

Officer Decisions

Chief Officer for Highways, Infrastructure Development and Waste - Meg Booth

Summary of Matter or Issue Requiring Decision

Response to Defra and Welsh Government consultation on updated guidance on the household waste duty of care

About you

1. What is your name?

Devon County Council officer response

2. What is your email address?

waste@devon.gov.uk

3. Would you like anything in your response to be confidential?

a. No x

4. Are you responding as or on behalf of:

a. an individual

b. a local authority x

c. a business

d. a trade association

e. a professional body

f. an NGO

g. a consultant

h. another type of organisation

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?

Local Authority Waste Disposal Authority

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?

England

Part A: Guidance for householders

Q8. Does the guidance clearly set out the duty of care requirements for householders?

Yes x

The definition of household waste under the guidance is likely to lead to more confusion from householders with regard to DIY/ construction and demolition type wastes. We charge for this type of waste at our network of HWRCs as our view is that under the Controlled Waste Regulations 2012 it is not household waste. Whilst we understand why DEFRA have chosen to use this general definition for the guidance it is likely to cause further confusion for householders. Perhaps a better approach could be to refer to 'waste generated by the householder'.

This opportunity could be used to strengthen the message that all waste created by tradesmen undertaking works at a residential property is deemed to be commercial waste and the responsibility of the tradesperson to dispose of responsibly and should have been included within their price.

The guidance is clear to Local Authorities & similar bodies and in the main comprehensive. However it is not the sort of guidance that a householder is likely to read unless they were specifically directed to it. It is quite long and written in language that the general public tend not to be familiar with. An A5 leaflet with a flow chart and easy to follow bullet points in plain English may be a better format for ease of public understanding.

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 x

What other reasonable steps, if any, should be included?

Stronger emphasis could be given to being cautious of those waste carriers who only accept cash payments and are not prepared to give a bona fide receipt which includes company address and registration number.

Householders could be encouraged to report to the Environment Agency when they have found that a particular waste carrier does not appear to be have the necessary registrations in place, or if they are suspicious of potentially illegal activity.

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

x Yes

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

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?

x No

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

The guidance is written for a Local Authority and not the householder. There is no detail of what would constitute sufficient evidence for the LA to deter prosecution. The LA would have strong evidence to issue a FPN and this would be used to pursue a prosecution. We would agree that failure to pay a FPN should be pursued further if necessary in order to reinforce the FPN system.

Part B: Guidance for local authorities

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

Yes x

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

The advice given is helpful to a point. However it is not clear how 'householders should not be penalised for minor breaches which do not lead to environmental harm' should be interpreted. 'Environmental harm' is difficult to define and could undermine the FPN system if LAs have to prove that environmental harm has been caused by a householder failing to comply with their duty of care for every FPN issued. We would agree however that a proportionate response should be taken to each case.

An LA should have the option to issue a FPN to a householder who consistently fails to present their waste for collection as prescribed by the LA. The householder should have a Duty of Care to present their waste for collection appropriately in line with the LA collection policies. Hence just 'putting the waste out for collection' which is contrary to the collection policies and methods in place should not relieve the householder of their responsibilities and should be seen as a breach of Duty of Care by the householder. Putting out side waste when the LA has a clear policy in place not to collect such waste can lead to litter problems as the waste is left in the street and could be construed as 'environmental harm' particularly if it contains plastic.

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

x Yes

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

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

x Yes

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?

x Yes

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?

x Yes

In Devon we are looking at a multi agency approach with regard to littering and fly tipping and the householder's duty of care will be included within the educational work that we plan to do.

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

This information is already likely to be recorded although recording total spent may be difficult as time spent may not be recorded and would only be an estimate. Reporting through WDF would seem a sensible way forward.

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

Total cost may be difficult and onerous to report as time spent on FPN work is not likely to be accurately recorded and hence will only ever be an estimate.

Summary of Reason(s) for Decision Taken	
Summary of Alternatives or Options considered and rejected	N/A
Details of any conflict of interest and dispensation granted to the Officer taking the decision or by any Member of the Council in delegating responsibility for any specific express delegation	N/A
Contact for enquiries/further information	Wendy Barratt, Head of Waste Management 01392 383000
Decision Date	15 August 2018

A copy of this decision and any supporting documentation considered by the Officer taking this decision may also be made available or inspection by the public at the Council's Offices or posted upon payment of any copying and postage charges. Any member of the public wishing to take up either of these options is asked to please ring 01392 382888 or email: members.services@devon.gov.uk