

## 4. Proposal

We would like to invite views on what more we can do to improve householder awareness of their duty of care and the steps they should take to protect against their waste being fly-tipped.

In tandem we propose providing enforcement authorities with new powers to issue FPNs to occupiers of a domestic property (householders) who fail to take all reasonable measures to ensure that any transfer by them of household waste produced on the property is to an authorised person. The power would be made available to the EA, NRW and waste collection authorities, who currently enforce the other waste duty of care offences. We also propose to work to improve householder awareness of their Duty of Care and FPNs.

### 4.1. Improving householder awareness

The government would like to invite views on how we should work with local authorities and other stakeholders on measures to improve household awareness of the waste duty of care. As a first step we propose ensuring that updated, simple and consistent guidance is available on Gov.uk and Gov.Wales but would like to know what else you think would work in terms of targeting of messages, use of communications methods, and involvement of local authorities, government, the waste industry and others. In recent years the government has worked with industry and regulators to raise awareness of the duty of care as it applies to waste producing businesses through the 'Right Waste, Right Place' campaign<sup>1</sup>. We would be interested in lessons learnt from this or other approaches that might work for households.

***Go to question 82.***

***Go to question 83.***

In 2016 the government published the Waste Duty of Care Code of Practice<sup>2</sup>. This sets out reasonable measures that should be taken to comply with the duty of care before passing on waste to another person. These include:

- Checking that the person offering to take your waste is registered to transport the waste. In England you can check whether a waste carrier is registered on the Environment Agency's public register or by calling 03708 506 506. In Wales you can check on the Natural Resource Wales public register or by calling 0300 065 3000.

---

<sup>1</sup> <http://www.rightwasterightplace.com/#intro>

<sup>2</sup> <https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice>

- Recording any checks you make, or asking the person or business for evidence of their authorisation, such as a copy of their waste carrier registration.

***Go to question 84.***

***Go to question 85.***

#### **4.2. How the fixed penalty notice could be used**

The proposed FPN could be used mainly in the following circumstances:

- Where waste is found in fly-tipping that can be traced back to a householder who is found to have failed to take reasonable steps to secure that that waste was transferred by them to an authorised person
- Where an unauthorised carrier is found to be carrying waste that can be traced back to a householder
- Where a householder is found to be transferring its waste to an unauthorised person at a site that does not have a permit or exemption.

We propose to limit the use of this FPN to the first transfer of waste from a householder to an unauthorised carrier / person (operator of an unauthorised site). In other instances, for example if the householder transferred the waste to an authorised person and that person then transferred it to an unauthorised person, the enforcement authority would not be able to issue a FPN against the householder.

Our policy is clear that enforcement action through fixed penalty notices should only be taken when it is proportionate and in the public interest to do so. Disproportionate enforcement activity undermines legitimate messages against fly-tipping related offences. Under no circumstances should regulators use fixed penalty notices as a means to generate income. We propose updating the Statutory Duty of Care (waste) code of practice to provide guidance to regulators on the use of this new fixed penalty notice.

***Go to question 86.***

Guidance is already available on how local authorities issue and enforce FPNs for environmental offences<sup>3</sup>, and on how and when environmental officers can issue FPNs<sup>4</sup>.

***Go to question 87.***

---

<sup>3</sup> <https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils>

<sup>4</sup> <https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices>

### 4.3. Proposed penalties for the householder duty of care FPN

In a first instance, we propose to set the level of the fine equivalent to that of a fly-tipping FPN (See **Table 1**).

The level of monetary penalty should make the decision to hire an unauthorised waste carrier potentially more expensive to a householder than hiring an authorised carrier, but less than the cost of being prosecuted in court. **Table 2** shows how the proposed default penalty might compare against legitimate disposal and prosecution using available data and assumptions on costs of these routes.

**Table 1 Proposed level of penalty**

Offence	Default penalty	Minimum default penalty	Maximum full penalty	Minimum discounted penalty
Failure of the occupier of a domestic property to take all reasonable measures to secure that any transfer by them of household waste produced on the property is to an authorised person.	£200	£150	£400	£120

**Table 2 Level of deterrent**

Scenario	1	2	3
	Hiring an authorised waste carrier	Hiring an unauthorised waste carrier and paying a FPN	Hiring an unauthorised waste carrier and court prosecution
Typical cost of the Waste Carrier	£190 <sup>5</sup>	£114 <sup>6</sup>	£114 <sup>34</sup>

<sup>5</sup> Typical prices (inc. VAT) for hiring a waste removal provider, for around 4.6 m<sup>3</sup> of waste (6 yds)

<sup>6</sup> Based on the assumption that an unauthorised waste carrier would charge 40% less than an authorised provider

Cost of court/FPN	£0		£200		£240 <sup>7</sup> (Fine) + £210 (Reimbursement of Local Authority Costs <sup>8</sup> )
Total cost	£190		£314		£564

***Go to question 88.***

***Go to question 89.***

***Go to question 90.***

***Go to question 91.***

***Go to question 92.***

***Go to question 93.***

***Go to question 94.***

#### **4.4. Appeals process**

There is currently no obligation for an authority that issues FPNs to offer an appeals process to someone that might want to dispute a FPN<sup>9</sup>. If a person was taking the decision to not pay the FPN (for example because they do not accept their guilt), then the issuing authority would need to make a decision whether or not they prosecute that person for the act which led to the FPN. If they do, then the matter proceeds through the criminal courts system. The person prosecuted would then be able to argue their innocence before the court.

There may be occasions, however, when it would be helpful for an issuing authority to provide a process for a person to dispute a householder duty of care FPN without both parties having to proceed to court. Where offered, an appeals process would need to cover:

- how, when and where to appeal

<sup>7</sup> Rounded average of fines received in court for the period 2011-2016 for occupiers of domestic properties failing to ensure they transfer their waste to an authorised person (Section 34 (2A) of Environmental Protection Act 1990, see here: <http://www.legislation.gov.uk/ukpga/1990/43/contents>)

<sup>8</sup> Typical costs to local authorities to bring a small scale fly-tipping case to court. See [https://www.legislation.gov.uk/ukia/2016/196/pdfs/ukia\\_20160196\\_en.pdf](https://www.legislation.gov.uk/ukia/2016/196/pdfs/ukia_20160196_en.pdf) (p.9)

<sup>9</sup> <https://www.gov.uk/guidance/fixed-penalty-notice-issuing-and-enforcement-by-councils>

- what happens if the appeal is successful (no further action will be taken and the FPN will be cancelled)
- what happens if the appeal is rejected and the offender does not pay
- how to complain

***Go to question 95.***

***Go to question 96.***

***Go to question 97.***

***Go to question 98.***

Ultimately, if an issuing authority does not offer an appeals process then there will be an independent and rigorous process for dealing with the disputed issuing of an FPN through the courts. This process would follow that set out for other existing FPNs.

***Go to question 99.***