

EXPLANATORY MEMORANDUM TO

THE HOUSEHOLD WASTE (FIXED PENALTY AND PENALTY CHARGE) REGULATIONS 2015

2015 No. 969

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The attached Regulations specify the range of penalties, and the amount which may be paid after early payment discount, applying to breaches of household waste collection requirements under the Environmental Protection Act 1990 (EPA) and the London Local Authorities Act 2007 (LLAA). They also make some modifications to the application of the appeals procedure under the LLAA.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Under changes made to the EPA and the LLAA by the Deregulation Act 2015, waste collection authorities and London borough councils can impose a monetary penalty on any person who fails to comply with a requirement imposed under those Acts related to the collection of household waste where that failure causes a nuisance or is detrimental to any amenities of the locality. These Regulations set the levels of the monetary penalty that may be imposed at between £60 and £80. They also provide that, where a waste collection authority or a London borough council makes provision for treating a penalty as having been paid if a lesser amount is paid before the end of a specified period, that amount must not be less than £40. The Regulations also make modifications to the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 (S.I. 2007/3842) to enable appeals against a decision to impose a penalty charge under LLAA to be made to an adjudicator.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 At the moment, under section 46 of the EPA, householders are subject to criminal sanctions and a fine of up to £1000 if they do not comply with local authority requirements for presenting their waste for collection. Alternatively, householders may be offered the opportunity to avoid prosecution by payment of a fixed penalty of £60 -

£80 . Currently, the LLAA gives London local authorities parallel powers to issue penalty charges (£110) to householders presenting their waste for collection incorrectly. These powers are in addition to (not instead of) the powers outlined above. Criminal sanctions are not available here, so a person who fails to comply cannot be prosecuted under the LLAA, but can appeal to the local authority if they think that the notice should not have been issued.

7.2 The Government Review of Waste Policy in England was published on 14 June 2011. This said that the Government would “protect civil liberties by stopping councils from criminalising householders for trivial bin offences.”

7.3 Legislation introducing interim changes came into force on 30 May 2012. This reduced the level of fixed penalties under the EPA from £75 - £110 to £60 - £80. The penalty after early payment discount can now be as low as £40 (previously £60). The default amount (if local authorities do not specify the amount of the penalty under the fixed penalty notice) has been reduced from £100 to £60.

7.4 The fines applying to commercial waste are the same as those currently applying to household waste – criminal sanctions and fine of up to £1000. Alternatively, fixed penalties may be applied. The level of fixed penalties for household waste was lowered in 2012, but left unamended for commercial waste (£80 - £110). We intend to retain the current criminal system currently applying to commercial waste.

7.5 Section 58 of the Deregulation Act 2015 amends section 46 of the EPA so that criminal sanctions (for non-compliance with a local authority’s requirements for presenting waste for collection) no longer apply in England, remaining for Scotland and Wales only. A civil fixed penalty regime will exist for England instead. Schedule 12 to the Deregulation Act 2015 amends the LLAA so that its provisions related to household waste collection operate in broadly the same way.

8. Consultation outcome

8.1 The Government Review of Waste Policy in England (2011) proposed changes to the household waste collection penalties regime. The consultation on these changes (England only) took place 16 January – 9 March 2012. Local authorities, waste partnerships and their representative bodies, such as the Local Government Association, were consulted, as were professional organisations such as the Chartered Institute of Wastes Management and Keep Britain Tidy. An eight-week consultation was considered appropriate as details of the proposed changes had been published in June 2011 as part of the Government’s Waste Review, and officials had already had informal discussions with key local authority organisations. The Government Response was published on 9 July 2012.

8.2 117 responses were received to this consultation. 101 responses were from local authorities and public bodies.

8.3 Consultees were asked what level of penalty they would consider to be correct for failing the “harm to local amenity” test. There was broad support for formalising the interim measure we put in place in 2012, which reduce the level of penalties to £60 - £80. The majority of those who replied to this question were in favour of keeping the penalty range at this level. 53 of the 81 public bodies who responded to this question wanted the penalty range to be set at £60 - £80. Retaining the range at this level avoids the need for local authorities to make further changes in this area.

9. Guidance

9.1 In response to the consultation, a number of local authorities have said that guidance on how to implement the “harm to local amenity” test would be helpful. We intend to work with local authorities to publish such guidance.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

10.2 The impact on the public sector is less than £5 million.

11. Regulating small business

11.1 The Regulations do not apply to small business.

12. Monitoring & review

12.1 The key point of substance in the Regulations is the level of penalties. Rather than building in a formal review after a specified amount of time, Ministers are free to review the levels of penalties and amend the penalty range as and when they see fit through secondary legislation.

13. Contact

13.1 Andrew Baxter at the Department for Environment, Food and Rural Affairs Tel: 020 7238 6151 or email: Andrew.Baxter@defra.gsi.gov.uk for answers to any queries regarding the instrument.