

North Yorkshire County Council
Business & Environmental Services
Executive Members

17 August 2018

DEFRA consultation on updated guidance on the household waste duty of care and new guidance local authorities on issuing fixed penalty notices

Report of the Assistant Director – Transport, Waste and Countryside Services

1.0 Purpose of report

- 1.1 To inform the Corporate Director Business and Environmental Services (BES) and the BES Executive Members of the Department for Environment Food and Rural Affairs (DEFRA) consultation on updated guidance for householders on meeting the waste duty of care and new guidance for local authorities on issuing proposed fixed penalty notices.
- 1.2 To seek approval for the attached response to the above consultation on behalf of the County Council to be sent to DEFRA.

2.0 Background

- 2.1 At the start of 2018 the Department for the Environment, Food and Rural Affairs (DEFRA) published a consultation on proposals to tackle crime and poor performance in the waste sector and introduce a new fixed penalty notice (FPN) for the householder waste Duty of Care. A report on the Consultation proposals to tackle crime and poor performance in the waste sector to BES Executive Members on the 23 March 2018 discussed the consultation and included a proposed consultation response, which members approved.
- 2.2 Further consideration is ongoing ahead of a final decision on how DEFRA will proceed.
- 2.3 This further consultation document focuses on the proposal to introduce a new FPN for household Duty of Care offences related to fly-tipping.
- 2.4 If a decision is taken to introduce a fixed penalty notice to provide a more proportionate response to breaches of this Duty of Care, DEFRA propose to issue non-statutory guidance to local authorities on how the FPN should be used, and update existing guidance in the waste Duty of Care Code of Practice, which sets out the waste duty of care requirements for householders, to provide greater detail on how to meet the duty of care. This guidance is being consulted on ahead of a final decision being taken on the proposed FPN, in order to allow for timely introduction if such a decision is taken.
- 2.5 The consultation <https://consult.defra.gov.uk/waste/consultation-household-waste-duty-of-care/> is open until 27th August 2018. A draft response to the consultation questions is attached as Annex 1.

3.0 The Consultation

- 3.1 Part A of the consultation seeks views on the guidance for householders on meeting their duty of care as set out in the updated Waste Duty of Care Code of Practice attached as Annex 2. To support householders in meeting their duty of care, alongside introducing the proposed FPN, government would issue updated non-statutory guidance for householders within the existing Waste Duty of Care Code of Practice.
- 3.2 Part B of the consultation relates to the guidance for local authorities in England on the use of the proposed new fixed penalty notice, attached as Annex 3. If a decision is taken to introduce the proposed new fixed penalty notice, the government would also issue guidance for local authorities on its use. This is intended to support local authorities in using the fixed penalty notices as a proportionate alternative to prosecution, and also provide householders with an expectation of how fixed penalties should be used.

4.0 Key Issues

4.1 Part A: Duty of care

4.2 Section 3.2: **What is household waste?** includes:

“For the purpose of applying the householder duty of care requirements, household waste is generally considered to be any waste produced within a domestic property. For the waste duty of care this includes septic tank sludge which is not used on agricultural land within the meaning of the Sludge (Use in Agriculture) Regulations 1989, and construction and demolition waste.

If a tradesperson carries out work on your property, generally they are responsible for the waste they produce and must comply with their own waste duty of care obligations in relation to that waste.

Household waste does not generally include waste from a property or part of a property that is mainly used for commercial business.”

- 4.2.1 This needs further explanation by DEFRA as to its legal standing regarding why “if a tradesperson carries out work on your property, generally they are responsible for the waste they produce...”. This appears to contradict section 75 (5) of the Environmental Protection Act 1990 –household waste means waste from (a) domestic property.
- 4.2.2 If householders dispose of waste arising from a tradesperson carrying out work in their home, the guidance needs to explain further what they should do with this waste. Would householders be breaking their duty of care and acting illegally if they disposed of these wastes themselves and treated them as household waste, would they need to register as an authorised carrier to transport the waste?
- 4.2.3 The title of the section and the first paragraph need to be amended they confuse what household waste is and the householder duty of care requirements. The title and the first paragraph need to be amended to read:
What wastes are covered by the householder duty of care requirements?
For the purpose of applying the householder duty of care requirements, any waste produced by the occupier (householder) of a domestic property is covered by the requirements.

- 4.2.4 The final sentence also requires rewording to read:
Waste from a property or part of a property that is mainly used for commercial business is commercial waste, the requirements for this waste are included in sections 1, 2, 4 and 5 of this guidance.
- 4.3 Section 3.3: **How should you dispose of your waste?** includes:
“If you have household waste which cannot be appropriately disposed of through your normal local authority waste collection service.....”
- 4.3.1 As the normal local authority collection waste collection service may be provided by contractors for local authorities it would be useful to include this in the guidance for householders as below:
If you have household waste which cannot be appropriately disposed of through your normal local authority waste collection service (this may be provided by a contractor on behalf of the local authority).....
- 4.4 Section 3.6: **What evidence can you use to demonstrate you have met your duty of care?** – It would be useful to add guidance in this section on how long householders should keep these records for.
- 4.5 A potential issue throughout section 3 of the guidance is the use of the term “householder”, as this is not used/defined in the primary legislation the Environmental Protection Act 1990, which uses the terms “an occupier of domestic property” and “persons resident”.
- 4.6 Part B: Guidance for local authorities in England on the use of the proposed new fixed penalty notice.
- 4.6.1 The Draft Guidance for local authorities details the approach that should be taken in issuing Fixed Penalty Notices for Fly Tipping. In this case the FPNs can only be issued by collection authorities which does not give the County Council as a disposal authority the opportunity to issue FPNs as we had suggested would be useful in the response to the earlier consultation
- 5.0 Financial Impact**
- 5.1 There is no direct financial impact resulting from the consultation.
- 6.0 Legal Implications**
- 6.1 There are no direct legal implications resulting from the consultation.
- 7.0 Equalities Impact**
- 7.1 There are no impacts on any of the protected characteristics for equalities as a result of the matters discussed in this report. An Equalities Impact Assessment screening form is attached as Annex 4.

8.0 Recommendation

- 8.1 It is recommended that BES Executive Members :
- 8.2 Consider the issues raised by the DEFRA consultation on updated guidance on the household waste duty of care and new guidance local authorities on issuing fixed penalty notices, and;
- 8.3 Endorse the attached response to the above consultation and allow the Assistant Director Transport Waste and Countryside Services to submit the response on behalf of the County Council.

IAN FIELDING

Assistant Director Transport Waste and Countryside Services

Author of Report: Andy Holmes

Background Documents: None

Response template for e-mail and postal returns

About you**1. What is your name?****2. What is your email address?****3. Would you like anything in your response to be confidential?**

a. No

If you answered Yes to this question please give the reason why you are requesting anything within your response be confidential:

4. Are you responding as or on behalf of:

b. a local authority

If you answered h. please specify

5. If you are replying as an individual, do you:

a. run your own waste business

b. work for a business or organisation in the waste sector

c. neither of the above

6. If you are not replying as an individual, what is your business or organisation?**7. If you are responding as a business or part of an organisation, where is it established, or if you are responding as a householder, where do you live?**

a. England

Part A: Guidance for householders**Q8. Does the guidance clearly set out the duty of care requirements for householders?**

Yes with conditions (please specify)

Section 3.2 What is household waste?

This section needs further explanation by DEFRA as to its legal standing regarding why "if a tradesperson carries out work on your property, generally they are responsible for the waste they produce...". This appears to contradict section 75 (5) of the Environmental Protection Act 1990 –household waste means waste from (a) domestic property.

If householders dispose of waste arising from a tradesperson carrying out work in their home, the guidance needs to explain further what they should do with this waste. Would householders be breaking their duty of care and acting illegally if they disposed of these wastes themselves and treated them as household waste, would they need to register as an authorised carrier to transport the waste?

The section also needs a different title it confuses what household waste is and the householder duty of care requirements.

The title of the section and the first paragraph need to be amended to read:

What wastes are covered by the householder duty of care requirements?

For the purpose of applying the householder duty of care requirements, any waste produced by the occupier (householder) of a domestic property is covered by the requirements.

The final sentence also requires rewording to read:

Waste from a property or part of a property that is mainly used for commercial business is commercial waste, the requirements for this waste are included in sections 1, 2, 4 and 5 of this guidance.

Section 3.3: **How should you dispose of your waste?** includes:

"If you have household waste which cannot be appropriately disposed of through your normal local authority waste collection service....."

As the normal local authority collection waste collection service may be provided by contractors for local authorities it would be useful to include this in the guidance for householders as below:

If you have household waste which cannot be appropriately disposed of through your normal local authority waste collection service (this may be provided by a contractor on behalf of the local authority).....

Q9. Does the guidance provide sufficient detail on the reasonable steps householders should be expected to take to ensure that waste is transferred appropriately?

Yes

Q10. Does the guidance provide sufficient detail on how a householder can demonstrate they have met their duty of care?

Yes with conditions (please specify)

What other reasonable means of demonstrating the householder has met their duty of care should be included, if any?

Section 3.6 **What evidence can you use to demonstrate you have met your duty of care?**

It would be useful to add guidance in this section on how long householders should keep these records for.

A potential issue throughout section 3 of the guidance is the use of the term “householder”, as this is not used/defined in the primary legislation the Environmental Protection Act 1990, which uses the terms “an occupier of domestic property” and “persons resident”.

Q11. Is the guidance clear enough on a householder's right to reject a fixed penalty notice, and to provide evidence to the local authority to deter prosecution?

Yes Yes with conditions (please specify) No

Do you have any further comments on the presentation of a householder's means of challenging a fixed penalty notice?

No comment

Part B: Guidance for local authorities

Q12. Does the guidance provide sufficient detail for local authorities to use the fixed penalty notices effectively?

Yes with conditions (please specify)

What other guidance, if any, should be included to ensure effective use of fixed penalty notices?

The Draft Guidance for local authorities details the approach that should be taken in issuing Fixed Penalty Notices for Fly Tipping. In this case the FPNs can only be issued by collection authorities which does not give the County Council as a disposal authority the opportunity to issue FPNs as we had suggested would be useful in the response to the earlier consultation.

Q13. Does the guidance provide sufficient detail on how the new fixed penalty notices should be used proportionately?

Yes Yes with conditions (please specify) No

What other guidance, if any, should be included on proportionate use of fixed penalty notices?

No comment

Q14. Is the guidance clear on how duty of care offences happening across local authority borders or the England and Wales border should be handled?

Yes Yes with conditions (please specify) No

No comment

Q15. Is the right for a householder not to pay an FPN, and to provide evidence to justify a case not being taken to prosecution, clear in the guidance?

Yes Yes with conditions (please specify) No

No comment

Q16. If you are a local authority that would make use of the FPN, would you carry out awareness raising activity alongside it as recommended in the guidance?

Yes Yes with conditions (please specify) No

No comment

Q17. What resource requirement would you expect the good practice reporting guidance to place on local authorities?

No comment

Q18. What, if anything, should be added to or removed from the list of recommended reporting requirements?

No comment

DRAFT

Waste Duty of Care Code of Practice

March 2016

Presented to Parliament and to the National Assembly for Wales pursuant to Section 34(9) of the Environmental Protection Act 1990

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1. Overview

The duty of care legislation makes provision for the safe management of waste to protect human health and the environment.

This code of practice (the Code) is issued under section 34 of the Environmental Protection Act 1990 (the EPA). It sets out practical guidance on how to meet your waste duty of care requirements, but following the guidance does not replace your obligation to comply with the duty of care itself.

This Code applies to you if you import, produce, carry, keep, treat, dispose of or, as a dealer or broker have control of, certain waste in England or Wales.

Failure to comply with the duty of care is an offence subject to an unlimited fine on conviction. In some instances a fixed penalty notice may be issued for failure to comply with the duty of care in place of prosecution. The Code is admissible as evidence in legal proceedings and its rules **must** be taken into account where relevant to questions raised in the case.

If your waste activities are authorised or registered in Scotland or Northern Ireland but you deal with waste in England or Wales, you need to follow this Code. You need to follow Scotland's and Northern Ireland's codes of practice if you operate across borders.

The regulators for the duty of care are the Environment Agency (EA) in England, Natural Resources Wales (NRW) in Wales and local authorities.

Householders have a separate duty of care for their household waste, also under section 34 of the Environmental Protection Act. Non-statutory guidance is included in the Code to help householders meet their duty of care.

2. Scope of the duty of care

2.1 Duty of care: who it applies to

The duty of care applies to anyone who imports, produces, carries, keeps, treats, disposes of, or are a dealer or broker that has control of, controlled waste (referred to below for the purpose of this Code as a “waste holder”).

Waste holders are a:

- **waste producer** – any person whose activities produce waste. This includes private sector businesses such as shops, offices, factories and tradespersons (e.g. electricians, builders, glaziers and plumbers) and public sector services such as schools, hospitals and prisons, as well as charities and voluntary and community groups. It also includes permitted operations or exempt facilities that produce waste as part of their activities. If you carry out a waste operation that changes the nature or composition of the waste, you are regarded as a producer of the waste
- **waste carrier** – any person, who normally and regularly collects, carries or transports waste in the course of any business or with a view to profit, including those that produce and transport their own waste e.g. builders and landscape gardeners
- **waste dealer** – any person, business or organisation that buys waste with the aim of subsequently selling it, including in circumstances where the dealer does not take physical possession of the waste
- **waste broker** – any person, business or organisation that arranges waste transportation and management of waste on behalf of another party, such as organisations contracting out waste collection services e.g. local authorities, supermarkets and producer responsibility compliance schemes
- **waste manager** – any person involved in the collection, transport, recovery or disposal of controlled waste, including the supervision of these operations, the after-care of disposal sites and actions taken as a dealer or broker

A separate duty of care applies to **householders** (occupiers of a domestic property), limited to taking all reasonable measures available to them to ensure their waste is only transferred to an authorised person.

For the purposes of this Code, householders are not treated as a ‘waste holder’ as defined above.

Separate guidance on householder duty of care requirements is set out in section 3.

2.2 Waste holders: what your duty of care applies to

The duty of care requirements apply to household, industrial and commercial waste, also known as **controlled waste**.

Waste is any substance or object that the holder discards, intends to discard or is required to discard. The meaning of “discard” applies to “disposal” and “recovery” operations and processes and can be intentional or unintentional on the part of the holder. Whether a substance or object is waste is determined on a case by case basis. If you are unsure you can use the ‘legal definition of waste guidance’ to check if something is classified as waste.

The following definitions describe common waste operations and processes:

“Recovery” is any operation which has the main result of waste serving a useful purpose by replacing non-waste materials that would otherwise have been used to fulfil a particular function. An example is incineration for energy recovery (for further examples see Annex II to the Waste Framework Directive). Preparing for re-use and recycling are both recovery operations.

“Preparing for re-use” is the operation or process of checking, cleaning or repairing products that have previously been discarded so that they can be re-used without any other pre-processing, for example repairing bicycles, furniture or electrical or electronic equipment which have been previously discarded by their owners.

“Recycling” is any operation by which waste is reprocessed into products, materials or substances, whether for its original or other purposes, for example crushed waste glass graded for blasting or playground surfaces from waste tyres. (It does not include energy recovery or reprocessing into materials to be used as fuels or for backfilling operations.)

“Disposal” is any operation which is not recovery (even where the operation has a secondary consequence of reclaiming substances or energy). An example is landfill (for further examples see Annex I to the Waste Framework Directive).

2.3 Waste holders: what your duty of care does not apply to

See Schedule 1 to the Controlled Waste (England and Wales) Regulations 2012 to check if your waste is controlled waste because of its source or type. Wastes not classed as controlled waste are:

- wastes listed in Article 2 of the Waste Framework Directive e.g. waste waters, decommissioned explosives, radioactive waste
- **waste containing animal by-products** where it is collected and transported in line with the Animal By-Products Regulation (see guidance for England and Wales)
- **sewage, sludge or septic tank sludge** where it is supplied, managed or used in the ways described in regulation 3 of the Controlled Waste (England and Wales) Regulations 2012.

This Code does not cover the extractive waste duty of care. If you are responsible for managing waste from prospecting, extraction, treatment and storage of mineral resources and working quarries (extractive waste) under the EPA you are subject to different duty of care requirements.

2.4 Waste holders: how long your duty of care lasts

You have a responsibility to take all reasonable steps to ensure that when you transfer waste to another waste holder that the waste is managed correctly throughout its complete journey to disposal or recovery.

You can do this by:

- checking the next waste holder is authorised to take the waste - see section 4.4 for examples of authorisation
- asking the next waste holder where they are going to take the waste, and checking that the intended destination is authorised to accept that waste.
- carrying out more detailed checks if you suspect the waste is not being handled in line with the duty of care, e.g. requesting evidence that your waste has arrived at the intended destination and that it has been accurately described

If you receive waste you should cooperate with the previous waste holders in any measures that they are taking to comply with their duty of care. This includes supplying evidence that previous holders may need to ascertain that their waste has reached its end of waste location. Each holder in the waste chain shares the duty of care obligations.

- If you use a waste dealer or broker, you each have a responsibility to comply with your duty of care obligations and to ensure that the waste is only transferred to an authorised person or establishment.
- If you transfer waste to a waste treatment facility for preliminary treatment, you will generally still be responsible for the complete recovery or disposal operation (in accordance with Article 15(2) of the Waste Framework Directive).

“Treatment” is a recovery or disposal operation, including preparation prior to recovery or disposal.

- If you carry out a waste operation that changes the nature or composition of the waste, you are regarded as a producer of the waste when it leaves your site.

3. Householders: waste duty of care requirements

As a householder, you have a duty to take all reasonable measures available to you in the circumstances to ensure that you only transfer household waste produced on your property to an authorised person. This section of the code of practice is non-statutory but provides useful information to help you meet your duty of care.

If you do not take all reasonable measures available to you in the circumstances to meet your duty of care, you could face a fixed penalty notice or prosecution and, on conviction, a fine.

If a fixed penalty notice is offered, you can pay this and discharge any liability for a breach of the duty of care in order to avoid being prosecuted for the offence. You can choose not to accept the penalty and can defend the prosecution through the courts or provide evidence that prosecution through the courts is not appropriate.

3.1 Who is a householder?

The householder duty of care applies to all occupiers of any domestic property.

3.2 What is household waste?

For the purpose of applying the householder duty of care requirements, household waste is generally considered to be any waste produced within a domestic property. For the waste duty of care this includes septic tank sludge which is not used on agricultural land within the meaning of the Sludge (Use in Agriculture) Regulations 1989, and construction and demolition waste.

If a tradesperson carries out work on your property, generally they are responsible for the waste they produce and must comply with their own waste duty of care obligations in relation to that waste.

Household waste does not generally include waste from a property or part of a property that is mainly used for commercial business.

3.3 How should you dispose of your waste?

If you have household waste which cannot be appropriately disposed of through your normal local authority waste collection service (or within the boundary of your home) you can:

- see if your local authority's household waste and recycling centre accepts the waste and take it yourself
- check if your local authority offers special collection services
- use a private business that provides a waste collection service
- take your waste to a site run by a private business with the appropriate authorisations

You should check whether a person or business is authorised to take waste before you transfer your waste to them. An authorised person includes:

- the local authority that provides your normal waste collection service

- someone who has a valid registration as a carrier, broker or dealer of waste
- an operator of a waste site with an appropriate environmental permit or exemption

3.4 What reasonable measures should you take when a private business takes your waste?

If a private business takes away your waste rather than the local authority, you should check that they are an authorised carrier with up to date and valid registration. Each carrier should have a registration number starting either CBDL or CBDU, followed by a set of numbers.

In England you can check whether a waste carrier is registered on the [Environment Agency's online public register](#) of waste carriers, brokers and dealers using their registration number, business name, or postcode or call 03708 506 506.

In Wales you can check on the [Natural Resources Wales public register](#) of carriers, brokers and dealers or call 0300 065 3000.

Instances where a private business is exempt from registering are very rare in the context of handling household waste.

3.5 What reasonable measures should you take when taking your waste to a private waste site?

If you take your waste to a site run by a private business you should similarly check that they have a permit or exemption.

In England you can check if a waste site has a permit or exemptions through the [Environment Agency's online public registers](#) for waste operations and waste exemptions using their registration number, business name, or postcode, or call 03708 506 506.

In Wales you can check on the [Natural Resources Wales public register](#) of waste, water quality, water resources and installation permits or call 0300 065 3000.

3.6 What evidence can you use to demonstrate you have met your duty of care?

To demonstrate you've met your duty of care, you could do any of the following:

- Record any checks you make, including the operator's registration, permit or exemption number.
- Keep a receipt for the transaction which includes the business details of a registered operator.
- Ask for a copy of the carrier's waste licence or site's permit.
- Record details of the business and of any vehicle used (registration, make, model, colour), which can be linked back to an authorised operator.

These steps can help ensure your waste will be handled appropriately and not cause harm to others or the environment. These steps can also help enforcement officers catch those responsible if your waste is fly-tipped.

You should also give extra caution to offers to take your waste at a price significantly lower than other offers, where cash is the only accepted form of payment, or where a service can only be found informally through social media.

4. Waste holders: waste duty of care requirements

You **must** take all reasonable steps to:

1. prevent unauthorised or harmful deposit, treatment or disposal of waste (see section 4.1)
2. prevent a breach (failure) by any other person to meet the requirement to have an environmental permit, or a breach of a permit condition (see section 4.2)
3. prevent the escape of waste from your control (see section 4.3)
4. ensure that any person you transfer the waste to has the correct authorisation (see section 4.4)
5. provide an accurate description of the waste when it is transferred to another person (see sections 4.5 and 4.6)

Failure to comply with the duty of care requirements is a criminal offence and could lead to prosecution.

4.1 Prevent unauthorised or harmful deposit, treatment or disposal

It is illegal to deposit controlled waste except under and in accordance with an environmental permit or a registered waste exemption.

It is also illegal to treat, keep or dispose of controlled waste in a way that is likely to cause pollution of the environment or harm to human health.

Examples of unauthorised or harmful deposit, treatment or disposal include the following:

- **operating illegal waste sites** without the correct permit or appropriate exemption to accept or manage a particular waste
- **misclassification of waste** as a non-waste or a waste that does not fit the written description
- **fly-tipping** is the deliberate unlawful dumping of waste e.g. at the roadside or on privately owned land - the scale can vary from a single bin bag of waste to large quantities of waste dumped from trucks

If you suspect that someone is fly-tipping, illegally depositing, treating or disposing of waste, do not give your waste to them or take waste from them. If you suspect that you have unknowingly accepted misclassified waste, isolate the waste and report all the details to the regulator. You should report any suspected illegal activity to the EA or NRW.

4.2 Prevent a breach of an environmental permit or a breach of a permit condition

Normally the operator of a waste treatment or recovery or disposal activity needs an environmental permit or to register an exempt waste operation.

Environmental permits set out specific conditions on how a waste operation **must** be carried out. The conditions will include limits to the amount of waste that can be handled, restrictions to the types of waste that can be handled, and measures that need to be put in place to protect the environment and human health.

Some waste activities may qualify for a waste exemption rather than a permit. The exemption must be registered and these too are subject to strict conditions such as limits to the amount of waste that can be handled or how they are handled.

There are some operations which do not need to be registered. These relate to the temporary storage of waste pending collection. Although you do not have to register these operations, you must still comply with the conditions of the operation.

Examples of activity that would breach a permit condition or exemption limit include the transfer of waste:

- to a facility that does not have an appropriate permit or exemption to accept or manage that type of waste
- in a condition which means that it cannot be managed or stored safely pending removal e.g. waste being stored outside the confines of buildings or bunds
- in a quantity that causes a facility to exceed the limits allowed by its permit or exemption e.g. increasing or expanding piles of waste

If you suspect that someone does not have an appropriate environmental permit or registered exemption, or that they are breaching a condition of their permit or exemption, you **must not** give them your waste or take waste from them. You should report suspected illegal activity or breaches to permits or exemptions to the EA or NRW.

4.3 Prevent the escape of waste

To prevent waste from escaping from your control, or from your employees' or waste contractors' control, you **must** make sure it is handled and stored safely and securely.

You can do this by:

- using containers that are:
 - clearly and correctly labelled
 - suitable for the storage, transport and subsequent management activities by you and following waste holders
 - designed to prevent leakage, contamination or spoiling of waste (spoiled waste is waste that cannot be managed in the way intended)

- limiting access to the waste to only those that are authorised to handle it. This will help prevent accidents, pests, incidents of vandalism and theft. It will also stop unauthorised people adding to the waste and so invalidating the waste description (see section 4.5)
- ensuring vehicles are covered and waste is secured appropriately for transport purposes

Before your waste is collected and disposed of or recovered you **must** assess and classify waste as set out in the waste classification guidance. This identifies whether the waste is hazardous or not, and which controls apply to the movement of the waste to prevent harm to people and the environment.

4.4 Transfer waste to an authorised person

You should check whether a person or business is authorised to take waste before you transfer your waste to them. An authorised person is one of the following:

1. someone who has a valid registration as a carrier, broker or dealer of waste
2. a waste management operator who has an environmental permit or registered exemption to accept such waste

You can ask the person or business you transfer your waste to or who arranges the transfer for evidence of their authorisation, such as a copy of their permit or proof of their exemption registration.

You should also use the public register to check any evidence they provide. The register contains information on:

- waste carrier, broker and dealer registrations
- environmental permits for waste operations
- waste exemptions

In England, you can check registration on the EA's public register or call 03708 506 506. In Wales you can check on the NRW's public register or call 0300 065 3000.

The person receiving the waste must also check that the previous holder has complied with their duty of care. If you suspect that the previous waste holder has breached their duty of care (e.g. by misdescribing the waste or not properly storing it), do not accept the waste and report your suspicions to the EA or NRW.

Record any checks you make as you can use this as evidence that you have met your duty of care.

If you use a dealer or broker to manage your waste, they **must** be registered as a dealer or broker with their regulator, even if they do not take physical possession of the waste.

Where a dealer or broker is the transferor or transferee of the waste, their details (including their registration number) **must** be included in the waste transfer information.

Waste carriers, dealers and brokers **must** present evidence of registration if requested by a police constable, an authorised officer of the EA, NRW or local authority. It is an offence not to do so without reasonable excuse and you could be issued with a fixed penalty notice under section 5B of the Control of Pollution (Amendment) Act 1989. To register as a carrier, dealer or broker, contact the EA in England or NRW in Wales.

4.5 Provide an accurate description of waste

When you transfer waste to another person, you **must** ensure that:

1. a written description of the waste is agreed and signed by you and the next holder. The description is part of the waste information you must provide.

For non-hazardous waste you can do this by using:

- “edoc” – a free national electronic duty of care system that creates, shares, signs and stores waste transfer notes and season tickets for you online - see www.edoconline.co.uk for more information
- a paper “waste transfer note” – a form to fill in or you can use alternative documentation e.g. an invoice, as long as it contains all the required information
- a “season ticket” - a single waste transfer note that covers a series of non-hazardous waste transfers. The season ticket can last up to one year and be used for regular transfers of the same type of non-hazardous waste with the same carrier. If you have several sites serviced by the same carrier with the same types of waste collected, they can be listed in a schedule to the season ticket. You should keep a record of the collection times and the quantity of waste

A waste information note is not required for non-hazardous waste if the waste holder does not change on the transfer of waste e.g. the waste is moved to other premises belonging to the same business. However, it is best practice that the business understands who has responsibility for that waste and a record is kept of internal transfers for audit purposes.

For hazardous waste you need to use a:

- consignment note - this applies to all movements of hazardous waste including collections from businesses by registered waste carriers, movements from one premises to another within the same business and all movements from the waste producer’s premises. The only two exceptions where a consignment note is not needed are where domestic hazardous waste (other than asbestos waste) is removed from a domestic household or waste is imported or exported under international waste shipment controls (which uses an equivalent note)
2. the description contains a statement confirming that you have fulfilled your duty to apply the waste hierarchy as required by regulation 12 of the Waste (England and Wales) Regulations 2011 (see **Waste Hierarchy Guidance** for England and Wales)
 3. the description of the waste is accurate and contains all the information you are reasonably in a position to provide to ensure the lawful and safe handling, transport, treatment, recovery or disposal by subsequent holders, including:
 - classification of the waste by using the appropriate codes (referred to as the List of Wastes (LoW) or European Waste Catalogue (EWC)) - Appendix A of the Waste Classification Technical Guidance provides a list of the codes as well as advice on how to assess and classify waste
 - its quantity and nature and whether it is loose or in a container
 - if in a container, the type of container
 - the time and place of transfer
 - the SIC code of the transferor (current holder of the waste)

- the name and address of the transferor and transferee (person receiving the waste) and their signatures (the signature can be electronic as long as an enforcement officer can view it)
- the capacity in which the transferor and transferee are acting (e.g. as a producer, importer or registered waste carrier, broker or dealer) and their relevant authorisation to act in that capacity (e.g. their permit number or registration number)

You should also consider whether there are any problems associated with the waste that you need to describe so that subsequent users can handle it properly. Examples include whether the waste:

- needs a special container
- needs particular treatment or handling, for example batteries or waste electrical and electronic equipment (WEEE)
- can or cannot be mixed with other wastes
- could cause a problem during treatment or disposal (e.g. dusty, smelly or otherwise offensive waste)
- has been processed (e.g. undergone treatment) or had certain materials removed from it (e.g. packaging) to meet basic characterisation requirements of wastes destined for landfill
- displays a hazardous property (e.g. flammable) or presents a chemical hazard
- has other issues (e.g. risk of spillage or leakage of liquids)

If you receive waste, you **must** ensure the waste matches the written description and that your permit allows you to accept such waste.

If you are operating under a waste exemption, you **must** ensure that by accepting any waste you are not contravening the exemption criteria e.g. waste limits.

4.6 Retention of waste documentation

You **must** keep a copy of the waste description for waste you have transferred or received (either electronically or on paper format) for:

- two years for non-hazardous waste
- two years for season tickets
- three years for hazardous waste consignment notes (different retention periods apply for consignees (receivers) of hazardous waste; see further detail in the hazardous waste guidance)
- six years if you are a landfill operator for non-hazardous waste (for landfill tax purposes)
- the lifetime of your permit if you are a landfill operator for hazardous waste
- the lifetime of an environmental permit (when the permit is surrendered, the regulator often requires a history of the types of waste received)

If an authorised officer of the EA, NRW or local authority asks you to provide the written description of waste, or a copy of it, and you fail to do so, they can issue a fixed penalty notice. Where the waste is hazardous waste, a variable monetary penalty for breach of the requirements to supply information may be issued.

5. Other waste laws for waste holders

A number of other waste laws are relevant to waste holders in particular circumstances. Some of these are briefly described below.

5.1 Hazardous Waste

If you produce or deal with hazardous waste you **must**:

- comply with the Hazardous Waste Regulations
- follow specific requirements for consigning hazardous waste

5.2 Producer Responsibility Regulations

If you manufacture, import or sell packaging, electrical and electronic equipment (EEE), batteries, or end-of-life vehicles (ELVs) you **must** follow the Producer Responsibility Regulations in England and Wales.

5.3 Separate Collection

- If you **collect** waste paper, metal, plastic or glass you **must** comply with the rules on **separate collection** (see guidance for England and Wales). The rules require that you collect waste paper, plastic, metal and glass separately from each other and from other wastes where it is both:
 - necessary to comply with the waste hierarchy and for the protection of human health and the environment, and to facilitate or improve recovery (see the **Waste Hierarchy Guidance** for England and Wales)
 - technically, environmentally and economically practicable (TEEP) (see European Commission guidance (paragraphs 4.3.4 and 4.4) for guidance on TEEP practicability tests)

Where waste paper, metal, plastic or glass has been collected separately, all reasonable steps **must** be taken to keep them separate from other waste or materials.

- If you are a **materials facility** and receive household waste (or household waste like material) consisting of mixed glass, metal, paper or plastic for separating out you **must**:
 - sample and test the materials you receive and send out
 - record the information
 - report every three months to the regulator

See the **Materials Facilities Guidance** for England and Wales, for details on when, how and what should be recorded.

5.4 Landfill

If you send waste to landfill or operate a landfill site:

- you **must** comply with the relevant permitting requirements in England and Wales for the landfilling of waste

- you **must** comply with waste acceptance rules required by legislation - if you do not, the landfill operator will be unable to accept your waste
- the written description of waste **must** contain details of any pre-treatments or processes that have been applied to the waste
- you **must** comply with the rules regarding landfill tax in England, (see the [general guide to landfill tax](#)), and Landfill Disposals Tax in Wales, (see the [Welsh Revenue Authority guidance](#)).

If your waste is being disposed of at a landfill site in Wales, you can check on the Welsh Revenue Authority list of landfill site operators to see if the landfill site is an authorised landfill site.

In Wales you may become liable to Landfill Disposals Tax on an unauthorised disposal if you knowingly caused or knowingly permitted an unauthorised disposal to be made. In some circumstances, it will be presumed that a person knowingly caused or knowingly permitted an unauthorised disposal. This is where, at the time of the disposal:

- a person controlled or was in a position to control a motor vehicle or trailer from which the disposal was made, or
- a person was the owner, lessee or occupier of the land on which the disposal was made.

If HMRC find you have deliberately supplied false information or withheld information which causes another person to make an incorrect landfill tax declaration, you will be liable to a civil penalty. The maximum penalty for misrepresentation is equal to the amount of the under-declared landfill tax.

HMRC can also recover landfill tax from those who dispose of waste, or knowingly facilitate the disposal of waste, at sites without a permit. This also applies to material deposited at permitted sites if not expressly exempt.

The WRA is also able to charge unauthorised disposal rate (initially £133.45 per tonne) on disposals made outside of an authorised landfill site (an unauthorised disposal). A person may become liable to the unauthorised disposals rate on an unauthorised disposal either where they made the disposal, or where they knowingly caused or knowingly permitted the disposal to be made.

If you are a landfill site operator there are further details on the requirements you **must** follow.

In Wales you must be registered as an authorised landfill site with the Welsh Revenue Authority (WRA) and you must comply with the Landfill Disposals Tax (Wales) Act 2017 (and legislation made under it) which makes provision for tax to be charged on taxable disposals in Wales.

5.5 Importing or exporting waste

If you import or export waste, you **must** comply with the European and UK rules that govern how you can ship waste into or out of the country.

Department for Environment, Food and Rural Affairs

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

July 2018

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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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Waste.RegulationandCrime@defra.gsi.gov.uk

Initial equality impact assessment screening form (As of October 2015 this form replaces 'Record of decision not to carry out an EIA') This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.			
Directorate	BES		
Service area	Waste Management		
Proposal being screened	NYCC's formal response to DEFRA consultation on updated guidance on the household waste duty of care and new guidance to local authorities on issuing fixed penalty notices.		
Officer(s) carrying out screening			
What are you proposing to do?	Respond to Consultation		
Why are you proposing this? What are the desired outcomes?	To raise North Yorkshire County Council's opinions on the proposals being put forward by DEFRA.		
Does the proposal involve a significant commitment or removal of resources? Please give details.	No		
Is there likely to be an adverse impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics? As part of this assessment, please consider the following questions:			
<ul style="list-style-type: none"> To what extent is this service used by particular groups of people with protected characteristics? Does the proposal relate to functions that previous consultation has identified as important? Do different groups have different needs or experiences in the area the proposal relates to? 			
If for any characteristic it is considered that there is likely to be a significant adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.			
Protected characteristic	Yes	No	Don't know/No info available
Age		✓	
Disability		✓	
Sex (Gender)		✓	
Race		✓	
Sexual orientation		✓	
Gender reassignment		✓	
Religion or belief		✓	
Pregnancy or maternity		✓	
Marriage or civil partnership		✓	
NYCC additional characteristic			
People in rural areas		✓	
People on a low income		✓	
Carer (unpaid family or friend)		✓	

Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.	No			
Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.	No			
Decision (Please tick one option)	EIA not relevant or proportionate:	<input checked="" type="checkbox"/>	Continue to full EIA:	
Reason for decision	<p>The report sets out NYCC's formal response to proposed DEFRA guidance on two issues. The first issue (householder's waste duty of care) is of more interest to NYCC as a higher tier authority and the report suggests some clarifications. The second issue (guidance around fixed penalty notices for fly-tipping) is only relevant to waste collection authorities.</p> <p>The updated guidance on householder's duty of care will, once implemented, apply to all residents. Older resident householders, or those who are disabled could be expected to rely more on third parties to remove and dispose of their household waste rather than transport the waste to a Household Waste Recycling Centre themselves. Our consultation responses aim to push DEFRA into providing clearer guidance. Therefore we do not believe that our response will have any negative impact on any of the protected characteristic groups.</p>			
Signed (Assistant Director or equivalent)	Ian Fielding			
Date	3 August 2018			