

Summary of responses to the consultation on amending the powers of local authorities regarding presentation of household waste for collection

16 January – 9 March 2012

July 2012

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1. Introduction and background

In the Government's Waste Review, published on 14 June 2011, we said "we have decided that;

1. We will remove the prospect of criminal sanctions applying to householders who present their waste for collection incorrectly
2. We intend to replace these with civil sanctions. We will ensure that the level of fines are appropriate, and are in line with penalties for similar offences."

Our consultation on changes to these powers (which opened on 16 January and closed on 9 March) proposed two options¹;

1. Replace the current system with a new system of civil sanctions, but leaving in place an underpinning criminal offence; those who fail to comply with local authority requirements would still receive a notice of intent to pursue further action (Section 46 Notices), but the level of financial penalties would be brought in line with comparable offences; there would be a route to appeal through a First Tier Tribunal (or other appellate body). The concept of the "harm to local amenity" test would apply here.
2. Move to a system relying exclusively on civil penalties with no underpinning criminal offence, whilst also keeping the notice of intent, introducing appeals and the "harm to local amenity" test and reducing the level of financial penalties as under option 1.

Overview

- 1.1. This summary is a presentation of the key issues highlighted by different groups who responded to the consultation and the Government's response to these issues.
- 1.2. The Government welcomes the responses of stakeholders to the consultation. The following sections provide greater detail on the views expressed for each of the 13 questions posed within the consultation letter, together with the corresponding Government response.
- 1.3. In collating the response it was found that the wording between several of the local authorities and other public bodies responses were the same or similar,

¹ The changes proposed in the consultation apply in England only.

such as to imply that there had been some degree of co-ordination of response between local authorities and their representative bodies. While each response has been collated on its own merit, it could be that such responses have changed the overall result one way or another.

- 1.4. For this reason, and in light of best practice when analysing consultation responses in this manner, we have shown the number of responses to each question but we have also provided qualitative analysis of the responses. This presents the report in a more qualitative manner, thus allowing the key messages conveyed through the consultation to be distilled without suggesting that the consultation delivers, through numbers of respondents taking one or other view, results which could be potentially misleading.
- 1.5. Finally, it is worth noting that many of the responses identified that a specific proposal was supported or not, but provided further information as a caveat, which indicated that respondents have similar concerns even if their response was different.
- 1.6. Each respondent was also coded according to which of the following broad groups they came from:

Local Authorities or other public bodies - included local authorities and Waste Partnerships as well as their representatives such as ALCO, LARAC, District Councils' Network, London Councils and the Local Government Association.

Professional and umbrella organisations, private businesses and individuals – included the private sector and individuals and their representatives such as CIWM, ESA, National HMO Lobby, Keep Britain Tidy and several residents' associations.

About this document

- 1.7. This document is organised into sections relating to each question asked in the consultation paper. This document does not attempt to repeat the background information given in the consultation document and only provides a limited amount of context for each topic. For each topic this document:
 - States the question asked in the consultation document; and
 - Summarises the responses to the question
- 1.8. Chapter 3 provides the government's response to the consultation comments.

Summary of Responses – group breakdown

1.9. 117 responses were received to the consultation. 101 respondents were from local authorities and other public bodies and 16 were from professional and umbrella organisations, private businesses and individuals.

1.10. Table 1 shows the group breakdown in more detail

Breakdown	Number	Totals
Local Authorities and other public bodies		
Local Authority representative groups	6	101
Local Authorities	86	
Waste Partnerships	9	
Professional and umbrella organisations, private businesses and individuals		
Business sector	2	16
Third Sector	10	
Business representative groups	1	
Individual	3	
Total		117

2. Summary of responses

Question 1: Which Option do you consider to be the best? Please provide evidence to support your views.

Who responded?

2.1 Of the 117 responses to the consultation, 106 responded to this question. 96 of these respondents were local authorities, their representative organisations or other public bodies.

How they responded

2.2 The majority of respondents (roughly two-thirds) who expressed a preference considered Option 1 (Civil penalties with an underpinning criminal offence) to be the best. Nearly a fifth of respondents expressing support for a particular approach favoured Option 2 (Civil penalties with no underpinning criminal offence). The rest (about a fifth) said they did not favour either option, or wanted the current system to remain in place as it stands.

Public bodies

2.3 47 of the 78 public bodies who expressed a preference considered Option 1 (Civil penalties with an underpinning criminal offence) to be the best available approach. 17 respondents indicated that the ultimate sanction of a criminal offence was needed to provide an effective deterrent as a last resort, to encourage behaviour change among the worst offenders who do not respond to other interventions. One local authority said that removing the threat of criminal sanctions in initial engagement with householders may mean that it takes longer, and more resources are needed, to achieve compliance. Another suggested that local authority requests to change behaviour may be undermined by removing the “teeth” provided by the criminal sanctions – This would send a signal that complying with waste collection requirements is not important, but many residents want their local authority to take action against those who do not care about recycling. 9 suggested that criminal sanctions are more cost effective than civil sanctions, as the resources spent pursuing small debts through the courts is disproportionate.

2.4 14 of the 78 public bodies who expressed a preference favoured Option 2 (Civil penalties with no underpinning criminal offence). 4 of these indicated that the current threat of a criminal conviction, and the possibility of a £1000 fine, was disproportionate. 3 said that the vast majority of breaches are solved

by communicating with householders. One said that it had stopped sending out notices and started using informal interventions instead, without any apparent increase in contamination. One authority stated that they would be able to manage the recovery of any additional civil debts if this became a civil matter. 2 London authorities referred to their experience related to the London Local Authorities Act 2007 (LLAA), saying that the decriminalised approach works well, and that no threat of criminal prosecution is required to successfully enforce policy in this area.

- 2.5 17 of the 78 public bodies who expressed a view said they favoured neither Option or wanted the current regime to remain in place, referring to the success of the current system, and the relative speed or cost effectiveness of the current procedure, particularly related to the legal process. 3 said that their general approach was to educate householders, but they believed criminal sanctions should be available as a deterrent for the worst offenders. Another said that there is little or no evidence to suggest that current powers are being abused. One local authority representative group stated that the current regime should be retained, supported by comprehensive guidance for local authorities. It had a number of concerns about the proposed civil regime – Removing the criminal sanction undermines the deterrent, removing criminal sanctions is inconsistent with the regime for similar offences such as littering and flytipping, the civil penalty could become very expensive for the householder (as bailiffs' charges and interest could be added). It favoured a dual model, along the lines of that currently available in London (with criminal sanctions available under the EPA, and civil sanctions available under the LLAA).
- 2.6 2 respondents to Q1 indicated support for the "harm to local amenity" test because it should ensure a consistent approach. 9 were concerned about this test, mainly because it would mean that local authorities would not be able to require householders to recycle. Contamination of recycled waste bins could lead to more waste ending up in landfill, with local authorities having to pay more landfill tax and losing income from lost recyclates. One local authority stressed the importance of reassuring its residents that it is dealing with those who cannot be bothered to recycle appropriately. 2 suggested that the test should be applied more broadly, to cover potential harm to those who collect or dispose of waste, and environmental impacts such as recycling rates and greenhouse gas emissions associated with sending waste to landfill. 2 stated here that they would like guidance on how the test should be applied.

Professional and umbrella organisations, private businesses and individuals

2.7 8 of the 10 respondents in this category who expressed a preference favoured Option 1 (Civil penalties with an underpinning criminal offence), 1 supported Option 2 (Civil penalties with no underpinning criminal offence), and 1 considered the current system should remain in place. 3 organisations referred to the particular problems with waste collection from student housing, considering that the strongest possible sanctions were needed in this situation. One third sector organisation said that a survey of its members revealed the vast majority supported retaining criminal sanctions, and that policy should be consistent with other offences such as littering.

Question 2: Do you think there should still be an underpinning criminal offence (and the possibility of a criminal conviction) for failing to comply with a section 46 Notice?

Who Responded?

2.8 Of the 117 responses to the consultation, 100 responded to this question. 85 of these respondents were local authorities, their representative organisations or other public bodies.

How they Responded

2.9 The majority of respondents (nearly nine-tenths) thought there should still be an underpinning criminal offence for failing to comply with a section 46 notice. Just over one-tenth did not think the underpinning criminal offence should be retained.

Public bodies

2.10 Of the 85 Local Authorities responding, the majority (73) were in favour of retaining a criminal offence. 10 were clearly against retaining it, and 2 were unsure.

2.11 Responses from those wanting to retain the criminal offence tended to be nuanced. Almost all of these shared the view that this should be a last resort only, for persistent offenders or very serious transgressions. The Kent Waste Partnership responders felt that the intention of the legislation had not been to criminalise those who did not shut their bins correctly, but that there were times when behaviours could lead to serious harm to the local amenity or to other people where a criminal offence would be appropriate. Many councils pointed out that they do not need to bring criminal prosecutions, but that the threat of a criminal record is an effective lever in itself, especially when

backed up by visits. Suffolk Waste Partnership felt that councils should be able to take decisions locally on whether to pursue the criminal offence. Other councils who wanted to keep the criminal offence sought better guidance on when it should be used to ensure consistency and transparency. Many councils made the point that section 46 notices and subsequent actions were only part of the picture, and education, information, infrastructure and design of collection services played a part: Manchester City Council made the point that where large numbers of residents were causing a problem, Section 46 notices were a cumbersome means of dealing with the issue and the power to prosecute landlords would be more helpful.

- 2.12 10 councils thought that the criminal offence should go, mainly because they considered civil sanctions to be effective deterrents, provided that they were enforced properly, and some because they felt civil sanctions to be more appropriate. One council thought that the burden of proof issues made a criminal conviction too difficult, and a better targeted civil regime was preferable.
- 2.13 Two councils' responses were very nuanced: one felt that there was a danger of imbalance between offences, if littering remained a criminal offence, and on the whole felt that decriminalising would not remove the problems associated with overzealous policing. Another responded that S46 notices would be more effective if they did not mention the threat of criminal conviction, but would like an escalation process to deal with more serious offences if appropriate.

Professional and umbrella organisations, private businesses and individuals

- 2.14 3 tenants' and residents' associations felt quite strongly that retaining the criminal offence was necessary to deal with antisocial behaviour. A disabled persons' group also felt that environmental legislation would not deal with those whose failure to present bins correctly in a way that caused them problems. Keep Britain Tidy was also in favour of retaining the criminal offence.
- 2.15 The industry representatives which responded, including CIWM and the ESA, believe that it is necessary to retain the criminal offence to indicate the importance of the problems caused, and to deal with repeat and serial offenders. The ESA point out that over-loading of bins and placing of inappropriate items in bins can prevent safety hazards for employees dealing with waste, and that poorly presented waste can undermine the Government's objective to extract more value from recyclable waste.

- 2.16 Of the individuals who responded, one felt that civil sanctions were sufficient. Others thought the criminal offence should be maintained as a deterrent or to deal with the minority of householders who could not “be bothered” to deal with their waste responsibly.

Question 3: Do you think local authorities should write to householders before taking action under Section 46? Is there anything else they should do before issuing a fixed penalty notice?

Who responded?

- 2.17 Of the 117 responses to the consultation received, 103 responded to this question. 91 of these respondents were local authorities or other public bodies.

How they responded

- 2.18 The vast majority (roughly nine-tenths) of those who responded to this question were in favour of local authorities writing to householders before taking action under Section 46.

Public bodies

- 2.19 85 of the 91 public bodies who responded to this question were in favour of local authorities writing to householders before taking action under Section 46, with the emphasis being on visits, communication and education. Many responses pointed out that local authorities do write to householders prior to issuing a Fixed Penalty Notice (FPN) under S.46. 2 responses suggested that there was a need for a voluntary Code of Practice to ensure a uniform approach across local authorities. 2 responses suggested that where there was damage to the local amenity, public health or fly tipping, then a letter should be issued with the FPN to resolve the situation quickly. 2 responses suggested that transient population and those who spoke English as a second language would benefit from more education. 2 London authorities noted that under the London Local Authority Act 2007 (LLAA 2007) local authorities were not required to write prior to issuing a FPN.
- 2.20 6 of the 91 public bodies who responded to this question were against local authorities writing to householders before taking action under Section 46, stating that residents were already informed and that writing again was duplicating the information. 1 response said that a recorded verbal warning was sufficient. 1 response noted that under LLAA 2007 London authorities were not required to write prior to issuing a FPN.

Professional and umbrella organisations, private businesses and individuals

- 2.21 6 of the 12 respondents in this category were in favour of local authorities writing to householders before taking action under Section 46, with the emphasis being on communication and education. There was the suggestion that evidence from neighbours and visual investigations could be obtained prior to issuing a FPN.
- 2.22 6 of the 12 respondents were not in favour of local authorities writing to householders before taking action under Section 46, where there was photographic evidence or the householders were persistent offenders. 1 respondent qualified their response say that the letter should not be in addition to the statutory requirement. 1 respondent suggested that a non-statutory Code of Practice should be introduced.

Question 4: What kinds of actions would you consider to cause sufficient nuisance to others (the “harm to local amenity test”) to warrant a financial penalty?

Who responded?

- 2.23 99 respondents replied to this question. 92 of these respondents were local authorities, their representative organisations or other public bodies.

How they responded

- 2.24 Respondents suggested a variety of responses to this Question. The most commonly suggested actions considered to cause nuisance to others where the Harm to Local Amenity test could apply included; putting out waste that is incorrectly contained or secured (suggested by roughly half of people responding to this question); putting bins out too early or for too long (nearly half); and, putting waste in the wrong receptacles (over a third).

Public Bodies

- 2.25 Responses from Local Authorities were divided between those who proffered direct responses to the questions, listing examples of what they would consider to be breaches of the test, and those who challenged the idea of the test itself, even though some of these included examples of breaches as well.
- 2.26 The most frequently suggested responses (with numbers of times mentioned in brackets) were:

- Putting out waste that is incorrectly contained or secured, including overfilling bins and putting out “side waste”, so that litter and pest problems are likely (48)
 - Putting bins or bags out too early, leaving them out too long, or failing to remove waste if it has not been collected for any reason. Concerns here included the risk of arson as well as unsightliness (44)
 - Putting waste into the wrong receptacles, especially putting recyclables in residual waste, or contaminating dry recycling with organic matter (37 for including this, and 1 who said it should not be a criterion)
 - Blocking highways with bins, including to reserve parking spaces (30)
 - Putting out rubbish in such a way as to create health and safety risks, either by blocking pavements for wheelchair users and those with prams and buggies, or by creating risks for those involved in collection (28)
 - Other concerns included leaving waste in gardens but not putting it out for collection, putting out materials such as bulky waste which are not covered by the collection service, putting out waste that causes odour problems, using other people’s bins, and leaving waste in corridors and public spaces in flats.
- 2.27 In many cases, the councils citing these reasons considered that penalties should apply for persistent behaviours, especially after warnings have been given.
- 2.28 25 councils raised concerns about the concept of the harm to local amenity test as a whole. One common concern was that it would not cover failure to participate in recycling, even where this was wilful and stated, or contamination of recycling, although this would result in increased landfill tax, land filling of organic waste, causing greenhouse gas emissions, lost revenue from recycling or damage to recycling facilities. Some councils would like to see “harm to the environment” included in the test as well, and one suggested a “harm to the local community” test.
- 2.29 There were concerns about how to define whether someone had made a mistake (or how many times they could make it), and about whether using the test would be overly bureaucratic and open to dispute and legal challenge. There were several calls for clear guidance on how to implement the test, including from the constituent members of the Kent Waste Partnership. LARAC suggest a national code of practice would be helpful. The LGA point out that the guidance to the Town and Country Planning Act 1990 acknowledges that the concept of “amenity” is broad and not formally defined in legislation, and suggests that local determination will be necessary to

decide what is amenity in a given context: it therefore proposes that councils should be given the power to determine what constitutes “harm to local amenity” within certain broad parameters. The LGA also raised the need to use the powers to prevent contamination of recycling if councils are to be able to achieve the quality of recycled material envisaged in the revisions to the Waste Regulations in connection with the question of co-mingling. It also makes the point that formal and meaningful consultation with local authorities will be required to produce a formulation which works flexibly for different circumstances.

Professional and umbrella organisations, private businesses and individuals

- 2.30 Keep Britain Tidy support the broad principle of the harm to local amenity test, including the differentiation between those creating persistent problems and those making small mistakes. They would like to be clear that obstruction of the public highway, impairing progress for those with mobility issues and hampering street cleaning services, is also included. Two residents’ groups and a disabled persons’ access group have expressed concern that obstruction of paths is included, which the residents’ groups would also want to cover detriment to the visual amenity, and leaving rubbish out for long periods or at the wrong times which may encourage “bin-dipping” and other criminal behaviour.
- 2.31 Of the industry bodies, the ESA would like to see “harm to human health” included, with stricter consequences for offenders in this category, and no reduction in severity for first-time offenders. CIWM suggest that leaving uncollected material on the pavement and leaving empty containers out on the street should be considered breaches of the harm to local amenity test. Waveney Norse express concern about possible inequalities between different housing areas, where standards may vary, and would like to see well-defined legislation or guidance. They suggest leaving wheelie bins out too long, and persistent placing of side waste, use of other people’s bins and contamination of recyclable waste to be breaches. The National HMO Lobby cites leaving bins, rubbish and empty bins on the street, obstructing highways and pavements and encouraging bin-abuse (such as blocking of streets, using bins for racing games) by leaving bins out as breaches. One individual member supported this response.
- 2.32 Two other individuals responded at some length to this question. One felt greater definition was needed to avoid the risk of judicial review . They considered that location would affect the definition, for example in areas of architectural interest or rural areas, or those with Neighbourhood Watch schemes. They considered that other issues than local amenity should be

considered, such as endangering others by obstructing highways and pavements and leaving bins outside houses from week to week. Local authorities should work with stakeholders, including estate agents, especially where there was a high turnover of householders. This individual also considered that the number, colour and size of containers could in itself constitute a harm to local amenity.

- 2.33 The other individual responder felt that no breach would occur if the occupier had obeyed the instructions of the Waste Collection Agency, and that these instructions could sometimes in themselves cause the harm. They pointed out that other penalties, or flytipping, littering and obstruction of the highway, are much higher and expressed concern that changes to S46 should not push local authorities into using these stronger penalties for problems which can currently be dealt with under S46.

Question 5: What level of financial penalty would you consider to be correct for failing the “harm to local amenity test” – the current fixed penalty (£75 - £110)? £60 - £80? A lower amount?

Who responded?

- 2.34 Of the 117 responses to the consultation received, 91 responded to this question. 81 of these respondents were local authorities or other public bodies.

How they responded

- 2.35 The majority of those who responded to this question were in favour of changing the financial penalty to between £60 and £80.

Public bodies

- 2.36 53 of the 81 public bodies who responded to this question wanted to see the financial penalty between £60 and £80, though the majority of these responders wanted an upper limit of £80, with a reduction should the fine be paid within a set number of days (mostly within 10 days but some suggestions of up to 21 days). Of the 25 who wanted the penalty to remain the same, the majority believed that this band acted as a deterrent with some believing that there should be scope for a higher level financial sanction if there is no threat of criminal proceedings.
- 2.37 There was mixed reaction about the comparison between the value of the current fixed penalty notice available under section 46 and that of other, unrelated fines (such as shoplifting). Most in this group believed that a more

appropriate comparison would be with the fixed penalty notice for littering, which currently stands at £75.

Professional and umbrella organisations, private businesses and individuals

2.38 6 of the 10 respondents in this category were in favour of retaining the current fixed penalty. 3 responses wanted to change the penalty to between £60 and £80. Only 1 responder wanted a lower penalty applied. Issues raised were similar to Public Bodies.

Question 6: Under current arrangements, local authorities retain the receipts from any Fixed Penalty Notices issued. What are your views on local authorities only keeping their processing costs, rather than the full amount of the penalty, under a new civil sanction regime?

Who responded?

2.39 Of the 117 responses to the consultation received, 99 responded to this question. 87 of these respondents were local authorities or other public bodies.

How they responded

2.40 The vast majority of those who responded to this question were in favour of local authorities keeping the full amount of the penalty.

Public bodies

2.41 82 of the 87 public bodies who responded to this question were in favour of local authorities keeping the full amount of the penalty. 39 said that money received from the FPN would not cover the cost spent on issuing the FPN, especially if the amount was reduced. 34 said they wanted the money to be used to improve the local environment, especially recycling and education.

2.42 5 of the 87 public bodies who responded to this question were in favour of local authorities keeping their processing costs only, although 2 suggested that this would be the same as the full amount of the penalty.

Professional and umbrella organisations, private businesses and individuals

2.43 All 12 of the 12 respondents in this category were in favour of local authorities keeping the full amount of the penalty. 7 said that money received from the

FPN would not cover the cost spent on issuing the FPN. 5 said that the money should be used to improve the local environment, especially recycling and education.

Question 7: What would be the right level of fine under the underpinning criminal offence (if retained) for failure to comply with a Section 46 Notice (currently this is up to £1000)?

Who responded?

2.44 Of the 117 responses to the consultation received, 92 responded to this question. 85 of these respondents were local authorities or other public bodies.

How they responded

2.45 Around half of all respondents (over three-quarters of those who responded to this question) were in favour of retaining the current level of fine, up to £1000.

Public bodies

2.46 71 of the 85 public bodies who responded to this question were in favour of retaining the current level of fine, up to £1000. 6 responders said they preferred a 'level 2' fine, up to a maximum of £500 and 8 responders had other preferences. Of these 8, 3 wanted the fine raised to fall in line with the current littering penalty, which carries a maximum £2,500 fine, with 1 asking for a 10 hour community service order, with a £1,000 fine should this not be complied with.

2.47 Although the vast majority favoured retaining the current level of fine, this preference was cautionary. Currently the Courts decide on a case by case basis what the appropriate punishment should be and it should be noted that fines actually awarded by courts rarely approach the maximum limit. There is a risk that reducing the maximum available may have the knock on effect of reducing the actual fines typically imposed by courts to a level which provides insufficient incentive for offenders to pay the penalty rather than go to court.

Professional and umbrella organisations, private businesses and individuals

2.48 3 of the 8 responders in this category were in favour of retaining the current level of fine, up to £1000. 3 responders said they preferred a 'level 2' fine, up to a maximum of £500 and 2 had other preferences. Of these 2, 1 responder believed there would be no reason to retain an underpinning criminal offence as persistent offenders would receive more civil penalties. The other responder said that it was important that the consultation considers the

outcomes of the Home Office review of Anti Social Behaviour powers and proposed framework of Community Protection Orders as these Orders propose new levels of fines for a variety of local environmental quality offences.

Question 8: Do you think householders should be able to appeal against penalties under Section 46?

Who responded?

2.49 99 respondents replied to this question. 90 of these respondents were local authorities, their representative organisations or other public bodies.

How they responded

2.50 The majority of respondents (nearly three-quarters) considered that householders should be able to make appeals against penalties under section 46. Roughly a quarter believed there should be no such appeal mechanism.

Public bodies

2.51 62 of the 90 public bodies considered that householders should be able to make appeals against penalties under section 46 as this was a democratic right and mistakes could be made, for example. Some provisos were given, however. These included that the appeals mechanism must not be too onerous and must be proportionate to the level of penalties. There was a concern that process should minimise financial pressure on local authorities.

2.52 22 of the public bodies did not consider that an appeals mechanism was appropriate. Reasons given for this included time and costs outweighing benefits, and the amount of education and guidance (at local and national level) meaning that appeals are not appropriate.

Professional and umbrella organisations, private businesses and individuals

2.53 7 of the 9 respondents in this category considered that householders should be able to make appeals against this penalties – 1 did not.

Question 9 (for local authorities): Do you use your current powers to impose fixed penalties under Section 46? If so, how many penalties do you issue a year?

Who responded?

2.54 Of the 117 responses to the consultation received, 85 responded to this question. 81 of these respondents were local authorities or other public bodies.

How they responded

2.55 The majority of local authorities who responded to this question (nearly three-quarters) said that they had not issued fixed penalties under section 46, compared to roughly a quarter who said that they had.

Public bodies

2.56 56 local authorities or waste partnerships said that they used the powers under Section 46 to issue warning letters, but only 22 local authorities or waste partnerships said they actually issued a FPN. Most of these were as a last resort following communication with the householder.

2.57 23 local authorities said they did not use the powers and had never issued a FPN. However, 4 local authorities said they were considering using the powers in the future.

Professional and umbrella organisations, private businesses and individuals

2.58 4 respondents in this category provided comments in response to this question. Keep Britain Tidy referred to a survey of 14 local authority members of their network. This revealed that the vast majority had not issued fixed penalties under section 46, although a minority had issued over 15 a year.

Question 10 (for local authorities): What do you think the impacts of these Options would be for you in your waste management and budget-holding roles?

Who responded?

2.59 Of the 117 responses to the consultation, 84 responded to this question. 83 of these respondents were local authorities, their representative organisations or other public bodies.

How they responded

2.60 Roughly a third of respondents considered that amending enforcement powers in line with the Options in the consultation document would lead to an

increase in costs. A tenth considered that both Options would make enforcement more difficult. Just under a fifth stated that the impact of pursuing Option 1 would be minimal, but pursuing Option 2 would have a detrimental impact. Just over a tenth said the Options would have an insignificant, or zero, impact.

Public bodies

2.61 26 of the 83 public bodies who responded to this Question said the Options would lead to an increase in local authorities' costs. A number of reasons were given for this. These included:

- Increased non-compliance leading to increased landfill charges and reduced revenue from recyclates
- Increased legal costs/bailiffs' fees related to appeals/chasing civil debts
- Need to retrain officers and set up appropriate systems
- Increased costs (including street cleansing costs) resulting from excessive waste or litter

2.62 8 respondents to this Question said both Options would make it more difficult to enforce requirements or to change behaviours to increase recycling. One of these said that watering down penalties would mean that more people will take the risk of ignoring threatened action.

2.63 11 of the 83 public bodies differentiated between the two Options, considering that the impact of Option 1 would be minimal, but Option 2 would have a negative impact for the reasons outlined in paragraph 1.2. One of these said that Option 1 had the greatest potential to bring about behaviour change, whereas Option 2 leaves little in terms of a deterrent, and sends the message that environmental/waste management issues have been downgraded. A further 11 respondents supported a response suggesting that more needs to be done, including discussions between central and local government, to understand the impact of the changes.

2.64 10 respondents considered that the Options would have no impact, or the impact would not be significant. This was mainly because local authorities issue very few Fixed Penalty Notices under the current system. One said that the changes outlined under the Options could encourage increased work to educate residents in problem areas. 2 considered that the Options would increase customer satisfaction – One said that a Fixed Penalty Notice scheme with appropriate financial penalties, that is seen to be effectively applied on

persistent perpetrators, will have far more resonance for residents than the current system.

Professional and umbrella organisations, private businesses and individuals

2.65 This Question was targeted at local authorities, but one individual responded, advising that Option 2 would mean that local authorities would have no effective enforcement powers. He suggested that, as people realise this, bad waste management practices amongst householders will spread.

Question 11: Are there any other points you would like us to consider related to these two Options?

Who responded?

2.66 Of the 117 responses to the consultation received, 84 responded to this question of which 75 were local authorities, their representative organisations or other public bodies.

How they responded

2.67 15 respondents used this opportunity to restate previous comments and 69 provided at least one further point which they had not previously raised in their response, but may have been raised by another respondent.

Public bodies

2.68 11 local authorities or waste partnerships restated previous comments and 64 local authorities or waste partnerships and 1 public body provided at least one further point. These are listed below:

- Guidance on the 'harm to local amenity test' (10 + 11 KWP)
- Changes would make the system impractical (9)
- A request for guidance on the procedure (7)
- Protection of civil liberties of law-abiding majority (7)
- The need to keep criminal sanctions in case they are needed (6 + 11 KWP)
- Clarification of whether the resident or owner was responsible for the presentation of waste for collection, especially in multi-occupancy accommodation (6)

- Suggestion that commercial premises should be included by making changes to Section 47 (4)
- Requests not to make any changes to legislation (4)
- Concerns about fly-tipping (3)
- Changes should also be made to Section 45 (3)
- Concern that the collection point could no longer be defined (2)
- Requests for examples of heavy handedness by local authorities (2)
- Reference to the current consultation on separate collection (2)
- Highlighting that Section 46 referred to household waste and not domestic waste and the changes would affect commercial operations producing household was such as charities and residential care homes (2)
- Suggestion that the proposed changes were disproportionate (2)
- A reminder that local authorities were trying to comply with Government policy requirements (2)
- Using different parts of the Environment Protection Act may result in higher fines (1)
- Removing criminal sanctions may result in some serious offences being dealt with under civil sanctions while some minor offences (such as littering) are still dealt with under criminal sanctions (1)
- A request not to introduce an appeals procedure (1)
- A suggestion that reference to fines could be dropped from the warning letter to householders (1)
- A suggestion that 'producer responsibility' should require those causing the problem to pay (1)
- A suggestion that the powers under the London Local Authorities Act 2007 should be extended to the whole country (1)
- A suggestion that those causing the problem are required to respond to the local authority (1)
- Harm to people should also be included (1 + 11 KWP)

- Clarification that the consultation does not differentiate between warning letters and FPN (1)
- There is no mention of the time limit to pay the fine which is currently 14 days (1)
- Observation that waste with early collection times tends to be left out overnight and therefore potentially causes more problems (1)

Professional and umbrella organisations, private businesses and individuals

2.69 9 respondents in this category provided of which 5 restated previous comments and 4 provided at least one further point which they had not previously raised in their response. These are listed below:

- Guidance on the 'harm to local amenity test' (2)
- Suggestion that commercial premises should be included by making changes to Section 47 (1)
- Concern that the collection point could no longer be defined (1)
- A suggestion that the powers under the London Local Authorities Act 2007 should be extended to the whole country (1)
- A request for a simple and cost effective appeals process (1)
- A request for guidance on the procedure (1)
- A request for non-statutory Code of Practice (1)
- Under the Localism agenda local authorities should be able to decide what is best (1)

Appeals Question A1: Do you consider that the First-tier Tribunal is an appropriate destination for these appeals?

Who responded?

2.70 33 responses were received to this Question. 31 of these were from local authorities, their representative organisations or other public bodies.

How they responded

2.71 Of the 23 respondents who expressed a clear preference, nearly two thirds considered that First Tier Tribunals should be used to consider these appeals, with just over a third who did not think the Tribunals should be used in this way.

Public bodies

2.72 14 of the 22 public bodies who expressed a preference considered that the First Tier Tribunal was an appropriate destination for these appeals. Reasons given included:

- there should be no extra administrative burden on local authorities
- a full Tribunal (for £100 penalties or less) would be disproportionate
- there could be an informal appeal process with the provision to go an external body if necessary by way of a formal appeal procedure. In the event the appeal is disallowed, it would be appropriate for the appellant to have the right to appeal to the First-tier Tribunal in line with other de-criminalised offences.
- procedures should match those in line with parking offences
- provisos that grounds for appeal are specified
- the appeal route should be effective, quick and proportional to the action taken

2.73 8 of the 22 public bodies who expressed a preference considered the First Tier Tribunal to be inappropriate to hear these appeals. Reasons included:

- excessive in time and cost – could easily be done locally
- councils should have own independent appeals panel/process
- it may be more appropriate for first appeals to be considered by the local authority, in the same way that traffic/parking appeals are

Professional and umbrella organisations, private businesses and individuals

2.74 Only 2 respondents in this category replied to this Question. 1 expressed a clear preference, considering that the First Tier Tribunal should not be used in this way – This individual said this would be a disproportionate, excessively costly approach.

Appeals Question A2: Do you consider that the General Regulatory Chamber Rules will suit the handling of these appeals against decisions by the local authority?

Who responded?

2.75 25 responses were received to this Question. 24 of these were from local authorities, their representative organisations or other public bodies.

How they responded

2.76 Of the 21 respondents who expressed a clear preference, roughly three-quarters considered that the General Regulatory Chamber rules would suit the handling of these appeals, with about a quarter considering that the rules were not suitable.

Public bodies

2.77 15 of the 20 public bodies who expressed a preference considered the GRC rules were appropriate for hearing these appeals. The following reasons were given:

- they are fully appropriate in that they give the judge wide case management powers to ensure that the overriding objectives of fairness and justice are achieved. It is important to allow the judge flexibility in getting to the truth of the matter.
- provided the procedures match those currently in place for dealing with traffic/parking offences
- provided this did not increase administrative burdens on local authorities.

2.78 The other 5 public bodies considered that these rules were not an appropriate mechanism, giving the following reasons:

- the rules will probably require one or more lawyers on both sides. This is excessive when all that is to be confirmed is what was in a bin, when was it put out and who put it there
- to reduce time, costs and bureaucracy local authorities should be able to set up their own independent appeals panels
- the process is too lengthy for a simple offence and would be too costly to administer for the small number of cases and their significance to the individual concerned. Internal local authority complaint procedures would be effective in dealing with these matters.

2.79 In its response to this question, one local authority said that it did not envisage many appeals being submitted. A further respondent suggested it could ask a neighbouring authority to hear the first appeal and a second neighbouring authority to hear any subsequent appeals – This could be done through a reciprocal agreement. Another respondent said that introducing a new appeals process added further complexity. A further point made in response to this Questions was that civil proceedings take longer than pursuing criminal sanctions, and pursuing civil debt was often more expensive than the debt itself.

General Comments

Who responded?

2.80 Of the 117 responses to the consultation, 55 provided general comments in covering letters attached to their consultation response. 41 of these respondents were local authorities, their representative organisations or other public bodies.

How they responded

2.81 Respondents made a number of points covering a variety of issues in these covering letters. Over a quarter said in these letters that the current approach should be retained. Roughly a fifth indicated concerns or uncertainty about how the “harm to local amenity” test would be applied. 5 bodies representing individuals, such as residents associations, said that heavy penalties were needed to deal with problem areas with high concentrations of multi-occupancy housing.

Public bodies

2.82 13 of the 41 public bodies who provided general comments indicated their support for the current approach in order to divert waste from landfill and maximise recycling. They advised that a considerable amount of time and effort was put into educating residents before penalties were issued – One advised that this approach meant they could distinguish between those who have made mistakes and those who persistently choose to present their waste incorrectly, even if this distinction is not included in legislation. Another local authority was concerned that it would not be able to improve the quality of recyclates as required by Defra when it would not have the power to enforce this requirement if the Options were pursued.

2.83 Other points, covering a range of issues, were made in covering letters:

- 6 local authorities thought the proposals (particularly the “harm to local amenity” test) would mean that local authorities would be unable to deter or fine people who presented waste in a way which caused obstruction, littered streets, or dumped waste as they pleased. A further 3 considered that it would be difficult for enforcement officers to judge when the test had been failed. This indicates some uncertainty about what will be covered under the “harm to local amenity” test, and 2 organisations representing local authorities have asked for more clarity on this.
- 3 considered that civil sanctions, or defending cases in tribunal appeals, would be more costly than the current system
- 4 considered that national and local government should work together to develop a comprehensive range of powers to deal with householders who are persistently non-compliant. This could result in guidance, or a code of practice.
- One organisation representing local authorities in London wanted them to retain the ability to set regulations as set out in the London Local Authorities Act 2007 (LLAA), and to decide whether to use criminal sanctions (available through the Environmental Protection Act 1990) or civil sanctions available through the LLAA. A further organisation representing local authorities said that it understood that, in the past, legislation in this area had been applied in an overzealous manner by a small minority of Councils.

Professional and umbrella organisations, private businesses and individuals

- 2.84 5 bodies (including residents associations) considered that strong penalties were needed to deal with problem areas with high concentrations of multi-occupancy housing, occupied by students, for example. Residents in this type of housing often had no commitment to their neighbourhood, which contributed to irresponsible behaviour such as leaving all waste in open bags, leaving bins on pavements, or setting bins on fire.
- 2.85 An association representing disabled people said that the “harm to local amenity” test should cover problems caused to disabled people using the streets, referring to hazards to pedestrians such as having to divert wheelchairs onto the road because of bins on the street.
- 2.86 A trade organisation expressed support for Option 1 in their covering letter (Civil penalties with an underpinning criminal offence), considering that the

threat of criminal proceedings was needed to deal with the most serious offences. A residents' association said that taking powers from local authorities sent the wrong message, and that local authorities should determine the level of fines at a local level. One individual said that fines should be scrapped as they encourage flytipping – Local authorities should make recycling easy by providing proper containers, not discourage it by providing inadequate receptacles.

3. Government Response

3.1 As stated in the consultation document published on January 16 2012, the purpose of this consultation has been to seek views on proposed amendments to section 46 of the Environmental Protection Act 1990, which sets out the penalties which local authorities may apply to householders who present their waste incorrectly. A primary goal of policy in this area is to ensure a fairer system of penalties that respects individuals' civil liberties while dealing effectively with behaviours that have a negative impact on residents' local neighbourhoods. The Government welcomes the considered and detailed responses received.

Retaining an underpinning criminal offence

3.2 We note that there is broad support for maintaining an effective deterrent of "last resort", which can help encouraging behaviour change among the worst offenders who do not respond to other interventions. We note that many respondents saw merit in retaining an underpinning criminal offence as an effective deterrent of "last resort". However, we also note the experience of several local authorities who have found that a decriminalised approach works well and that no threat of criminal prosecution is required to successfully enforce policy in this area. Several other authorities have said that the vast majority of breaches are solved by communicating with householders. One has stopped sending out notices and started using informal interventions instead, without any apparent increase in contamination. We do consider that criminal sanctions are disproportionate here, and intend to amend section 46 to remove the current underpinning criminal offence. We consider that it is right that stronger penalties should be applied to those responsible for more serious waste crime, such as flytipping.

"Harm to local amenity" test

3.3 We note that there is some concern about applying the "Harm to local amenity" test, in particular how to ensure congruence between this test and activities to encourage recycling. Our intention is that legal (civil) sanctions should be available when a person's behaviour in this area has a negative impact on their local neighbourhood. Alternative approaches, such as education, are more appropriate for mistakes people make when recycling, for example. Education would also be more suitable for dealing with behaviours presenting safety hazards for employees dealing with waste.

3.4 In this consultation, we asked what kinds of actions should warrant financial penalties when this test is applied. We envisage that many of the issues most

frequently suggested in responses will be subject to such penalties under the test. Some respondents were concerned that local authorities will not be able to take legal action against behaviours which would in fact be subject to civil penalties when the test is in place. Examples include endangering others by obstructing highways and pavements and persistently obstructing public pavements with bins. Some authorities have requested guidance on how the test should be applied. We intend to work with local government to produce advice to help local authorities implement the test with confidence and consistently.

Writing to householders before taking action

3.5 It is clear that the vast majority of respondents are in favour of local authorities' writing to householders before taking action. We agree that this is the correct approach, and should always be the first step for local authorities ahead of issuing any form of penalty under section 46. Such a notice gives householders the chance to contest the penalty if they do not consider they are liable.

Financial penalties

3.6 We note the broad support for formalising the interim measures we have put in place, which reduce the level of financial penalty to between £60 and £80. As this is also consistent with the changes we have already made, this approach avoids the need for local authorities to make a further set of changes in line with comments we have received from some of them.

3.7 In the consultation, we asked for views about whether local authorities should be able to keep only the processing costs element of the penalties, with the remainder of the receipts going to central funds. There was a clear view among respondents that local authorities should keep the full amount of the penalty. A substantial number said that the money from the penalty would not in fact cover the costs of issuing it, and we are aware that there is some concern about the cost attached to the proposed civil sanctions and appeals mechanisms. Taking this into account, we have decided that local authorities should be able to keep the full amount of these receipts.

Appeals

3.8 We agree with the majority of respondents who considered that householders should be able to make appeals against penalties under section 46. Under the current system, a person who does not think they should pay a Fixed Penalty Notice can refuse to pay, and will have their "day in court" if the local authority decides to prosecute. Removing the criminal offence removes this possibility, but procedural

safeguards are needed to ensure a householder can contest the fine. We intend to introduce a system where representations are made to the local authority before a penalty is imposed, and providing for an appeal to an independent tribunal if necessary.

3.9 A limited number of respondents responded to the questions in the consultation document about the use of the First Tier Tribunal (FTT) and the General Regulatory Chamber Rules. The Tribunal is an independent judicial body, which has its own rules of procedure which can be applied flexibly in proportion to the issues involved. We agree with the view of the majority who responded to these questions, and expect that the Tribunal (using the General Regulatory Chamber rules) will be the independent body to hear appeals if the householder and local authority cannot settle contested penalties between themselves.

Annex A – List of respondents

- Adur and Worthing Councils
- APSE (Association for Public Service Excellence)
- Ashford Borough Council (Kent Waste Partnership)
- Association of London Cleansing Officers (ALCO)
- Barnsley Metropolitan Borough Council
- Brent Council
- Broadland District Council
- Canterbury City Council (Kent Waste Partnership)
- Carlisle City Council
- Central Community Partnership
- Cheshire Fire and Rescue Service
- City of York Council
- CIWM Chartered Waste Manager
- Colchester Borough Council
- Cornwall Council
- Coventry City Council
- Dartford Borough Council (Kent Waste Partnership)
- Defra
- District Councils' Network
- Dorset Waste Partnership
- Dover District Council and Shepway District Council

- East Cambridgeshire District Council
- East Devon Council
- East Herts Officers
- East Staffordshire Borough Council
- Enfield Council
- Environmental Action Coordinator Waste Partnership (RECAP)
- Environmental Services Association
- Epping Forest District Council
- Exeter City Council
- Gateshead Council
- Gedling Borough Council
- Gravesham Borough Council (Kent Waste Partnership)
- Halton Council
- Harlow District Council
- Harrogate Borough Council
- Hartlepool Borough Council
- Keep Britain Tidy
- Kent County Council (Kent Waste Partnership)
- Kirklees Council
- LARAC
- LB Camden
- Leeds City Council
- Leicester City Council

- Leicester Disabled People's Access Group
- Leicestershire Waste Partnership
- Liverpool City Council
- Local Government Association
- Local residents association
- London Borough of Camden
- London Borough of Hammersmith & Fulham
- London Borough of Haringey
- London Borough of Harrow
- London Borough of Islington
- London Borough of Lambeth
- London Borough of Redbridge
- London Councils
- London Councils TEC
- Luton Borough Council
- Maidstone Borough Council (Kent Waste Partnership)
- Manchester City Council
- Merseyside and Halton Waste Partnership's (MHWP)
- Middlesbrough Council
- Milton Keynes Council
- National HMO Lobby
- National HMO Lobby
- New Way Tenants Residents
- Newcastle City Council
- North East Lincolnshire Council

- North Tyneside Council
- Northampton Borough Council
- Northamptonshire Waste Partnership (NWP)
- Norwich City Council
- Nottingham Action Group
- Nottingham City Council

- Oxford City Council
- Plymouth City Council
- Preston City Council
- Rossendale Borough Council
- Rotherham MBC
- Rushcliffe Borough Council
- Salford City Council
- Sandwell Metropolitan Borough Council
- SARG
- Sevenoaks District Council (Kent Waste Partnership)
- Shaftesbury Town Council
- Shropshire Council
- Somerset Waste Partnership
- South Gloucestershire Council
- Stockmore Street Residents' Association in Oxford
- Stockport Council
- Suffolk Waste Partnership
- Surrey Waste Partnership
- Swale Borough Council (Kent Waste Partnership)

- Teignbridge District Council
- Telford & Wrekin Council
- Thanet District Council (Kent Waste Partnership)
- The Borough of Pendle
- Tonbridge & Malling Borough Council (Kent Waste Partnership)
- Torfaen Council
- Torrington District Council
- Tunbridge Wells Borough Council (Kent Waste Partnership)
- Waltham Forest Council
- Wandsworth Borough Council
- Ward councillor for Nottingham City local authority
- Waveney District Council
- West Lancashire Borough Council
- West Yorkshire Fire & Rescue Service
- Wildcare
- Wiltshire Council
- Wokingham Borough Council
- Woodstock Town Council

Note: In addition to these respondents 4 people responded as private individuals.