

EXPLANATORY MEMORANDUM TO
THE UNAUTHORISED DEPOSIT OF WASTE (FIXED PENALTIES)
REGULATIONS 2016

2016 No. 334

1. Introduction

- 1.1 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 instrument amends the Environmental Protection Act 1990 (c. 43) (the Act) to allow a waste collection authority in England to issue a fixed penalty notice for fly-tipping (a contravention of section 33(1)(a) of the Act). This provides local authorities with a more efficient and proportionate response to small-scale fly-tipping of waste.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The amendments in this instrument are part of a domestic package of measures made in the context of relevant EU legislation (in particular Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3). The package of measures is to tackle waste crime and entrenched poor performance in the waste management industry. An amendment to the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) was made in October 2015 (S.I. 2015/1756). It is intended that further amendments as part of the same package will be made later in 2016.
- 4.2 Directive 2008/98/EC provides at Article 36 that Member States must take the necessary measures to prohibit the abandonment or dumping of waste. The fixed penalty notices provided for in this instrument, allowing another enforcement option as an alternative to bringing a prosecution, mean that the range of penalties available for the offence are effective, proportionate and dissuasive.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales and Scotland.
- 5.2 The territorial application of this instrument is England.

5.3 The provisions in new section 33ZA of the Act are similar to those that apply in Scotland (see section 33A of the Act as it applies in Scotland).

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for the Department of Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 Fly-tipping is a significant problem to local communities and a risk to the environment. It is a drain on local authority resources and also undermines legitimate waste businesses where unscrupulous operators undercut those that operate within the law.

7.2 In 2014/15, local authorities reported 900,000 incidents of fly-tipping in England, costing taxpayers an estimated £50 million to clear. Local authorities have indicated that the costs of investigation, bringing prosecutions and ultimately clearance and disposal of fly-tipping are considerable. Where fines are issued as a result of successful prosecutions, they are paid to the Court and prosecuting authorities must seek to recover their costs as a separate process. For many local authorities, this application often results in an award of significantly less than the cost of investigation and prosecution.

7.3 In March 2015 the Communities and Local Government Select Committee inquiry into litter and fly-tipping recommended that Government should introduce a national fixed penalty notice for small amounts of fly-tipping (<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcomloc/607/607.pdf>). In April 2015 the Conservative Party's 2015 manifesto included a commitment to allow councils to tackle small-scale fly-tipping through fixed penalty notices (<https://www.conservatives.com/manifesto>).

7.4 This instrument introduces a new fixed penalty notice provision that can be used as a response to fly-tipping offences where appropriate. This provides local authorities in England with a more efficient and proportionate response to small-scale fly-tipping of waste, instead of enforcement solely by way of prosecution, as is currently the case.

7.5 The new provisions provide for a fine of not less than £150 and not more than £400 as specified by the waste collection authority, and £200 if no amount is specified. The new provisions allow a waste collection authority to offer a reduction for early repayment of not less than £120 if the penalty is paid before the expiration of the period of 10 days following the date of the notice.

7.6 The intention is that fixed penalty notices will act as a deterrent to offenders and those local authorities using them should therefore see a decrease in the number of small-scale fly-tipping incidents that occur in their areas, and in the number of prosecutions they bring.

7.7 The new fixed penalty notice will not be an appropriate sanction for operators in the waste management industry, repeat offenders or those responsible for large-scale fly-

tipping or the fly-tipping of hazardous waste. These types of incident will continue to be enforced by local authorities using existing prosecution powers.

8. Consultation outcome

- 8.1 A public call for evidence on a number of proposals, including the proposal to introduce fixed penalty notices for small-scale fly-tipping, took place for 10 weeks between 26th February and 6th May 2015. The call for evidence sought views on whether the introduction of a fixed penalty notice would help tackle fly-tipping; the level of fine; any disadvantages of fixed penalty notices; and the cost and benefits of the proposal. There were 95 responses to the call for evidence on fly-tipping.
- 8.2 There was overwhelming support for this proposal, with 93% of respondents agreeing that fixed penalty notices would help tackle the problem. Respondents stated that fixed penalty notices would be a proportionate response to small-scale fly-tipping. They also commented that they are a relatively simple, quick and cheap way of dealing with offenders, as opposed to prosecutions which are time and resource intensive and not always appropriate.
- 8.3 Respondents suggested a range of penalties from £75 to £5,000 that they believed would act as a suitable deterrent. Twenty respondents suggested that the penalty should be set at £300 (which is the same as the existing fixed penalty amounts for failure to produce a waste transfer note under section 34A of the Act and for failure to produce authority to transport waste under section 5B of the Control of Pollution (Amendment) Act 1989 (c. 14)). Eleven respondents suggested that the penalty should be set at £200 (which is the same level as the fixed penalty amount for fly-tipping in Scotland under section 33A of the Act as it applies in Scotland). A number of respondents suggested that there should be some element of flexibility in the amount of the penalty imposed. As a result of these comments, the provisions in the instrument provide for a range of fines of not less than £150 and not more than £400 as specified by the waste collection authority, and £200 if no amount is specified.
- 8.4 A number of respondents suggested that there should be a reduction for early payment of the penalty. This would be in line with other fixed penalty notice schemes in the Act (for example, see sections 34A, 47ZB and 88). As a result of these comments, the provisions in the instrument allow for a waste collection authority to offer a reduction for early repayment of not less than £120 if the penalty is paid before the expiration of the period of 10 days following the date of the notice.
- 8.5 The summary of responses to the call for evidence and the Government response dated October 2015 is available at: <https://www.gov.uk/government/consultations/waste-crime-improving-enforcement-powers-to-reduce-persistent-non-compliance-at-waste-handling-sites>.

9. Guidance

- 9.1 Guidance for local authorities on issuing fixed penalty notices will be available on www.gov.uk when the instrument comes into force (see <https://www.gov.uk/guidance/fixed-penalty-notices-issuing-and-enforcement-by-councils> for the current guidance which will be updated).
- 9.2 The guidance will also be useful to anybody who is issued with a fixed penalty notice as it sets out the enforcement, range of fines available to local authorities and what happens if an individual fails to pay the notice.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is expected to be positive as these proposals should act as a deterrent to fly-tippers and help level the playing field for those businesses dealing with waste. This deterrent should also bring an indirect benefit as individuals and businesses will need to find a legitimate outlet for their waste and those operating legitimate waste businesses will win this business.
- 10.2 The impact on the public sector is expected to be beneficial. The instrument provides local authorities with a more efficient and proportionate response to small-scale fly-tipping of waste, instead of enforcement solely by way of prosecution, as is currently the case. This will reduce the costs borne by local authorities when dealing with a fly-tipping incident. It will also reduce the burden on HM Courts & Tribunals Service as the introduction of fixed penalty notices is likely to lead to a reduction in the number of fly-tipping prosecutions brought.
- 10.3 In addition, local authorities will be able to use the receipts of any fixed penalty notices issued for the purpose of exercising their functions, increasing the resources available to them to tackle issues in their areas, which should be beneficial to the whole community.
- 10.4 A Validation Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation does not apply to lawful activities that are undertaken by small businesses. Those small businesses that carry out waste activities illegally (in this case, fly-tipping) will experience costs as a result of this instrument, for example through having to find legitimate disposal routes for their waste, or as a direct result of being issued with a fixed penalty notice.

12. Monitoring & review

- 12.1 Given that this instrument amends regulatory provision contained in primary legislation, it is not considered appropriate to include a review clause under the provisions of the Small Business, Enterprise and Employment Act 2015 (c. 26) since it is outside the scope of the policy objectives as set out in the statutory guidance, which relate to the inclusion of review provisions in secondary legislation.
- 12.2 Local authorities will provide information on fly-tipping to the Department for Environment, Food and Rural Affairs which will enable the Department to monitor the effectiveness of these measures.

13. Contact

- 13.1 Ian Hill at the Department for Environment, Food and Rural Affairs Telephone: 020 8026 3267 or email: ian.hill@defra.gsi.gov.uk can answer any queries regarding the instrument.