



REPORT REFERENCE: **3.2**  
23 February 2012

LINCOLNSHIRE WASTE PARTNERSHIP

<b>SUBJECT:</b>	<b>DEFRA CONSULTATION – PRESENTING HOUSEHOLD WASTE FOR COLLECTION</b>
<b>REPORT BY:</b>	<b>WASTE OFFICERS GROUP</b>
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## **BACKGROUND INFORMATION**

On 16 January DEFRA launched a consultation 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 for collection.

The proposed amendments will abolish the criminal offence currently provided for in Section 46. A new, civil sanction will be put in place instead. Local authorities will continue to be able to issue fixed penalties in limited circumstances. “Harm to local amenity” will be introduced as a test before such a penalty can be imposed. The test aims to ensure that penalties are targeted at those who behave in a way which reduces the quality of their neighbours’ surroundings.

The consultation closes on 9<sup>th</sup> March 2012.

## **DISCUSSION**

Currently a notice under s46 can be served on a householder who, for example, for having a bin out for collection for too long a period, or for putting the wrong materials in a bin. Failure to comply can result in a fixed penalty (of £75 to £110 with discounts for early payment), or potentially a criminal conviction with a fine of up to £1,000.

The Government, in its Waste Policy Review, published on 14 June 2011, 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 level of fines are

appropriate, and are in line with penalties for similar offences.”

DEFRA are proposing 2 options:

Option 1: Civil penalties with an underpinning criminal offence

Option 2: Civil penalties with no underpinning criminal offence

In both options the amount of the fixed penalty would be reduced and action would only be possible if there was ‘harm to local amenity’.

### **Officers’ Views**

There are two main issues:

- The level and nature (civil or criminal) of the penalty
- The restriction to use where there is ‘harm to amenity’ only.

When comparing the sanctions for this offence with others it would appear that the level of penalty could be too high: for example a fixed penalty notice for shoplifting only results in a penalty of £80. The potential criminal conviction and fine of up to £1,000 does appear excessive.

However the restriction in the use of the powers to where there is ‘harm to local amenity’ means that no powers would be available to deal with situations where there is persistent placing of materials in the wrong bin, resulting in contamination of recyclable waste streams for example. Whilst these powers are little used in Lincolnshire at present not to have them as a fallback position could cause problems if contamination levels become unacceptable, for example.

DEFRA poses 11 questions in the consultation. Officers have drafted the proposed response in Appendix 1 in light of the above views

### **RECOMMENDATIONS**

1. That the Lincolnshire Waste Partnership responds to the consultation as indicated in Appendix 1.

## **Proposed response to DEFRA**

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

The Lincolnshire Waste Partnership (LWP) supports Option 2. We consider that the imposition of a criminal offence for this type of misdemeanour is excessive.

**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?*

No. See answer to Q1.

**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?*

Yes. We consider that normally at least one informal letter should be sent before service of a notice under s46. In addition an advisory/educational visit should be offered to the householder. The notice should be served only once attempts to bring about a change in behaviour by negotiation/education have failed. However this would not be appropriate in the case of repeat or persistent offenders.

**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?*

We do not agree that the notices should be served only where there is 'harm to local amenity'. This would remove an important power to deal with issues of contamination of recyclable waste streams, which would not ordinarily lead to harm to amenity. We consider that the aim to improve the quality of recyclable materials could be harmed if this default power is removed. This will act contrary to the aims of the revised Waste Framework Directive objective to promote high quality recycling. We would point out that contamination of a waste stream at an individual property could lead in some cases to the contamination and rejection of a complete load of recyclable material.

**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?*

Subject to the caveat in Q4 regarding the principle of 'harm to local amenity' we consider a penalty of £60 - £80 would be appropriate.

**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?*

Although such a move would remove any incentive to over enforce it is likely that a penalty of the amount being considered would not cover the local authority cost in investigating, undertaking informal steps (as outline in the answer to Q3), issuing the penalty notice and

recovering the penalty. We therefore see no reason why the penalty should not be retained by the local authority.

**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)?*

No comment – see answers to Q1 and Q2

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

Yes.

**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?*

The authorities comprising the Waste Partnership use the powers very little at present. Indeed no fixed penalty notices have been served in 2011/12 to date. However this does not diminish the need for the powers to be retained as a reserve power to be used where necessary, and as a deterrent. As an illustration one Council alone has served over 250 warning letters in relation to this power in this financial year; without the reserve power such letters, which prove successful, would have little authority.

**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?*

The options would have negligible budgetary impact. However restricting the powers to use when there is 'harm to local amenity' could, as explained above, have potentially significant impact on the quality of recyclable material.

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

No