

Papur Datgan Sbwriel o Gerbydau

Vehicle Litter Position Paper



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Introduction

Litter has become an unpalatable constant on the roads of Wales. The public perception is that litter – particularly on the thoroughfares into and through our towns and cities – is an ever-increasing problem. Motorists often complain about traffic delays, without realising that one of the regular causes of such delays is enforced road closure to deal with littered items.

Every responsible citizen of Wales wants to see a Wales that is litter-free, and this document lays out our response to the problem of littering from vehicles in Wales. It should be noted that this paper will not cover the crime of unlawful disposal of waste (fly-tipping).

The Problem

Most people in Wales see it on a daily basis – cans, bottles, cigarette ends, sweet wrappers and crisp packets littering the roadsides. Some of this will have been deposited by pedestrians, but plenty of it will have been tossed out of the windows of vehicles passing through the area. In many cases, the impact is particularly noticeable at traffic lights or other places where traffic slows or comes to a standstill.

Although we tend to see the results of such littering all the time, we notice the culprits far less regularly. These selfish, mean-spirited people think that someone else should clean up their mess after them. Perhaps they are unaware of the massive costs involved in cleaning litter from roadsides, costs that have to be recouped through increases in Council Tax. Perhaps they don't even care about the increased danger that local authority staff face when collecting roadside litter.

In rural parts of Wales in particular, there is a significant problem of people emptying their cars of litter when waiting at temporary traffic lights. Local authority staff responding to complaints often remove litter, only for it to reappear within days.

People will use any excuse for dropping litter. Among those offered are that throwing litter on the roads 'adds variety to the landscape', or that it 'keeps the existing litter from getting lonely'.

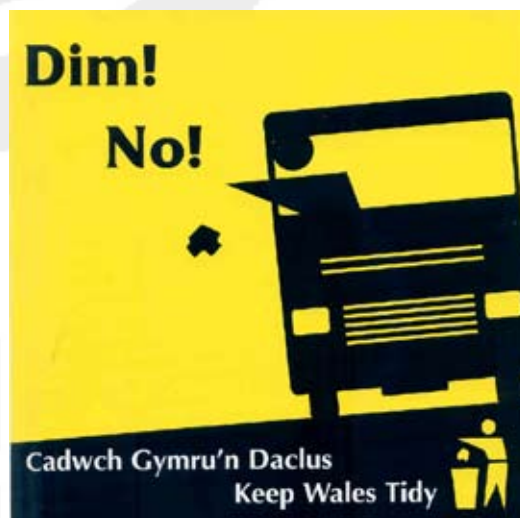


The Current Situation

The law as it stands allows for serving a Fixed Penalty Notice of £75 on anyone who can be identified as having dropped litter, including from a vehicle. Failure to pay the fine can render the litterer liable to prosecution. However, on some occasions it can be difficult to determine with absolute certainty the individual responsible, and on these occasions the perpetrator can sometimes avoid payment of a Fixed Penalty Notice.

Options for Improvement

Campaigns: Campaigns should focus on informing people that it is an offence to dispose of litter inappropriately, regardless of whether or not they are inside a vehicle at the time. Keep Wales Tidy has an ongoing campaign targeting litter dropped by motorists.



Hire Cars: Hire car companies should be encouraged to place a rubbish bag in their vehicles with each new lease. This practice, already widely practised elsewhere in the world, would encourage people to think more carefully about their disposal of waste and litter from a vehicle, and would thereby engender an increased awareness of the problem. Keep Wales Tidy will contact all major vehicle rental companies operating in Wales to promote this idea. Keep Wales Tidy would be keen to participate



in the drafting of a leaflet to accompany the rubbish bag.

Fixed Penalty Notices: There is a small minority of people that persists in behaving unacceptably, and, sadly, education and campaigns will be unlikely to reach these individuals. If reliable, independent witness statements can be used as the basis to issue Fixed Penalty Notices, then this thoughtless minority might just get the message that the people of Wales will no longer tolerate their littering.

Legislation: There is a strong case for the relevant legislation to be tightened or clarified. Ideally, the Registered Keeper of the vehicle should be held responsible for any littering from that vehicle. A Fixed Penalty Notice would then be served on the owner or Keeper, and the only exemption from this Notice would be evidence from the Registered Keeper that a named individual was responsible for the littering. This proposal has received very widespread support from practising enforcement officers and their managers right across Wales.

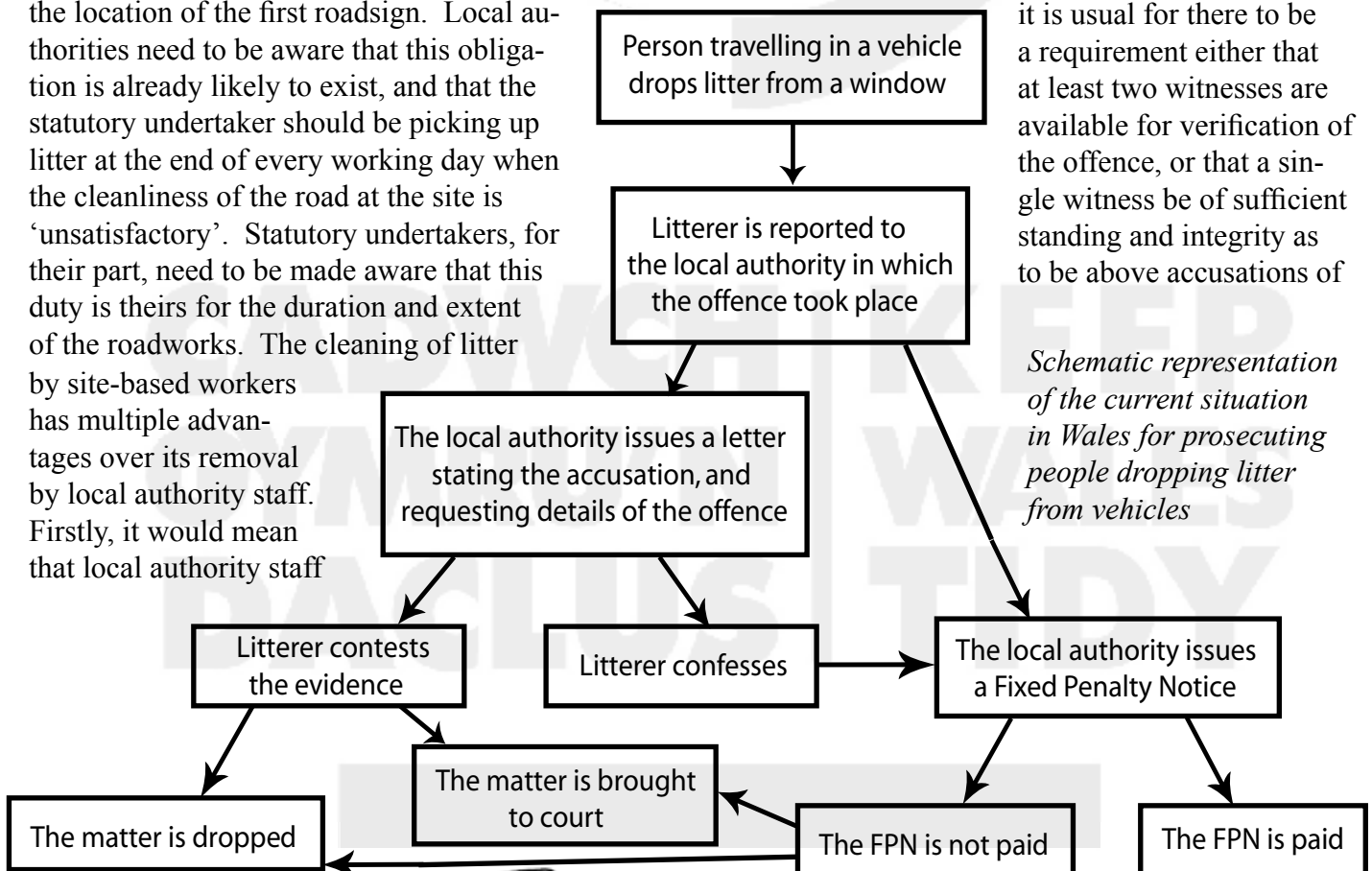
Cleansing at Road Works: Statutory undertakers (utilities companies, for example) will usually have a contractual obligation to the local authority to keep the site of roadworks clean. This will include the removal of litter from the site, which starts from the location of the first road sign. Local authorities need to be aware that this obligation is already likely to exist, and that the statutory undertaker should be picking up litter at the end of every working day when the cleanliness of the road at the site is 'unsatisfactory'. Statutory undertakers, for their part, need to be made aware that this duty is theirs for the duration and extent of the roadworks. The cleaning of litter by site-based workers has multiple advantages over its removal by local authority staff. Firstly, it would mean that local authority staff

would not be required to litter-pick these often remote sites on a daily or weekly basis. Secondly, because the statutory undertakers are working on the site itself, it would cut down considerably on the effort, expense, fuel, and time taken in removing the litter. When local authority depots are distant from the site, these savings could be substantial. Thirdly, of course, these savings would be felt by the taxpayer, while the minor additional costs would be borne by the statutory undertaker. Finally, because the litter removal would take place while the traffic lights were still operational, it would be a much safer activity than for local authority staff removing litter after the traffic lights have been taken away.

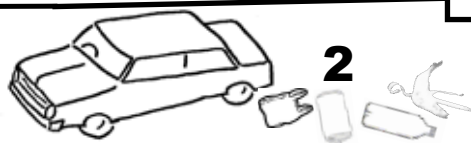
The Current Situation in Wales

During the course of our research, Keep Wales Tidy has spoken to enforcement staff at every local authority in Wales. Local authorities have a very varied approach to pursuing vehicle litterers. At one end of the scale, some authorities do not issue Fixed Penalty Notices. While most of these authorities are in the process of introducing them, others appear to have no clear idea of either their utility nor of any timetable for their introduction. However, most local authorities do issue Fixed Penalty Notices for littering from vehicles. For these authorities,

it is usual for there to be a requirement either that at least two witnesses are available for verification of the offence, or that a single witness be of sufficient standing and integrity as to be above accusations of



Schematic representation of the current situation in Wales for prosecuting people dropping litter from vehicles



malicious claims. In all cases, the person or persons submitting a complaint should be aware that they may be called upon to testify in court.

The Current Legal Situation

Keep Wales Tidy does not have ready access to legal expertise, and this summary of the legal situation is our interpretation of the relevant Acts.

Depositing or Disposal of Waste

Section 33 of the Environmental Protection Act 1990 (EPA) places a "Prohibition on unauthorised or harmful depositing, treatment or disposal etc. of waste". It states that

"... a person shall not deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence".

Controlled waste is defined, in Section 75 (subsection (4)) as being

"... household, industrial and commercial waste or any such waste",

and household waste is defined, in subsection (5) as being waste from

"domestic property... which is used wholly for the purposes of living accommodation"

"a caravan... which usually and for the time being is situated on a caravan site"

"premises forming part of a university or school..."

"a residential home", or

"premises forming part of a hospital or nursing home".

On summary conviction of this offence, a person is liable to imprisonment for a term not exceeding twelve months or a fine not exceeding £50,000 or both. The courts also have the power to allow forfeiture of the vehicle and its contents.

Littering

Section 87 of the EPA makes it an offence if any person

"throws down, drops or otherwise deposits in, into or from any place... and leaves, any thing whatsoever in such circumstances as to cause, or contribute to, or tend to lead to, the defacement by litter of any place..."

The Clean Neighbourhoods and Environment Act (2005) makes it clear that this holds true on any land, regardless of ownership (unless on private land with permission), and also in any body of water.

Section 88 of the EPA elucidates the rationale for issuing Fixed Penalty Notices:

"where on any occasion an authorised officer of a litter authority finds a person who he has reason to believe has on that occasion committed an offence under section 87 above in the area of that authority, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty."

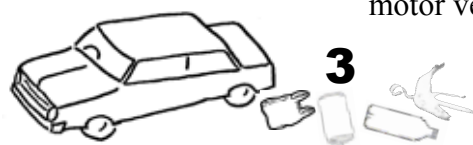
The crucial point is that the authorised officer must have reason to believe that a defined person has committed the offence.

The maximum penalty for littering is a fine of £2,500.

Why Change or Clarify Legislation?

Although the returns from Fixed Penalty Notices in Wales are reasonable, the identity of the litterer is not always clear when litter is thrown from a car with multiple occupants. This means that some Fixed Penalty Notices for littering fail on the technicality that an individual litterer can not, or will not, be identified.

The offence of unauthorised disposal of waste is commonly used to prosecute fly-tippers. It is an offence that is not punishable by a Fixed Penalty Notice, so in every case it is prosecuted in court. While this is a time-consuming and expensive route, it is clearly an option that is available for local authorities to prosecute people who litter from vehicles. The advantage of this means is that the litterer her/himself does not need to be identified – the Registered Keeper of the vehicle is liable for all waste being disposed of in an unauthorised manner. Section 33 of the EPA (1990), subsection (5), makes it quite clear that where waste is disposed of from a motor vehicle, the person controlling the use of the



vehicle or who is in a position to do so (the Registered Keeper) is treated as knowingly causing the waste to be deposited, whether or not any instructions were given to that effect.

The definition of waste used for this offence is

“... household, industrial and commercial waste or any such waste”.

Under European legislation – which in every case has primacy over UK legislation – waste is defined as:

“any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard”. (Waste Framework Directive (75/442/EEC))

Annex I includes several categories of interest to vehicle littering:

“Q5. Materials contaminated or soiled as a result of planned action (e.g. residues from cleaning operations, packing materials, containers etc)”

“Q14. Products for which the holder has no further use (e.g., agricultural, household, office, commercial and shop discards)”

“Q16. Any materials, substances or products which are not contained in the above categories”

Keep Wales Tidy is confident that using the European definition of waste, any form of littering from vehicles could be classed as “unauthorised disposal

of waste”.

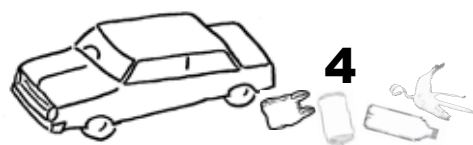
There are several concerns with using these powers to prosecute vehicle litterers:

- It seems a disproportionate way of dealing with a littering offence.
- Fines imposed in court do not accrue to local authorities in the way that Fixed Penalty Notices do.
- It is a much more time-consuming and expensive way of dealing with littering than the use of Fixed Penalty Notices. In particular, it could be seen as an unnecessary burden on the legal section of local authorities.

Keep Wales Tidy therefore considers that this legislation should be recommended only when confronted with an individual chronic litterer who has not responded to multiple Fixed Penalty Notices or other notification of complaint.

The law on litter, as it stands, does not permit the Registered Keeper of a vehicle to be held responsible for littering from that vehicle; the litterer him or herself must be identified by name. Keep Wales Tidy recommends that section 87 of the EPA be updated to permit the Registered Keeper of a vehicle to be held liable, by a Fixed Penalty Notice, for any littering emanating from a vehicle for which she or he is responsible. Although there will undoubtedly be costs in terms of legislative time and effort in drafting the necessary legislation, it would greatly facilitate the issuance of Fixed Penalty Notices to transgressors. Major cleanliness benefits would accrue to Wales as education activities raise awareness of the new powers.

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Conclusions

Keep Wales Tidy is of the opinion that enforcement officers throughout Wales would benefit from a clear legal framework for prosecuting people who drop litter from vehicles. At present, authorities have approaches that vary from having no awareness of the ability to prosecute, to very active pursuit of offenders. The present piecemeal approach is less effective than a standard route would be, and it is also a source of irregularity in treatment of offenders.

Introducing or changing legislation to provide clear means of prosecution would not only benefit enforcement officers. It would be of major benefit to the people of Wales and its visitors, who would see a marked improvement in the cleanliness of the highways; to street cleansing teams, who would need to spend less time cleansing busy, dangerous roads; to motorists, who would face fewer delays from litter collection activity lane closures; and to council taxpayers, for whom the street cleansing team would be able to work more effectively in residential areas, and for whom less would be spent on landfilling the litter that would otherwise end up on the road network.

Keep Wales Tidy makes the following recommendations:

- All local authorities should examine their standard contracts with statutory undertakers to ensure that the requirement to keep the worksite clean is stipulated. Where it is not, such a clause should be introduced. Where it is, the statutory undertaker should be reminded of their duty to keep the road satisfactorily clean for the entire site.
- People who are in a position to make a reliable, independent witness statement, and who would be willing to testify in court, should be encouraged to report all offences. Examples of such individuals

would be police officers (on or off duty), magistrates, councillors, and other people of standing in the community. Keep Wales Tidy staff would, naturally, also be willing to report offenders. Ideally, such statements should be backed by more than one witness, to reduce the likelihood of the case being contested.

- All local authorities in Wales should prosecute people who drop litter from vehicles, where reliable testimony is available to pursue the offender in court.
- Where a known individual is a chronic litterer but is unresponsive to Fixed Penalty Notices, the offence of unauthorised disposal of waste may be used as an alternative to the offence of littering. This offence has the advantage that the Registered Keeper is liable.
- The relevant legislative body should consider changing legislation in order to make it easier for local authorities to conduct their duties. The most effective means of achieving this would be to permit the Registered Keeper of a vehicle to be held liable for any litter emanating from a vehicle for which she or he is responsible. Backing for this idea has been almost unequivocal from local authorities in Wales.

The desired endpoint of this policy paper is to reduce the littering of Wales. By making the whole process of issuing a Fixed Penalty Notice much easier, the education effect of the legislation would be strengthened. People will very rapidly realise that they have a responsibility to ensure that people using their vehicles do not drop litter from them, and Keep Wales Tidy anticipates that littering from vehicles would become far less prevalent. This reduced litter effect is what Keep Wales Tidy seeks, and what we believe most citizens of Wales also desire and deserve.

Keep Wales Tidy is an independent National Voluntary Organisation with Charity Status working to achieve a "clean, safe and tidy Wales" www.keepwalestidy.org

