

1. Background

The law places a duty on occupiers of domestic property (householders) to give their waste to an 'authorised person'. This is defined further in legislation, but is normally either the local authority collection service or a registered waste carrier. Householders are required to take all reasonable steps to ensure that any transfer of waste produced at their property is to an authorised person. Further guidance is in the Duty of Care (waste) Code of Practice¹. Householders are not required to complete a written description of the waste.

Household waste collection is funded from Council Tax rather than paid for at the point of use. Local authorities also offer free at the point of use disposal and recycling services at household waste and recycling centres. They may charge separately for collection of certain wastes such as bulky waste, for example fridges and beds. These charges vary considerably across the country but are often around £20-£30 per item. Charges may also be levied for items such as garden waste, which is on average around £40 per year. Where a householder produces building type waste, for example, when carrying out renovation work, the cost of hire of a small (4 yard) skip is about £100 to £250 across the country. Often in these cases, if they employ a contractor to do the works, the contractor may charge to take the waste away as part of the contract or hire in separate skip or grab services.

2. The case for action

1.1. Current options for enforcement of duty of care in respect of householders

Government is committed to tackle fly-tipping. Householders can be prosecuted or issued with an FPN if they fly-tip waste themselves. While two-thirds of fly-tipped waste is household waste, this is often fly-tipped because a householder has allowed an unauthorised person to take it away, rather than them fly-tipping it themselves. Since householders are not required to complete a waste transfer note describing the waste, there is not an FPN option currently available for this offence and the only option is for the regulator (usually the local authority in this case) to take the offender to court. Every year there are a number of successful prosecutions against householders who have broken the law by failing to make reasonable checks and giving their waste to an unauthorised person. However, these prosecutions are costly for the regulators and for the court, and having a more flexible range of

¹ <https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice>

penalties to use could be more effective at changing behaviour and reducing the costs in particular to local authorities. Successful prosecutions also result in householders being left with a criminal record, even if they had no idea the waste was going to be fly-tipped and paid for its disposal in good faith.

1.2. About fixed penalty notices

We have already introduced a number of FPN powers to tackle illegal waste activity and related anti-social behaviour such as littering, fly-tipping and failing to produce a waste transfer note.

FPNs are designed to be ‘on-the-spot’ penalties negating the need for more formal action such as prosecution in court. A person issued with an FPN can decide to pay it instead of being prosecuted. However, the person can also decide not to accept the FPN and ask that the matter be dealt with in court instead. If found guilty they would face both a penalty of some kind from the court and would also have a criminal record, which would not be the case with an FPN. The prosecution would be for the duty of care offence, not for refusing to pay the fixed penalty.

Generally, authorities use FPNs to deal with more minor offences, which frees up resources and time to concentrate prosecution through the courts for more major or serious cases and offences. **Table 1** shows related waste offences in England that already have the option of a FPN.

Table 1 Related waste offences in England that already have the option of a FPN² (Figures for Wales in brackets when different from English figures)

Offence	Default penalty	Minimum full penalty	Maximum full penalty	Minimum discounted penalty	FPN money from this offence can be spent on functions relating to:
Littering³	£75 (£75)	£50 (£75)	£80 (£150)	£50 (£50)	Litter, dog control, graffiti and fly-posting
Fly-tipping	£200	£150	£400	£120	There are no restrictions on how

² <https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils>

³ The government has recently announced its intention, subject to Parliamentary approval, to increase the level of fixed penalties in England for littering (and for the related offences of unauthorised distribution of free printed material in a designated area, graffiti and fly-posting). With effect from 1 April 2018, the default FPN is expected to increase to £100, with a maximum of £150. With effect from 1 April 2019, the minimum fixed penalty is also expected to be increased to £65.

					councils can use income
Failure to produce a waste transfer note	£300	£300	£300	£180	Waste on land

3. Our approach

We would like to improve public awareness of the duty on householders and the risks they take when not passing their waste to an authorised person.

We also consider that regulators should be able to tackle small scale fly-tipping of household waste through fixed penalties rather than costly prosecutions, and that in many cases this approach is preferable to a household being left with a criminal record.