State.
 - (3) For the purposes of subsection (2), the functions of adjudicators under the regulations as so applied are to be discharged by the persons appointed under regulations made under section 81 of the Traffic Management Act 2004 as adjudicators for the purposes of Part 6 of that Act.
 - (4) Penalty charges payable under section 20A are penalty charges for the purposes of section 64 and, for the purposes of subsection (2)(b) of section 64, they are to be treated as if they were payable under a provision of Part 4.
 - (5) Schedule 4 applies in relation to the administration and enforcement of section 20A as it applies in relation to the administration and enforcement of section 61.”
- 4 (1) Section 23 (regulations relating to receptacles for waste: enforcement) is amended as follows.
- (2) In subsection (2), omit “subsection (1) of section 20 (regulations relating to receptacles for household waste) or”.
 - (3) In subsection (4)—
 - (a) omit paragraph (e);
 - (b) in paragraph (f), omit “subsection (4) of the said section 20 or” and omit “as the case may be”.
 - (4) In the heading, after “receptacles for” insert “commercial or industrial”.