APPENDIX A – CABINET REPORT – LONDON BOROUGH OF WALTHAM FOREST – EXPANSION OF PERSISTENT EVADER ENFORCEMENT POWERS

FINAL CODE OF PRACTICE

PERSISTENT EVADER ENFORCEMENT UNDER PART 5 OF THE LONDON LOCAL AUTHORITIES AND TRANSPORT FOR LONDON ACT 2008

PILOT GROUP GUIDANCE

1. Introduction

1.1 Part 5 of The London Local Authorities and Transport for London Act 2008 (LLA & TfL Act 2008) provides local authorities, in London, with further powers to take enforcement action against persistent evaders of parking and traffic penalties. A persistent evader is defined as:

- a vehicle that has three or more unpaid penalty charge notices from any one authority that are not subject to appeal and have passed the date by which an appeal can be made, and are not the subject of a warrant of execution, or
- a vehicle that has three or more unpaid penalty charge notices from any one authority for which no current registered keeper details can be supplied by DVLA, and the authority has taken reasonable steps to find the name and address of the relevant person but has failed to do so, and 35 days have elapsed since the penalties became payable.

1.2 While the basic criterion for entry onto the Persistent Evaders Database is three or more outstanding penalties from a single authority, once on the database, any similarly outstanding penalties from other authorities can be added and any action should encompass all outstanding penalties irrespective of the authority which issued them.

1.3 Statutory Guidance and borough policies in general make it clear that clamping and removal should be targeted at persistent evaders, particularly those where there are no recorded keeper details.

1.4 The 2008 Act provides the following further powers in respect of persistent evaders. These further powers are, in brief:

- A persistent evader vehicle may be immobilised and subsequently removed even when it is parked legally.
- If the owner of a PE vehicle is unknown then the vehicle can be released only where evidence of the keeper’s identity is produced. This enables the conventional enforcement process to take place.
- If the owner of a PE vehicle is known then all outstanding penalties and charges in respect of all authorities should be paid before the vehicle can be released.
- If the keeper challenges any or all of these penalties or charges, then a bond can be paid to arrange release of the vehicle while representations under the 2008 Act against the charges are made.
- Relevant penalties for the operation of this scheme can come from any borough and authorities should not limit their activities solely to those charges due to it.

1.5 A pilot group comprising officers from the participating London boroughs has been formed to evaluate the legislation and to agree on procedures to be used. The pilot group will report on progress at the end of the pilot.

1.6 The pilot group is sponsored and led by London Councils who will coordinate the pilot scheme and provide legal support and advice to the group.
2. **Identification and Location of Persistent Evader Vehicles**

2.1 Councils should make provision for keeping data on persistent evaders. This should be based on London Councils’ Persistent Evader Database. Authorities should provide details of candidates for this database and should make provision to receive daily updates of this data from London Councils.

2.2 PE vehicles will fall into two categories: current keeper details known or vehicle with no keeper details.

2.3 Where keeper details are known, as soon as a vehicle becomes eligible for entry onto the persistent evaders’ database, the authority initiating this entry should send a notice to the keeper. This notice is intended to inform the keeper of the outstanding penalties, that the vehicle is being entered onto the Persistent Evaders Database and that subsequently it may be clamped or towed away even when parked legally. The notice should list the outstanding penalties, including:
- PCN number
- Time, date and place of PCN issue

2.4 The notice also gives the keeper 7 days to pay either all the outstanding penalties or a bond of £250. Once payment of the penalty charges or the bond has been made, the keeper may make representations under specific grounds (similar to those for witness statements). Those grounds are:
- that the bond or other charges exceeded the amount applicable
- that all the outstanding penalty charges were incurred before the person became the owner of the vehicle
- that the number of penalty charges incurred after the person became the owner was fewer than three
- that the outstanding penalty charges have all been paid
- that the recipient is a vehicle hire firm, the vehicle was on hire at the time and that the person hiring the vehicle had signed a statement of liability
- in a case where the keeper details are known, that the owner did not receive the Penalty Charge Notice (for postal PCNs including bus lanes and moving traffic PCNs) or Notice to Owner / Enforcement Notice (for on-street PCNs / bus lanes) in question
- that representations were made against the PCN but no response was received
- that an appeal was made but no decision was received.

A sample notice is shown at appendix 4.

2.5 Where representations are made, the authority should deal with them in the normal away and an appeal to the adjudicator can be made if the representations are rejected.

2.6 The vehicle details should not be entered onto the Persistent Evaders Database until 7 days after service of this notice and, where representations are made, should not be entered onto the database until the outcome of their consideration is known. If representations are accepted or an appeal allowed, the relevant PCN details should not be entered onto the database and, if this results in fewer than three outstanding penalties, the whole entry should be deleted.

2.7 If representations are made late, the authority should consider them but need not take the details off the persistent evaders database until or unless the representations are accepted. In these circumstances there is no right of appeal to the adjudicator.
2.8 Where a council wishes to add further outstanding penalty details to an existing entry on the database, that council should send a further letter to the keeper giving the same information as the previous letter.

2.9 Councils should use whatever means possible and at their disposal to locate persistent evaders. This can include:
- Persistent evader lists uploaded to CEOs hand held computer terminals
- ANPR camera technology
- Existing CCTV systems
- Their own contracted bailiff service
- Details of previous parking behaviour by persistent evaders (who frequently park in a similar location on several occasions)

2.10 Once identified, persistent evader vehicles can be clamped or towed away, even when parked legally. However, the normal principles related to clamping – that vehicles should not be clamped where they might cause an obstruction and that neither vehicles displaying a blue badge or diplomatic ‘X’ or ‘D’ plates should be clamped – still apply.

3. Procedure where Keeper Details are not known

3.1 If a PE vehicle has no keeper details then the authority must take other reasonable steps to find the owner of the vehicle. This may include searching the authority's own Residents' Permit database or checking with other organisations, for example the police or Hire Purchase Information if it suspected that the vehicle is on finance.

3.2 If a PE vehicle that has no keeper details available is identified it should be immobilised without delay by wheel clamping (ensuring that an immobilisation sticker is affixed to the windscreen explaining the options) and / or removed to a vehicle pound facility. The vehicle should be immobilised / removed under the LLA & TfL Act 2008 with the (00) contravention code (TBC) and TRACE action taken in line with this legislation.

3.3 If it has been established that a PE vehicle is also a PE in other Boroughs then the Borough taking the initial enforcement action should ensure that information regarding the PE is entered onto the PE Database without delay so that all other interested Boroughs are aware and may take their own enforcement action.

3.4 In line with normal practice for releasing vehicles from either a clamp or the pound, proof of identity of the person seeking to recover the vehicle is also needed. Such forms of ID include:
- Photo-card current drivers licence
- Full valid current passport
- Current ID card issued by member state of EC/EAA
- Current Travel Document issued by Home Office
- Current Debit / Credit Card
- Current benefits or pension statement

3.5 Where a vehicle has been clamped or removed and no keeper details are known, the vehicle must be released **without charge** upon provision of satisfactory and verifiable proof of name and address. Such identification might include:
- Vehicle Ownership Document V5
- Current Insurance Certificate (not back-dated)
- New Keeper Supplement
- Company Letter (verifiable)
- Current Tenancy Agreement
- Garage Bill of Sales Invoice (verifiable)
Where the person seeking to recover the vehicle cannot provide satisfactory and verifiable proof of name and address, the vehicle can be released, so long as proof of identity is provided, as described above, upon payment of a Bond. Further details of the bond provision are shown in section 4 below. In these circumstances the bond is refundable if the person provides any of the forms of identification of keepership shown above. In these circumstances the bond should be refunded immediately.

Once identification of keepership has been established TRACE should be informed and the vehicle removed from all databases of persistent evaders immediately. Authorities may then start normal enforcement procedures, commencing with the issue of the Notice to Owner (or Penalty Charge Notice for bus lanes). The normal statutory time limits for serving these notices are disapplied in these circumstances, but authorities should certainly seek to do this within 28 days of the keeper information becoming available.

If nobody seeks to recover the vehicle normal procedures for disposal of the vehicle apply, as set out in section 101 of the Road Traffic Regulation Act 1984.

### The Bond where Keeper Details are not known

The owner of a vehicle may arrange the release of that vehicle by the payment of a bond. Details of the bond are:

- The amount of the bond has been set by the London Councils Transport and Environment Committee at £250.
- The bond will only be required when the claimant has provided proof of ID through one of the documents listed in paragraph 3.4 but has not provided verifiable name and address details through one of the documents listed in paragraph 3.5.
- The bond is intended to allow the claimant to provide verifiable name and address details and is therefore time limited to 21 days. Details of the procedure for making representations are shown in the following paragraphs.
- Bond payments should be placed in a suspense account pending the outcome of any representations.

As stated above the purpose of the bond is to allow a claimant to provide satisfactory and verifiable proof of the name and address of the owner of the vehicle. If those details are provided the full amount of the bond should be refunded immediately to the person who paid them.

As the bond is intended to enable the claimant to provide details of the owner of the vehicle, if no details are supplied within 21 days (the authority should allow 28 days to allow for postage) then the bond is forfeit to the authority that received it.

If details are not provided then the bond is to be set against the outstanding penalties. In the first instance, the bond should be set against penalties and charges due to the authority which was responsible for taking action against the persistent evader. If there is any amount of the bond left over after all the amounts due to the authority taking action are taken into account, then the residue should be set against the remaining penalties and charges from the oldest first.

### Procedure where Keeper Details are known

If current keeper details of a PE vehicle are known by the authority, the notice described in section 2 should be sent and no action should be taken until 7 days after service of that notice or until any valid representations are dealt with.
5.2 Once the vehicle has been clamped or removed the person seeking to recover it has two options:
- To pay all the outstanding penalties and charges, or
- To challenge some or all of the outstanding penalties and charges by means of paying a bond.

5.3 If the keeper takes the option of paying off all outstanding penalties the case should be closed and the vehicle details should be removed from the PE database immediately. The Payment Information Exchange (PIE) system should be used with respect to payments due to authorities other than the one that has taken action against the vehicle and all authorities should ensure that they deal with notifications and payments made through the PIE system immediately to avoid unnecessary further action.

5.4 If the keeper wishes to challenge any or all of the outstanding penalties and charges they can do this only by way of paying a bond. To take up the option of the bond he/she must supply verifiable proof of identity and address. The acceptable documents are listed above in section 3.5. A challenge to any penalty or charge by paying a bond can only be made once for any one charge or penalty. If the motorist has previously paid a bond against a particular penalty they cannot do so again and their only option is to pay the penalty or charge in full if they wish to recover the vehicle. Where the record shows a mixture, with some penalties or charges previously challenged, unsuccessfully, by way of a bond and some not, he / she must pay the previously challenged penalties in full but can pay a bond against the others.

5.5 The bond, currently set at £250, is a single total payment for all previously unchallenged penalties or charges the motorist is unwilling to pay in full, not a charge per unpaid penalty or charge.

5.6 When the bond has been paid, the motorist must be given a notice which should be displayed in the vehicle and no further enforcement concerning its PE status should be taken for the period that the bond remains valid. However, enforcement under other legislation, such as TMA2004, can be taken if the vehicle is parked in contravention.

5.7 The document shown below at appendix 1 must be given to the keeper at the point at which they make payment. This document provides them with all the necessary information to make representations. The keeper also has the right of appeal to a parking adjudicator if the representations are rejected and details of how the appeal should be made are included on the notice of right to representation.

5.8 If the keeper takes the option to pay the bond and subsequently makes representations within the 28 day period allowed by the payment of the bond then the PCN details should be taken off the persistent evader database until the representation and appeals processes have been completed. No further action under PE legislation should be taken against this vehicle during this period but normal enforcement under TMA 2004 can still take place.

6. The Bond where Keeper Details are known

6.1 The owner of a vehicle may arrange the release of that vehicle by the payment of a bond. Details of the bond are:
- The amount of the bond has been set by the London Councils Transport and Environment Committee at £250.
- The bond will only be agreed when the owner / driver has provided proof of ID through one of the documents listed in paragraph 3.4 and verifiable name and address details through one of the documents listed in paragraph 3.5.
6.2 As stated above the purpose of the bond is to allow a vehicle owner to make representations. If those representations are allowed the full amount of the bond should be refunded to the vehicle owner. If the representations are rejected and the vehicle owner decides to appeal against the rejection the bond should be retained by the authority until the outcome of the appeals(s) are known.

6.3 If the appeal(s) are allowed the bond should be refunded to the payer immediately.

6.4 If representations are rejected and there is no appeal, or if the appeal(s) are refused the bond is to be set against the outstanding penalties. In the first instance, the bond should be set against penalties and charges due to the authority which was responsible for taking action against the persistent evader. If there is any amount of the bond left over after all the amounts due to the authority taking action are taken into account, then the residue should be set against the remaining penalties and charges from the oldest first.

6.5 As the bond is intended to enable the keeper to make representations against the outstanding penalties and charges, if no representations are made within 21 days (the authority should allow 28 days to allow for postage) then the bond is forfeit to the authority that received it.

6.6 If representations are made against only some of the outstanding penalties and charges and the total amount in question is less than the sum of the bond, the amount of the bond over the amount in question is forfeit.

7. TRACE

7.1 As mentioned above TRACE must be informed of any vehicle immobilisation or removal (using the correct procedure) depending under what legislation the vehicle was immobilised / removed under.

7.2 The contravention code for vehicles removed when legally parked is 00.

8. Payment Information Exchange

8.1 The Payment Information Exchange (PIE) provides a formal arrangement whereby payments in London destined for one authority can be accepted on account by another and then transferred. This eliminates the need for cheques or payments to be returned with the attendant difficulty in ensuring a second cheque is written. PIE also handles payments made at the adjudication centre.

8.2 PIE works by the immediate transfer of information about 'orphaned' payments received from one authority to another via London Councils. The exchange of information is as follows. On a daily basis authorities must inform London Councils of any payments they have received which are due to another authority (as long as these payments can be ascribed positively to a specific PCN). The information needed for this exchange is:

- the PCN number;
- the amount received;
- the authority that received the money; and
- the date received.
8.3 London Councils will collate and transmit this information to the appropriate authorities also on a daily basis. Where a PCN cannot be identified positively the money should either be kept in a suspense account for a limited time or returned to the sender immediately.

8.4 No money needs to change hands on a daily basis; instead London Councils provides each authority with a monthly statement indicating how much is due from one authority to another.

8.5 Payments received by London Councils, e.g. diplomatic payments or payments following adjudication, will be transferred to the appropriate authorities using the PIE system.
CERTIFICATE OF BOND PAYMENT
London Local Authorities and Transport for London Act 2008

Vehicle Registration Number: [VRM]

Date of Issue of this Certificate: [Issue date]

Date of Expiry of this Certificate: [Expiry date]

IN ORDER TO HAVE EFFECT, THIS CERTIFICATE MUST BE DISPLAYED IN A PROMINENT POSITION IN OR ON THE VEHICLE TO WHICH IT RELATES

This certificate has been issued under Section 15 of the London Local Authorities and Transport for London Act 2008 ("the Act").

With regard to the vehicle specified above, on or before the Date of Expiry of this Certificate:
- no immobilisation device may be fixed to the vehicle under Section 15 of the Act; and
- the vehicle may not be removed under Section 17 of the Act.

This certificate does not exempt the vehicle from immobilisation or removal if it is in contravention of other relevant legislation.

If the [enforcing authority] is provided with satisfactory and verifiable proof of the name and address of the owner of the vehicle then the bond shall be returned to the person who paid it.

The proof of name and address must be supplied to the [enforcing authority] by post to [postal address] or in person at [payment centre address / council office].

The following shall be acceptable as proof of keepership:
- Vehicle Ownership Document V5
- Current Insurance Certificate
- New Keeper Supplement
- Company Letter
- Garage Bill of Sales Invoice

Displaying a false certificate or making a false statement may result in prosecution and a possible fine of up to £5,000.
B.2 – Bond Certificate under Section 16(5) of the Act

CERTIFICATE OF BOND PAYMENT
London Local Authorities and Transport for London Act 2008

Vehicle Registration Number: [VRM]

Date of Issue of this Certificate: [Issue date]

Date of Expiry of this Certificate: [Expiry date]

IN ORDER TO HAVE EFFECT, THIS CERTIFICATE MUST BE DISPLAYED IN A PROMINENT POSITION IN OR ON THE VEHICLE TO WHICH IT RELATES

This certificate has been issued under Section 16 of the London Local Authorities and Transport for London Act 2008 ("the Act").

With regard to the vehicle specified above, on or before the Date of Expiry of this Certificate:
   • no immobilisation device may be fixed to the vehicle under Section 15 of the Act; and
   • the vehicle may not be removed under Section 17 of the Act.

This certificate does not exempt the vehicle from immobilisation or removal if it is in contravention of other relevant legislation.

The [enforcing authority] may disregard any representations received after the period of 28 days beginning with the date of service of the Notice of Right to Make Representations.

Displaying a false certificate may result in prosecution and a possible fine of up to £5,000.
CERTIFICATE OF BOND PAYMENT
London Local Authorities and Transport for London Act 2008

Vehicle Registration Number: [VRM]
Date of Issue of this Certificate: [Issue date]
Date of Expiry of this Certificate: [Expiry date]

IN ORDER TO HAVE EFFECT, THIS CERTIFICATE MUST BE DISPLAYED IN A PROMINENT POSITION IN OR ON THE VEHICLE TO WHICH IT RELATES

This certificate has been issued under Section 19 of the London Local Authorities and Transport for London Act 2008 ("the Act").

With regard to the vehicle specified above, on or before the Date of Expiry of this Certificate:

- no immobilisation device may be fixed to the vehicle under Section 15 of the Act; and
- the vehicle may not be immobilised or removed under Section 17 of the Act.

This certificate does not exempt the vehicle from immobilisation or removal if it is in contravention of other relevant legislation.

If the [enforcing authority] is provided with satisfactory and verifiable proof of the name and address of the owner of the vehicle then the bond shall be returned to the person who paid it.

The proof of name and address must be supplied to the [enforcing authority] by post to [postal address] or in person at [payment centre address / council office].

Any one of the following shall be acceptable as proof of name:
- Photo-card current drivers licence
- Full valid current passport
- Current ID card issued by member state of EC/EAA
- Current Travel Document issued by Home Office
- Current Credit / Debit Card (when payment is made with that card)
- Current benefits or pension statement

The following shall be acceptable as proof of address:
- Vehicle Ownership Document V5
- Current Insurance Certificate
- New Keeper Supplement
- Company Letter
- Current Tenancy Agreement
- Garage Bill of Sales Invoice

Displaying a false certificate or making a false statement may result in prosecution and a possible fine of up to £5,000.
B.4 – Bond Certificate under Section 20(3) of the Act

CERTIFICATE OF REPRESENTATIONS
London Local Authorities and Transport for London Act 2008

Vehicle Registration Number: [VRM]

Date of Issue of this Certificate: [Issue date]

Date of Expiry of this Certificate: [Expiry date]

IN ORDER TO HAVE EFFECT, THIS CERTIFICATE MUST BE DISPLAYED IN A PROMINENT POSITION IN OR ON THE VEHICLE TO WHICH IT RELATES

This certificate has been issued under Section 20 of the London Local Authorities and Transport for London Act 2008 ("the Act").

With regard to the vehicle specified above, on or before the Date of Expiry of this Certificate:

• no immobilisation device may be fixed to the vehicle under Section 15 or Section 17 of the Act; and
• the vehicle may not be removed under Section 17 of the Act.

This certificate does not exempt the vehicle from immobilisation or removal if it is in contravention of other relevant legislation.

The [enforcing authority] may disregard any representations received after the period of 28 days beginning with the date of service of the Notice of Right to Make Representations.

Displaying a false certificate or making a false statement may result in prosecution and a possible fine of up to £5,000.