



# Powers of local authorities regarding presentation of waste for collection

This briefing provides a summary of the consultation on amending the powers of local authorities regarding the presentation of waste for collection. The changes proposed in the consultation apply in England only.

## Key issues

- The Department for Environment, Food and Rural Affairs (Defra) has issued a consultation on amending the Environmental Protection Act 1990 with regards to the presentation of waste for collection
- Presents 2 options for consideration
- Please email views to [djohns@apse.org.uk](mailto:djohns@apse.org.uk) by 5 March 2012

## 1. Introduction

In June 2011, the Government committed in the Waste Policy Review to:

- Remove the prospect of criminal sanctions applying to householders who present their waste for collection incorrectly
- Replace these with civil sanctions and ensure that the level of fines is appropriate and in line with penalties for similar offences.

APSE did a briefing paper on the Waste Policy Review which is available by clicking [here](#). The Waste Review Action Plan stated that Defra would bring about legislative changes "to remove disproportionate local authority enforcement powers against householders" by spring 2013. The Review also proposed to set 'harm to local amenity' as a test before a civil penalty could be imposed.

This consultation, following on from the Review aims to bring about these changes. These amendments will abolish the criminal offence provided for in section 46 of the Environmental Protection Act 1990, together with the £1,000 fine. A new, civil sanction will be put in place instead.

This involves changing primary legislation ([the Environmental Protection Act 1990](#)) and therefore consultation and further primary legislation is required. In the meantime, the Government plans to make interim changes to the levels of fixed penalties to make them more proportionate. The changes proposed in the consultation will apply in England only.

This briefing paper summarises the changes proposed in the consultation and asks for responses/views of APSE member authorities to be emailed through to [djohns@apse.org.uk](mailto:djohns@apse.org.uk) by 5 March 2012. APSE will then consolidate the findings and respond to the consultation on behalf of its member authorities.

## **2. Proposed changes**

The consultation provides 2 options for changing the current enforcement regime and these are outlined in more detail below:

### **Option 1: Civil penalties with an underpinning criminal offence**

This option replaces the current system with a new system of civil sanctions but leaves in place an underpinning criminal offence. This includes:

- Those who put out their rubbish incorrectly receive a Section 46 Notice: the vast majority of those who do not comply with that notice will face civil penalties.
- Councils must apply a 'harm to local amenity test' to ensure that penalties and criminal sanctions are targeted at the worst offenders.
- Criminal convictions would be available only in the most extreme cases.

Therefore, financial penalties and criminal sanctions would be imposed only if a householder fails the 'harm to local amenity' test, which means that the quality of other people's lives has been affected. Examples used in the consultation include where bin bags are left on the street for days on end and not when someone doesn't close their bin lid properly, leaves it out for an hour too long or mistakenly puts something in the wrong bin.

As with the current regime, local authorities would need to issue a notice explaining how an individual had failed to meet S46 EPA requirements, giving the opportunity for individuals to change their behaviour before pursuing civil or criminal sanctions.

The consultation is welcoming views on the right level of financial penalties and is proposing a penalty of £60-£80, with reductions available for early payment. They are also seeking views on whether local authorities should be able to keep only enough of this money to cover their processing costs with the remainder of the receipts going to central funds.

Under this approach, individuals would have a right to appeal against the civil sanction (probably but not necessarily to the First Tier Tribunal). Cases would go to court only if prosecuted under the underpinning criminal offence.

If this option is taken forward then the Government would look to make similar changes to the [London Local Authorities Act 2007](#) (LLAA) (i.e. financial penalties would only be imposed if a householder failed the 'local amenity' test and the level of penalties would be the same as under the EPA). They would not look to introduce criminal sanctions under the LLAA and would also look to retain the existing system of appeals under the LLAA.

## **Option 2: Civil penalties with no underpinning criminal offence**

This would involve moving to a system relying exclusively on civil penalties (at no stage would householders be told that they may face criminal conviction or a high level fine). This includes:

- Those who put out their rubbish incorrectly receive a Section 46 Notice: those who do not comply with that notice will face civil penalties.
- Councils must apply a 'harm to local amenity test' to ensure that penalties are targeted at the worst offenders.
- Householders do not face the prospect of prosecution because there is no criminal offence: failure to pay a fixed penalty may mean being pursued for a civil debt.

As with option 1, the Government are seeking views on whether local authorities should be able to keep only enough of the receipts from these penalties to cover their processing cost. The consultation paper acknowledges that some local authorities may be concerned that the removal of criminal penalties may make it more difficult for them to deter the worst kind of breaches but points to other powers such as S87 and S92A of the Act (litter enforcement powers) and the possibility of prosecution for flytipping, which could be used to deal with the worst offenders.

Appeals would be heard by the First Tier Tribunal (or other appellate body) and they are testing the level of financial penalties as part of the consultation.

If this option is taken forward then the Government would look to make similar changes to the London Local Authorities Act 2007 (LLAA) (i.e. financial penalties would only be imposed if a householder failed the 'local amenity' test and the level of penalties would be the same as under the EPA). They would not need to remove an underpinning criminal offence as this section of the LLAA does not include criminal sanctions. They would also look to retain the existing system of appeals under the LLAA.

### **Appeals procedure**

The First-tier Tribunal is empowered to deal with a wide range of issues which might form the substance of appeals, and to ensure the cases are dealt with in the interest of justice and minimising parties' costs. The composition of a Tribunal is a matter for the Senior President of Tribunals to decide and may include non legal members with suitable expertise or experience in an appeal in addition to Tribunal judiciary. If the First-tier Tribunal is selected as the appropriate body to hear appeals in these matters then it is likely that they would be made to the General Regulatory Chamber which hears appeals in various matters. The consultation asks for feedback on the appeals procedures.

## **3. Conclusion**

Undoubtedly, this consultation will receive mixed responses from local authorities. APSE's State of the Market for Street Cleansing Survey 2011 ([click here](#)), a survey completed by local authority street cleansing managers throughout the UK, found that enforcement powers are used to varying degrees across councils; for instance, 32% of respondents issued on the spot fines where waste is left out at the wrong times, 80% issued on the spot fines for littering and 69% issue of litter clearing notices.

The extent upon which the current powers in the EPA were ever fully utilised by local authorities to the extent of criminal convictions or fines of up to £1,000 is debateable. The consultation paper acknowledges this: *"We do not believe that convictions are often*

*pursued – the letter from the council, sometimes followed by a visit or telephone call, is usually sufficient to change behaviours.”* However, the Government considers the threat under the current legislation to be unnecessarily severe. The question remains, though, that if the threat is reduced, will the changes proposed in the 2 options above be adequate to deter persistent offenders?

The onus now appears to be on local authorities, who would need to carry out a ‘harm to local amenity’ test before a penalty or criminal sanction can be imposed. Further guidance would need to be provided on what constituted ‘harm’ or there may be different interpretations and ultimately lack of consistency in applying the test.

The consultation paper also asks about the level of financial penalties. This obviously needs to be weighed against the potential impact that a reduction in enforcement powers could have on street cleansing costs and potentially the need for more reactive maintenance by local authorities, in a time when front line services are facing unprecedented financial pressures.

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