



Deregulation Act 2015

2015 CHAPTER 20

The environment etc

58 Household waste: de-criminalisation

- (1) Part 2 of the Environmental Protection Act 1990 (waste on land) is amended in accordance with subsections (2) to (5).
- (2) In section 46 (receptacles for household waste), in subsection (6) (offence of failing to comply with requirements relating to receptacles), after “requirements imposed” insert “by a waste collection authority in Scotland or Wales”.
- (3) After section 46 insert—

“46A Written warnings and penalties for failure to comply with requirements relating to household waste receptacles: England

- (1) This section applies where an authorised officer of a waste collection authority in England is satisfied that—
 - (a) a person has failed without reasonable excuse to comply with a requirement imposed by the authority under section 46(1), (3)(c) or (d) or (4) (a “section 46 requirement”), and
 - (b) the person’s failure to comply—
 - (i) has caused, or is or was likely to cause, a nuisance, or
 - (ii) has been, or is or was likely to be, detrimental to any amenities of the locality.
- (2) Where this section applies, the authorised officer may give a written warning to the person.
- (3) A written warning must—
 - (a) identify the section 46 requirement with which the person has failed to comply,
 - (b) explain the nature of the failure to comply,

Status: This is the original version (as it was originally enacted).

- (c) explain how the failure to comply has had, or is or was likely to have, the effect described in subsection (1)(b),
 - (d) if the failure to comply is continuing, specify the period within which the requirement must be complied with and explain the consequences of the requirement not being complied with within that period, and
 - (e) whether or not the failure to comply is continuing, explain the consequences of the person subsequently failing to comply with the same or a similar section 46 requirement.
- (4) Where a written warning has been given in respect of a failure to comply that is continuing, an authorised officer of the waste collection authority may require the person to whom the written warning was given to pay a fixed penalty to the authority if satisfied that the person has failed to comply with the section 46 requirement identified in the warning within the period specified by virtue of subsection (3)(d).
- (5) Where a person has been required to pay a fixed penalty under subsection (4) and that requirement has not been withdrawn on appeal, an authorised officer of the authority may require the person to pay a further fixed penalty to the authority if satisfied that the failure to comply is still continuing at the end of a relevant period which falls within the period of one year beginning with the day the written warning was given.
- (6) For the purposes of subsection (5)—
 - (a) a “relevant period” is a period beginning with the day a final notice is served on the person under section 46C(5) in respect of the failure to comply that is continuing and ending with—
 - (i) where the person appeals against the requirement to pay a fixed penalty imposed by the final notice, the day on which the appeal that is the final appeal made by the person against the requirement is dismissed or withdrawn;
 - (ii) where the person does not appeal, the day on which the period for appealing expires;
 - (b) there is no relevant period where the person appeals as mentioned in paragraph (a)(i) and the requirement to pay the fixed penalty is withdrawn on appeal.
- (7) Where a written warning has been given, whether or not in respect of a failure to comply that is continuing, an authorised officer of the waste collection authority may require the person to whom the written warning was given to pay a fixed penalty to the authority if satisfied that, within the period of one year beginning with the day the written warning was given —
 - (a) the person has again failed without reasonable excuse to comply with the section 46 requirement identified in the warning and the person’s failure to comply has had, or is or was likely to have, the effect described in subsection (1)(b), or
 - (b) the person has failed without reasonable excuse to comply with a section 46 requirement that is similar to the one identified in the warning and the person’s failure to comply has had, or is or was likely to have, the effect described in subsection (1)(b).

- (8) An authorised officer may require a person to pay a fixed penalty under subsection (5) or (7) each time that the authorised officer is satisfied of the matters mentioned in the subsection.
- (9) An authorised officer imposing a requirement to pay a fixed penalty under subsection (4), (5) or (7) must act in accordance with section 46C.
- (10) A “fixed penalty” means a monetary penalty of an amount determined in accordance with section 46B.
- (11) An “authorised officer”, in relation to a waste collection authority, means—
 - (a) an employee of the authority who is authorised in writing by the authority for the purpose of giving written warnings and requiring payment of fixed penalties under this section;
 - (b) any person who, under arrangements made with the authority, has the function of giving such warnings and requiring such payments and is authorised in writing by the authority to perform that function;
 - (c) any employee of such a person who is authorised in writing by the authority for the purpose of giving such warnings and requiring such payments.

46B Amount of penalty under section 46A and recovery of penalty

- (1) The amount of the monetary penalty that a person may be required to pay to a waste collection authority under section 46A is—
 - (a) the amount specified by the waste collection authority in relation to the authority’s area, or
 - (b) if no amount is so specified, £60.
- (2) A waste collection authority may make provision for treating a fixed penalty under section 46A as having been paid if a lesser amount is paid before the end of a period specified by the authority.
- (3) The Secretary of State may by regulations make provision in connection with the powers conferred on waste collection authorities in England under subsections (1)(a) and (2).
- (4) Regulations under subsection (3) may (in particular)—
 - (a) require an amount specified under subsection (1)(a) to fall within a range prescribed in the regulations;
 - (b) restrict the extent to which, and the circumstances in which, a waste collection authority may make provision under subsection (2).
- (5) The Secretary of State may by order substitute a different amount for the amount for the time being specified in subsection (1)(b).
- (6) A fixed penalty under section 46A—
 - (a) is recoverable summarily as a civil debt;
 - (b) 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.

46C Penalties under section 46A: procedure regarding notices of intent and final notices

- (1) Before requiring a person to pay a fixed penalty under section 46A, an authorised officer must serve on the person notice of intention to do so (a “notice of intent”) in accordance with subsections (2) to (4).
- (2) A notice of intent must contain information about—
 - (a) the grounds for proposing to require payment of a fixed penalty,
 - (b) the amount of the penalty that the person would be required to pay, and
 - (c) the right to make representations under subsection (3).
- (3) A person on whom a notice of intent is served may make representations to the authorised officer as to why payment of a fixed penalty should not be required.
- (4) Representations under subsection (3) must be made within the period of 28 days beginning with the day service of the notice of intent is effected.
- (5) In order to require a person to pay a fixed penalty under section 46A, an authorised officer must serve on the person a further notice (the “final notice”) in accordance with subsections (6) to (8).
- (6) A final notice may not be served on a person by an authorised officer before the expiry of the period of 28 days beginning with the day service of the notice of intent on the person was effected.
- (7) Before serving a final notice on a person, an authorised officer must consider any representations made by the person under subsection (3).
- (8) The final notice must contain information about—
 - (a) the grounds for requiring payment of a fixed penalty,
 - (b) the amount of the penalty,
 - (c) how payment may be made,
 - (d) the period within which payment is required to be made (which must not be less than the period of 28 days beginning with the day service of the final notice is effected),
 - (e) any provision giving a discount for early payment made by virtue of section 46B(2),
 - (f) the right to appeal under section 46D, and
 - (g) the consequences of not paying the penalty.

46D Appeals against penalties under section 46A

- (1) A person on whom a final notice is served under section 46C may appeal to the First-tier Tribunal against the decision to require payment of a fixed penalty.
- (2) On an appeal under this section the First-tier Tribunal may withdraw or confirm the requirement to pay the fixed penalty.
- (3) The requirement to pay the fixed penalty is suspended pending the determination or withdrawal of the appeal that is the final appeal made by the person against the decision to require payment of the penalty.

(This is subject to subsection (4).)

- (4) Where the requirement to pay the fixed penalty is confirmed at any stage in the proceedings 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 unless the person makes a further appeal before the end of that period.
- (5) The reference in subsection (4) to the requirement to pay the fixed penalty being confirmed on appeal includes a reference to an appeal decision confirming the requirement to pay the fixed penalty being upheld on a further appeal.”
- (4) In consequence of subsection (2), in section 47ZB(2)(b) (amount of fixed penalty for offence)—
 - (a) omit sub-paragraph (i), and the “and” following it;
 - (b) in sub-paragraph (ii), omit “in any other case.”.
- (5) In section 73A (use of fixed penalty receipts), in subsection (2) (power for waste collection authority to use fixed penalty receipts for purposes of its functions under Part 2 and other functions specified in regulations), after “34A” insert “, 46A”.
- (6) Schedule 12 makes amendments to the London Local Authorities Act 2007 that correspond to those made by subsection (3).