



APSE response to the consultation on the powers of local authorities regarding presentation of waste for collection

This briefing provides details of APSE's response to the consultation on the powers of local authorities regarding presentation of waste for collection. The changes proposed in the consultation apply in England only.

Key Issues:

- This briefing includes APSE's response to the Department for Environment, Food and Rural Affairs (Defra) consultation on the presentation of waste for collection.
- The views of APSE's member authorities who sent their comments through to APSE have been included in this response.
- The consultation presented two options for change and this briefing paper outlines APSE's views on the proposed changes.

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.

In January 2012, Defra issued a consultation paper, following on from the Review, which aimed to bring about these changes. APSE produced a briefing paper on the proposed changes which is available by clicking [here](#). The briefing paper summarised the changes proposed in the consultation and asked for responses/views of APSE member authorities.

On 9th March 2012, APSE responded to Defra with views on the proposed changes. The views of APSE’s member authorities who sent their comments through to APSE have been included in the response. The full response is shown below.

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The Association for Public Service Excellence (APSE) represents officers and members involved in the management and provision of quality public services. APSE’s mission statement positions the organisation as *‘The Association which consults, develops, promotes, advises and shares on best practice in the delivery and provision of efficient and accountable public services’*. APSE is currently working with 250 authorities within the United Kingdom, has advisory networks in waste and recycling and has been involved in a number of projects with a range of local authorities throughout the UK on waste related issues. APSE has consulted with its membership and has included their comments within this submission.

The first point relates to the extent to which the current powers in the Environmental Protection Act 1990 with regards to the presentation of waste for collection are fully utilised by local authorities to the extent of criminal convictions or fines of up to £1,000. Feedback from local authorities suggests that in practice, fixed penalty notices are only issued after letters and visits have failed to resolve the problem. Councils fully recognise engagement and education as the tools to change behaviour and already use other means (procedure letters, advisory letters, warnings) as the first step. The use of such letters and non-fixed penalty notices resolves the vast majority of cases before the need for a Fixed Penalty Notice. 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.” Councils have also commented that successes in changing individuals’ behaviour towards waste and recycling has emanated from the use of section 46.

The question remains that if the threat of a fine or criminal conviction is reduced, will the changes proposed in the 2 options be adequate to deter persistent offenders? Those APSE member authorities who have responded to our consultation believe that councils need to retain a power to take action on refuse related issues (which includes an underpinning criminal offence) as a deterrent to the majority and to tackle the minority of persistent offenders. If the deterrent is too weak, then councils will not use this and an effective enforcement mechanism is needed to protect the public realm for other citizens. Therefore, out of the two options presented by Defra, the most preferred option is option 1 (civil penalties with an underpinning criminal offence).

The principal of needing to prove ‘harm to local amenity’ needs further description and explanation. Detailed supporting guidance will limit the risk of different interpretations being used. Feedback on the proposed appeals mechanisms suggests that this will simply add more bureaucracy to the process and could lead to ‘bottle necking’. Defra need to take into consideration whether an appeals process is necessary considering the fact that civil action is only usually targeted at a minority of citizens who refuse to present the waste properly after a range of other methods (letters, visits, etc) have been explored. Comments include that a right of appeal for this type of offence should not be introduced, otherwise the Clean Neighbourhoods and Environment Act 2005 will also need to be revised.

In terms of financial penalties, the proposed scale of penalties of £60-£80, with reductions for early payment, is in line with some authority’s existing values. As any changes to the level of fixed penalties would involve councils making policy, procedural and printing changes with no extra funding, then some APSE members have commented that these should not be changed. The level of income generated from penalties is minimal at present, as most resource is targeted towards dealing with problems informally. In addition, the staff costs are invariably greater than the level of receipts; this isn’t a money making exercise for councils. The receipts to this income should be kept by the council rather than going towards central funds as the income offsets some of the costs and enables councils to inject receipts into deprived areas and waste reduction initiatives. In addition, the reduction in enforcement powers could have an impact 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.

Thank you for the opportunity to respond to this consultation.

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