

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 58: Household waste: de-criminalisation

269. Under section 46 of the Environmental Protection Act 1990 (the “EPA”) a waste collection authority may by notice require occupiers of premises to present their household waste for collection in a specified way. Failure, without reasonable excuse, to comply with such a requirement is an offence under section 46(6) of the EPA. Under section 47ZA of that Act, a fixed penalty may be offered as an alternative to prosecution. This section amends the EPA.
270. *Subsection (2)* amends section 46(6) of the EPA to remove the offence in relation to England. It will remain in relation to Wales and Scotland. *Subsection (3)* inserts new sections 46A to 46D into the EPA to provide for waste collection authorities in England to issue a fixed monetary penalty for any such failure to comply. By replacing a criminal offence with a civil penalty, this section reduces a burden on householders in England.
271. For a fixed penalty to be imposed under new section 46A, a written warning must first be given. A written warning may be given where an authorised officer of a waste collection authority in England is satisfied that a person has failed without reasonable excuse to comply with a requirement about the presentation for collection of household waste and that the failure to comply has caused (or is or was likely to cause) a nuisance or has been (or is or was likely to be) detrimental to any amenities of the locality (section 46A(1) and (2)). Section 46A(3) prescribes the content of the warning. Where such a warning has been given, section 46A(4), (5) and (7) allow the authorised officer to require the person to pay a fixed penalty.
272. A fixed penalty can be imposed where:
- a) in the case of a failure to comply that was continuing at the time the written warning was given, the person has, having been given the warning, failed to comply with the requirement within the period specified in the warning (section 46A(4)), or
 - b) the person has, within one year of the warning having been given (whether or not given in respect of a failure to comply that was continuing), again failed without reasonable excuse to comply with the requirement or failed without reasonable excuse to comply with a similar requirement, and (in either case) the failure to comply has caused (or is or was likely to cause) a nuisance or has been (or is or was likely to be) detrimental to any amenities of the locality (section 46A(7)).
273. Section 46A(5) provides that, where a person has been required to pay a fixed penalty under section 46A(4) (that is, in respect of a failure to comply that is continuing) and that requirement has not been withdrawn on appeal, an authorised officer may require a further fixed penalty to be paid if satisfied that the failure to comply is still continuing at the end of a particular period falling within one year of the written warning having been given. That period begins when a final notice is served and ends (a) if there has

*These notes refer to the Deregulation Act 2015 (c.20)
which received Royal Assent on 26 March 2015*

been an appeal, the day on which the final appeal is dismissed or withdrawn or (b) if no appeal is made, the day on which the period for appealing expires (section 46A(6)). Section 46A(8) provides that an authorised officer may require a person to pay a fixed penalty under subsection (5) or (7) each time that the officer is satisfied of the matters mentioned in the subsection. Section 46A(9) requires an authorised officer imposing a requirement to pay a fixed penalty to act in accordance with section 46C.

274. Section 46B makes provision for the amount of any such fixed penalty, which will be the amount specified by the waste collection authority in relation to its area or, if no amount is so specified, £60 (section 46B(1)). The authority may also make provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a specified period (section 46B(2)). The Secretary of State is given powers under section 46B(3) and (4) to make regulations in connection with the powers conferred on waste collection authorities under this section, including the power to require any amount specified by an authority to fall within a range set out in the regulations. Section 46B(5) gives the Secretary of State power by order to amend the figure of £60. Section 46B(6) provides that a fixed penalty is recoverable summarily as a civil debt and is recoverable as if it were payable under an order of the High Court or the county court, if the court in question so orders.
275. Section 46C makes provision regarding notices of intent and final notices. Section 46C(1) requires the service of a notice of intent before any fixed penalty can be imposed. Section 46C(2) prescribes the content of a notice of intent. Section 46C(3) provides that the person on whom a notice of intent is served may make representations as to why payment of a fixed penalty should not be required; this must be done within 28 days (section 46C(4)). Section 46C(5) provides that, in order to require a person to pay a fixed penalty under section 46A, a final notice must be served. A final notice may not be served before the expiry of the period of 28 days beginning with the day service of the notice of intent was effected (section 46C(6)). Section 46C(8) prescribes the contents of a final notice.
276. Section 46D makes provision for appeals to be made to the First-tier Tribunal against the imposition of a fixed penalty. The requirement to pay the fixed penalty is suspended pending the determination or withdrawal of the appeal that is the final appeal (section 46D(3)), and the First-tier tribunal is given powers to withdraw or confirm the requirement to pay the fixed penalty under section 46D(2). Where the requirement to pay the fixed penalty is confirmed on appeal, payment must be made before the end of the period of 28 days beginning with the day on which the requirement is so confirmed (section 46D(4) and (5)).
277. *Subsections (4) and (5)* make consequential amendments.
278. *Subsection (6)* introduces Schedule 12 which makes amendments to the London Local Authorities Act 2007 that are based on new sections 46A to 46C of the EPA. See commentary on Schedule 12 below.
279. This section, like the EPA, forms part of the law of England and Wales and Scotland but its effect is limited to England. It comes into force on the day on which the Act is passed so far as is necessary for enabling subordinate legislation to be made. It comes into force for remaining purposes on a day to be appointed by the Secretary of State in a commencement order.