



Department
for Environment
Food & Rural Affairs

Consultation on amendments to the use of fixed penalty receipts for litter, fly-tipping and breach of household waste duty of care

June 2023

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy and supporting our world-class food, farming and fishing industries.

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Introduction

Littering and fly-tipping can result in all kinds of waste being left in the environment. This can be harmful to human health and wildlife, can encourage pests and odours, and can otherwise interfere with people's enjoyment of the environment. This waste may also not be recycled resulting in valuable resources being lost to the economy.

Taking proportionate and effective enforcement action against people who intentionally or carelessly damage their local environment is a practical step authorities can take to change behaviour and deter others from offending. In the recent [Antisocial Behaviour Action Plan](#), we said that we want to see councils take a much tougher approach to litter and fly-tipping and that we would take steps to facilitate this.

We committed to raising the upper limits for fixed penalty notices (FPNs) for these offences this year, allowing local authorities (LAs) greater freedom to set the rates that offenders should pay. The plan also said that revenue from these fines will be reinvested locally in clean up and enforcement – meaning perpetrators pay for local councils to continue toughening their approach in future years. It is therefore the government's intention to make legislation restricting the use of FPN receipts for these purposes. We are seeking views to refine our understanding of how FPN receipts are currently spent, and the potential impacts of these proposed new restrictions.

Audience

This survey is for the Environment Agency, the research community, and bodies representing the interests of local government, the waste industry, and the public with respect to litter and fly-tipping. We will be consulting directly with local authorities through two workshops to be held this summer.

Litter and fly-tipping are devolved matters and the proposed changes will have effect in England only. As such we are not seeking views from the devolved administrations or representative bodies of those nations.

Duration

This private consultation will run for 4 weeks. This is in line with the Cabinet Office's 'Consultation Principles' which advises government departments to adopt proportionate consultation procedures. The consultation opens on 26 June 2023 and closes on 21 July 2023.

Responding to this consultation

Please respond to this consultation in the following ways:

Online using the MS Form at this link: [Amendments to the use of fixed penalty receipts for environmental antisocial behaviour](#)

By email: flytipping@defra.gov.uk

Or in writing to:

FPN ringfencing consultation, Ground floor Seacole Building, 2 Marsham Street, London, SW1P 4DF

If you choose to respond by post, please ensure your response is received by the closing date of the consultation, and include a return address.

After the consultation

We will update all respondents on the findings of this consultation.

Information in response to this consultation may be subject to release to the public or other parties in accordance with the access to information laws (these are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA)). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances.

If you click on 'Yes' in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. The reason for this is that your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances. If you click on 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available.

Defra is the data controller in respect of any personal data that you provide, and Defra's Personal Information Charter gives details of your rights in respect of the handling of personal data.

Compliance with the consultation principles

This consultation is being conducted in line with Consultation Principles set out in the Cabinet Office guidance, which can be found at: <https://www.gov.uk/Government/publications/consultation-principles-guidance>.

If you have any comments or complaints about the consultation process, please address them to consultation.coordinator@defra.gov.uk

Or in writing to:

Consultation Co-ordinator Defra 2nd Floor Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX.

Position today

According to independent research published by the Environmental Services Association in 2021, the estimated national cost of fly-tipping to the economy has increased from £209 million in 2015 to £392 million in 2018/19, and reports of fly-tipping have continued to rise.¹ Street cleansing, including clearing up litter and fly-tipping, cost local authorities in England £743 million in 2021/22.² Litter and fly-tipping can also harm the environment and blight local communities. There is a need for more action to be taken to prevent people from committing these offences.

There are currently provisions in the Environmental Protection Act 1990 (EPA 1990) for authorised officers of local authorities (LAs) to issue fixed penalty notices (FPNs) for the offences of leaving litter, unauthorised deposit of controlled waste on or in land (“fly-tipping”), and breach of household waste duty of care (“household waste DoC”), where a householder fails to take reasonable steps to ensure that they transfer their waste to an authorised person.

Use of these FPN receipts by LAs is already restricted to qualifying functions – for fly-tipping and household waste DoC offences, use of receipts is restricted to the functions related to Part II EPA 1990. For litter, the functions are listed under section 96(4) of the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005). For example, LAs might currently spend litter FPN receipts on street cleansing including removal of detritus and leaves, cleaning up graffiti, public bin infrastructure, maintenance and emptying, education, data collection, enforcement and communications.

We are seeking, through this consultation, to understand more about how FPN receipts are currently spent and what the impacts would be of restricting the spending of these receipts to enforcement and clean-up. We recognise that the proposed restrictions may require local authorities to amend how they currently budget for related activities. We are therefore also seeking views on the time needed for local authorities to make any budgetary adjustments in order to comply with the new restrictions. Section A seeks information about current practice, and Section B seeks views on the proposed new qualifying functions.

We remain clear that FPNs should never be used as a means to raise revenue, target accidental littering or punish those who are trying to do the right thing when education would be the better approach. This is set out in our advisory guidance on [effective enforcement for litter](#), and Defra ministers wrote to councils to remind them of this last year. We are concerned by reports which suggest some councils are still using private contractors incentivised on the volume of fines issued and we do not want to see these new FPN levels exploited for profit in this way. We have therefore committed to putting this guidance in statutory footing in due course, giving those to which it applies a clear and explicit duty to have regard to it when exercising their enforcement functions.

¹ [Counting the Cost of Waste Crime, ESA, 2021, www.esauk.org](#)

² [Local authority revenue expenditure and financing England: 2021 to 2022 individual local authority data - outturn - GOV.UK \(www.gov.uk\)](#)

Proposal

As set out in the PM’s Anti-social Behaviour Action Plan, the government would like to see councils taking a much tougher approach to tackling litter and fly-tipping, utilising their enforcement powers more. We understand that for some local authorities, one barrier to issuing more FPNs is a lack of funding for authorised officers. While the government respects that local authorities are best placed to set local budgets, we believe that revenue received through issuing of these FPNs should be primarily reinvested for the purposes of expanding or improving their enforcement functions, including employment of authorised officers.

Research has shown that at present, the proportion of total LA street cleansing spend on enforcement and other preventative measures is very low, with the bulk being spent on clean-up and disposal costs. We are aware that street cleansing costs for local authorities are significant, and that local authorities may currently and legitimately put their FPN receipts towards these costs. We are therefore proposing that costs directly related to the collection and disposal of litter and fly-tipped waste on relevant land (“clean-up”), and any steps taken to remove or eliminate the consequence of the littering or fly-tipping (“restoration of land”), should also remain as activities that can be funded through the use of FPN receipts.

Our proposal is to restrict, through legislation, the qualifying functions on which a local authority can spend income raised through the payment of fixed penalty notices for the offences of littering, fly-tipping and breach of household waste duty of care. A summary of changes and list of the proposed new qualifying functions is presented in table 1. Under this proposal, all other currently qualifying functions would no longer be eligible to be funded by FPN receipts. We are not proposing to introduce any new monitoring of how local authorities spend FPN receipts.

We propose to lay legislation in Parliament this year, to come into effect from the next financial year (2024/25). Local authorities would remain free to set their own budgets for enforcement and clean-up alongside the use of FPN receipts, in accordance with local priorities.

Table 1: Proposed new qualifying functions

Fixed penalty notice issued under	Currently restricted by	Currently restricted to	New qualifying functions
Sections 33ZA 34ZA EPA 1990 “fly-tipping” and “breach of household waste duty of care”	Section 73A(2) EPA 1990	Functions under Part II EPA 1990 , which relate to waste on land	1) Enforcement functions, namely: <ul style="list-style-type: none"> • employment of officers authorised under s33ZA(12) EPA 1990, s34ZA(12) EPA 1990 • enforcement data collection and publication, including but not limited to reporting to WasteDataFlow

Fixed penalty notice issued under	Currently restricted by	Currently restricted to	New qualifying functions
			<ul style="list-style-type: none"> • purchasing equipment to aid enforcement for example CCTV • other investigation and enforcement costs related to offences under s33(1)(a) and s34(2A) EPA 1990, 2) Clean-up functions, namely: <ul style="list-style-type: none"> • collecting and disposing of fly-tipped waste • restoration of land affected by fly-tipping
<u>Section 88 EPA 1990</u> leaving litter and/or refuse	<u>Section 96(1)(a) CNEA 2005</u>	Functions listed under <u>section 96(4) CNEA 2005</u> , which relates to functions under Part IV EPA 1990 and section 43 of the ASB Act 2003	1) Enforcement functions, namely <ul style="list-style-type: none"> • employment of officers authorised under s88(10) EPA 1990 • enforcement data collection and publication • purchasing equipment to aid enforcement for example CCTV • other investigation and enforcement costs related to offences under s87 EPA 1990, 2) Clean-up functions, namely: <ul style="list-style-type: none"> • collecting and disposing of litter and refuse • restoration of land affected by littering

The Environment Agency must pay FPN amounts received under section 34A and 34ZA to the Secretary of State (see section 73A(1) of the EPA 1990), and we do not intend to change this. Parish and community councils also have powers to issue FPNs for litter and we do not intend to make changes to the way they spend their receipts. We are not making changes to the way FPN receipts for graffiti offences are spent.

Please follow this link to answer the consultation questions about this proposal

[MS Forms: Amendments to the use of fixed penalty receipts for environmental antisocial behaviour.](#)

Alternatively, you can complete the same questions below and respond by email or post. (See 'Responding to this consultation')

About you

Q1. Would you like your response to be confidential?

- Yes
 No

If you answered 'Yes' above, please give your reasons and state clearly what information you would like to be kept confidential (please see section 'After the consultation' above for more information)

Q2. What is your name?

Jane Harrison

Q3. What is your email address?

Jane.harrison@cla.org.uk

Q4. Which of the options below best describes you?

*Please tick one option. If multiple categories apply to you, please choose the one which **best describes you** and which you are representing in your response.*

- Local authority representative body
 Business representative/Trade body
 Charity or social enterprise
 Community group
 Academic/ consultancy/ research
 Other: *please identify the type of organisation here*

Q5. If you are responding on behalf of an organisation, what is its name?

Country Land & Business Association

Section A. Current practice

Please only answer this section if you are familiar with local authority spending of FPN receipts. Where questions refer to 'FPN receipts', consider the combined total of FPN receipts for litter, fly-tipping and breach of household waste duty of care.

Q6. For a typical local authority, roughly how much of their total street cleansing spend is currently funded by FPN receipts?

- None
- A little
- A moderate amount
- A majority
- All

Q7. For a typical local authority, what proportion of FPN receipts are currently spent on enforcement functions? (please refer to table 1 for examples of enforcement functions)

- None
- A little
- A moderate amount
- A majority
- All

Q8. For a typical local authority, what proportion of FPN receipts are currently spent on collection, disposal and restoration of land costs?

- None
- A little
- A moderate amount
- A majority
- All

Q9. Thinking about the last 12 months, which other activities are typically funded through the use of FPN receipts? For each activity, please indicate what proportion of FPN receipts are typically spent on the activity (a little, a moderate amount, a great deal, all)

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Q10. Thinking about the effective enforcement guidance for litter, which aspects could be improved or strengthened with respect to eliminating the practice of using FPNs to intentionally raise revenue, and how?

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Section B. Proposed restricted functions

Q11. Do you agree or disagree with the definition of enforcement functions in Table 1?

- Agree – All enforcement functions covered
- Disagree – Unnecessary enforcement functions listed
- Disagree - Additional enforcement functions required
- Disagree – Other reason
- Unsure

If you answered 'Disagree' above, please describe an alternative definition

Q12. Do you agree or disagree with the definition of clean-up functions in Table 1?

- Agree – All clean-up functions covered
- Disagree – Unnecessary clean-up functions listed
- Disagree - Additional clean-up functions required
- Disagree – Other reason
- Unsure

If you answered 'Disagree' above, please describe an alternative definition

We agree with the clean-up functions proposed but the wording could contain additional clarity. It is important that the funds could be used for clean-up functions on both private and public land and this clarity should be included either within the functions themselves or within guidance.

Q13. Do you think the proposed new qualifying functions could limit the alleged practice of using FPNs to intentionally raise revenue?

- Yes
- No
- Maybe/Unsure

Please provide the rationale for your answer

The funds will be used to deal with the problem as such it will still be used to raise revenue that the authority can use. We have no knowledge of the internal practices of local authorities and whether this will provide a disincentive to FPNs being used in this way, we would hope not.

Q14. We propose to communicate the restrictions to local authorities this autumn, with them coming into effect from April 2024. How are local authorities likely to find complying with these restrictions within this timeframe?

- Very difficult
- Difficult
- Neutral
- Easy
- Very easy
- Unsure

If you have answered 'Difficult' or 'Very difficult' above, please briefly describe your reasons why below

Q15. Do you have any concerns about the practicalities of complying, outside of the timeframe?

N/A

Q16. Do you think the proposal would lead to any positive effects, outside of those described here?

We would hope so. With increased funds generated by more FPN's being served there could be an opportunity to employ more Enforcement Officers. It is hoped if there are more funds available for enforcement this may lead to more successful prosecutions not just the increased use of further FPNs.

Q17. Do you think that the proposal would lead to any negative unintended consequences?

N/A

Q18. Do you have any recommendations around how the proposal could be amended or improved, or any other views on the proposal?

Confirm that clean up functions allow the option to clear up waste fly-tipped on private land.

Consultee feedback on the Survey

Dear Consultee

Thank you for taking your time to participate in this survey. It would be appreciated if you can provide us with an insight into how you view the tool and the area(s) you feel could be improved, by completing our feedback questionnaire.

Q19. Overall, how satisfied are you with our online consultation tool?

- Very satisfied
- Satisfied
- Neither satisfied nor dissatisfied
- Dissatisfied
- Very dissatisfied
- Don't know

Please give us any comments you have on the format, including suggestions on how we could improve it.

It seems a reasonable timeframe, but we do not know what processes would need to be adapted within each of the local authorities.