

Guidance for Local Authorities on Household Waste Duty of Care Fixed Penalty Notices

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Introduction

The fixed penalty notice (FPN) for breaches of the household waste duty of care provides an alternative option for enforcement. There is no obligation for you to offer an alleged offender an FPN. However, it can be more proportionate than prosecution through the courts.

The duty of care requires householders to take all reasonable measures available to them in the circumstances to ensure that they only transfer household waste produced on their property to an authorised person. This reduces the chance of waste ending up in the hands of those who would fly-tip it. More detail on the householder's duty of care is set out in section 3 of the Waste Duty of Care Code of Practice.

You should follow this guidance when issuing fixed penalties for breaches of the household waste duty of care. You should also follow the [general guidance on the use of fixed penalty notices](#).

When you can issue fixed penalties

You may issue the FPN when a householder appears to have failed to comply with their duty of care under section 34(2A) of the Environmental Protection Act 1990 in England. For example:

- Where fly-tipped waste can be traced back to a householder who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised person.
- Where an unauthorised carrier is found to be carrying waste that was directly transferred to them by a householder.
- Where a householder is found to be transferring their waste to an unauthorised person at a site that does not have a permit or exemption.

An authorised person may still fly-tip waste, so tracing fly-tipped waste to a household does not necessarily demonstrate a breach of the duty of care. Householders should be given an opportunity to demonstrate that they took reasonable steps to determine the person that took their waste was authorised to do so.

When you should not or cannot issue fixed penalties

The use of these penalties should focus on those who cause genuine harm to the local environment by not meeting their duty of care. Householders should not be penalised for minor breaches which do not lead to environmental harm.

This FPN is not applicable where a householder intends for waste to be collected by the local authority, for instance where this is put out in household waste or recycling bins. The local authority is considered an authorised person and so in putting the waste out for collection by a local authority, the householder has taken all reasonable steps to ensure the person they transfer it to is authorised.

Proportionate use

The Government wishes to encourage a balanced approach to enforcement. You should only issue an FPN when it is proportionate and in the public interest to do so.

The principles of the [Regulators Code](#) apply to issuing the fixed penalty notice. An effective environmental offences enforcement regime is one that is proportionate, consistent, targeted, transparent and accountable. Under general principles of public law, you have a duty to act fairly and proportionately and are encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest. In no circumstances should enforcement be used as a means to generate income.

If a householder is considered to be a vulnerable person (for example due to age or disability), close consideration should be given as to whether it would be proportionate and in the public interest to issue a fixed penalty notice, on a case-by-case basis.

A householder giving their waste to a friend or family member to dispose of would be in breach of the duty of care. However, it would only be appropriate and in the public interest for you to issue an FPN in this and similar circumstances where there is evidence the friend or family member has disposed of the waste illegally.

Opting for prosecution

FPNs should not be used where prosecution through the courts is more appropriate. This could include deliberate transfer of waste to an unauthorised person in the knowledge that it would be fly-tipped, or when someone is a persistent offender with a record of not paying fixed penalties.

Where the cost of a landowner or the local authority clearing fly-tipped waste cannot be covered by the FPN and any costs recoverable from the fly-tipper themselves, prosecution may be more appropriate if it enables recovery of costs. The issuing of an FPN should not be presented as a barrier to a private individual who has waste fly-tipped on their land from recovering costs.

How to issue fixed penalties

Given the potential for fly-tipping to cross local authority borders, it is recommended that you consider the benefits of consistent, and possibly collaborative, approaches to enforcement with neighbouring authorities.

Opportunity to demonstrate duty of care

A householder's waste can still be found fly-tipped or in the possession of an unauthorised carrier, even if they meet their duty of care. As such you should give householders an opportunity to demonstrate they met their duty of care. This could include:

- Details of the business and of any vehicle used which can be linked to an authorised operator
- A record of the operators registration, permit or exemption number
- A receipt for the transaction which includes the business details of a registered operator
- A copy of the carrier's waste license or site's permit

When giving the householder the opportunity to demonstrate they met their duty of care, you should inform them:

- of the evidence gathered, e.g. if their waste has been found fly-tipped
- that they may get a fixed penalty or face prosecution, and why
- how long they have to show they met their duty of care

If a householder makes a convincing case that they complied with their duty of care you cannot issue an FPN, or if a convincing case is made after an FPN has been issued, the FPN should be withdrawn.

You should continue to investigate the authorised carrier that was used to identify how the waste ended up being disposed of inappropriately. For instance if the householder transferred their waste to an authorised person, but that person nevertheless fly-tipped it or transferred it to an unauthorised person.

Issuing the fixed penalty notice

When issuing an FPN, the notice must name the householder and tell them:

- why they have been given a fixed penalty, i.e. the circumstances alleged to constitute the offence
- that the FPN is offered as an option to discharge liability for a criminal offence without prosecution, but they may choose not to pay it

- that they can provide evidence to the local authority at any time to justify the case not being taken to prosecution even if the FPN is not paid, and what such evidence may include
- how much they must pay and how they can pay it, including to whom it should be paid and the address to do so
- the deadline for the payment
- that proceedings will not be taken for the offence during the payment period, or after if the penalty is paid during that period
- what happens if they pay the penalty early, for example if there's a discount
- any other ways in which the fixed penalty may be paid

Penalties should be set within the limits set out in legislation:

Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty
£200	£150	£400	£120

Where waste comes from multiple individuals in the household

You will need to consider who in the household is responsible for the breach of the duty of care before issuing the FPN against them.

Cross-boundary approach

The FPN can be used when a householder appears to have failed to comply with their duty of care in England only. This relates to the point where the transfer of waste took place, not the final disposal point of the waste. This would typically be if a householder takes their waste to an unauthorised site in England, or if they transfer their waste to an unauthorised carrier in England, even if the waste is ultimately taken out of England.

Non-payment of fixed penalties

An alleged offender may choose not to accept or pay a fixed penalty, and may provide evidence at any time that they did not commit the offence.

Where a householder does not pay an FPN and has not given a convincing reason for you not to take the case to prosecution, you are expected to do so. Failure to follow up an unpaid FPN with prosecution for the original offence will discredit the use of fixed penalties and the duty of care itself. This may lead to declining rates of payment and more breaches of the duty of care.

As such, it is good practice when issuing a fixed penalty to have sufficient evidence to prosecute if the notice goes unpaid.

Challenge Process

There is no right of appeal against an FPN as they are offered as an optional means of discharging liability for an offence. However, if after the FPN is issued you receive a convincing case from the householder that they should not be prosecuted, you should withdraw the FPN.

The grounds of such a case might include, but are not limited to:

- if the person issued with the penalty was not the person that committed the offence, for instance where someone else arranged for the disposal of the waste
- if the person issued with the FPN brings forward evidence that could undermine any later prosecution
- if evidence is provided that the person issued with an FPN is in some way vulnerable and enforcement would not be in the public interest
- if evidence is provided that enforcement would, for any other reason, not be considered to be in the public interest

You must consider any information provided when deciding whether or not to start criminal proceedings against the person if the FPN goes unpaid.

You can cancel an FPN at any point during the process. This can be done even when a breach of the duty of care is without doubt if appropriate for the circumstances of the case.

Where an FPN is cancelled you should promptly inform the individual concerned and explain the reasons.

Awareness Raising

You should not view your enforcement regime in isolation. In addition to taking enforcement action, you should aim to reduce breaches of the household waste duty of care through clear, well-designed communications.

You should communicate to the community your reasons for the use of the FPN and make it clear that enforcement is about preventing waste crime.

Reporting

You should report regularly and consistently on your use of the FPN to help the public understand the approach to enforcement.

As good practice you should publish the following information about your use of the FPN:

- a. number of fixed penalties notices issued
- b. number of fixed penalty notices cancelled
- c. number of fixed penalty notices paid
- d. number of fixed penalty notices paid at a discount rate
- e. number of prosecutions undertaken following non-payment of a fixed penalty notice (whether the case is concluded or not)
- f. number of prosecutions undertaken for environmental offences for which a fixed penalty notice was not offered
- g. number of fixed penalty notices written off for other reasons (e.g. procedural error, not in the public interest to pursue, alternative sanctions used etc.)
- h. total net income from fixed penalty notices for household waste duty of care offences
- i. total spent on enforcement activity against household waste duty of care offences



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