

# **LGA Response to Defra consultation on proposals to tackle crime and poor performance in the waste sector and introduce a new fixed penalty for the waste duty of care**

26 March 2018



## **About the LGA**

The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.

We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

The LGA welcomes the opportunity to respond to this consultation

### **1. Poor management of waste sites and cracking down on criminal activity**

The first two proposals in the consultation would primarily affect the waste management industry and the Environment Agency as the regulator.

- **Part A: raising the standard of waste site operator competence**  
Raising the bar to hold and obtain a waste permit
- **Part B: reforming the exemptions regime within the waste permitting regime**  
Changing the waste exemption to prevent them from being used to hide waste crime

The LGA supports the principle of strengthening regulations to deter criminal activity and drive up standards on waste management sites. Poorly run sites can cause significant problems for local authorities, for example through pollution and fire risks. Criminal activity is undermining legitimate, responsible waste operators as well as creating additional costs for councils and other public services.

We would be happy to work with Defra and the Environment Agency to draw up further evidence of the cost to councils to inform the impact assessment.

The LGA is not able to answer the detailed questions on these parts of the proposals.

## 2. Tackling fly-tipping

The third part of the proposals covers a new power for councils to issue fixed penalty notices to householders who fail to take all reasonable measures to ensure their “duty of care” in disposing of waste from their property.

Clearing up fly-tipping costs councils more than £57 million a year<sup>1</sup> – money that could be spent on other services, like caring for the elderly, protecting children or tackling homelessness. We were pleased the Government responded to our call for councils to be able to apply Fixed Penalty Notices to fly-tippers. This was a big step in the right direction.

Councils warn households to only use reputable operators who can prove they dispose of rubbish responsibly. This follows a significant rise in the so-called ‘man with van’ phenomenon, where cold callers offer to ‘dispose’ of unwanted household goods like fridges, mattresses, and furniture for cash.

When they take offenders to court, councils need a faster and more effective legal system which means fly-tippers are given hard-hitting fines for more serious offences. Councils must be able to cover the full costs of bringing about successful prosecutions. Fines resulting from prosecutions are paid directly to the Court, and councils must recover costs through a separate process. Unfortunately, local authorities regularly end up clawing back far less than they had to spend on the duties associated with prosecution.

The Government should also consider asking manufacturers to provide more take-back services, allowing people to hand in old furniture and mattresses when they buy new ones.

The consultation document refers to proposals in the Government’s Litter Strategy to produce guidance to councils on what can be charged for at household waste and recycling centres and says that “Government’s view is that residents should be able to dispose of household DIY waste free of charge”<sup>2</sup>. Councils want to work with households so they can dispose of reasonable household waste easily and cost-effectively. However, when items which are clearly inappropriate are taken to household recycling centres, for example excessive amounts of DIY waste such as rubble, they may charge for a limited range of materials to avoid abuse of facilities intended for use by households and to offset the high cost of disposing of these items that would otherwise fall on council tax payers. This is a matter for councils to decide, and does not require further guidance from government.

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<sup>1</sup> DEFRA, Fly-tipping statistics for England, 2016/17

<sup>2</sup> Page 71

**3. Answers to questions on Part C: proposals for a new Fixed Penalty Notice for household duty of care offences related to fly-tipping**

**Question 82. Do you believe that householders are sufficiently aware of their duties and the risk of prosecution when passing their waste to an unauthorised person?**

Councils use all the information channels available to them to raise awareness of householder responsibilities on waste, such as their websites, social media and leaflets. This message may also be a key part of campaigns to crack down on fly-tipping campaigns.

Boston Borough Council, East Lindsey District Council, and South Holland District Council have run a campaign with a message of “Most People don’t want their rubbish to end up like this” to raise awareness about the duty of care. 1,050 fly tips have been removed in the last year by Boston Borough Council, East Lindsey District Council have cleared 1,229 and South Holland District Council have cleared 906<sup>3</sup>.

Hertfordshire County Council is running a Let’s Scrap Flytipping campaign. SCRAP stands for the steps householders can take including “Sspect all waste carriers, Check that they are registered with the Environment Agency”<sup>4</sup>.

**Question 83. What more could be done to improve householder awareness of their duty of care and prevent fly-tipping of household waste?**

It is difficult to see how councils could do more, given the pressure on resources.

**Question 84. Do you think that the Waste Duty of Care Code of Practice provides enough guidance on reasonable measures that can be taken to meet the household duty of care?**

The LGA does not have a view on this question.

**Question 85. Do you think there are any other reasonable measures to meet the household duty of care that should be set out in guidance to households?**

The LGA does not have a view on this question.

**Question 86. Do you think that the introduction of a FPN for the offence of a householder passing their waste to an unauthorised person would help tackle fly-tipping?**

The introduction of a new fixed penalty notice issued to householders could provide a useful alternative to prosecution for “duty of care” offences.

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<sup>3</sup> <http://www.boston.gov.uk/index.aspx?articleid=13022>

<sup>4</sup> <https://www.hertfordshire.gov.uk/services/recycling-waste-and-environment/recycling-and-waste/wasteaware-campaigns/lets-scrap-fly-tipping.aspx>

We encourage government to consider a wider range of solutions to fly-tipping, including those set out in Section 2 above. Criminal activity will not be deterred by a new fine for householders. Councils would like to see hard hitting penalties that send a strong message to illegal waste operators.

**Question 87. Do you think that government should provide further guidance to regulators on the use of the proposed FPN?**

Existing guidance on issuing and enforcing fixed penalty notices should provide all the information needed.

**Question 88: Do you think the proposed level of penalty for this FPN are correct?**

The proposed maximum penalty is £400 with a minimum discounted penalty of £120. These are set at the same levels as fixed penalty notice fines for fly tippers, and are designed to make the fine an effective deterrent by making it more expensive than complying with the law and hiring a registered waste carrier.

We agree that this a reasonable principle for setting the level of fines.

**Question 89. Following implementation of the FPN, do you think that local authorities should communicate how frequently they use these penalties, and the impact on fly-tipping?**

This should be a decision for councils. If government chooses to make publication of information a mandatory requirement this must be treated as a new financial burden and properly resourced.

**Question 90. Do you think the introduction of this FPN will impose any additional costs on local authorities?**

Local authorities will need to amend their enforcement policies and update their systems and processes for issuing fixed penalty notices. Costs will vary across areas, and individual councils will be able to provide more information on costs.

We would expect the costs to councils to be higher than the money that can be recouped through money collected in fines. This is based on the experience of councils who have used the existing system of prosecution, and the amount of time they have to put into collecting evidence and building a robust case.

If government wish to see proactive use of the new penalty this should be supported by additional funding for councils.

**Question 91. Do you think the introduction of this FPN will make savings for local authorities or other issuing authorities?**

It is difficult to estimate whether any savings would be made.

**Question 92. Do you think that other parties than local authorities and other issuing authorities could incur costs of benefit from the introduction of this FPN?**

The LGA is not aware of any costs that would be saved by other parties.

**Question 93. Do you think that the proposal will impose additional costs on yourself or your organisation?**

Not applicable to the LGA.

**Question 94. Do you have any other information on the possible cost or benefits of issuing fixed penalty notices?**

Not at national level. Individual councils may be able to address this question.

**Question 95. Do you think that issuing authorities should be able to offer an appeals process for people to dispute a household duty of care FPN?**

The consultation document notes there is no obligation for authorities issuing fixed penalty notices to offer an appeal process for other types of environment offences.

It is not clear why government thinks an appeals system would be necessary for a householder duty of care fixed penalty notice. For councils, it would be bureaucratic to set up an appeals system for one type of fixed penalty notice. It would also require additional time and resources

If local authorities were forced to include an appeals process as part of the new fixed penalty, this could have the unintended consequence of discouraging them from using the powers.