

# London Councils' Transport & Environment Committee

## Setting Penalty Charge Levels for Builders' Skips Contraventions under the London Local Authorities and Transport for London Act 2013

Item no: 5

**Report by:** Jennifer Sibley      **Job title:** Principal Policy Officer  
**Date:** 15 October 2015  
**Contact Officer:** Jennifer Sibley  
**Telephone:** 0207 934 9829      **Email:** [Jennifer.sibley@londoncouncils.gov.uk](mailto:Jennifer.sibley@londoncouncils.gov.uk)

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**Summary:** This report sets out the results of the public consultation into setting penalty charge levels for builders' skips contraventions under the London Local Authorities and Transport for London Act 2013 and the London Local Authorities Act 2007. It asks Members to decide whether to set penalty charge levels for these contraventions, and if so at what level.

**Recommendations:** The Committee is asked to:

- Consider the outcome of the consultation.
- Decide whether to set a penalty charge level for contraventions relating to builders' skips, and if so;
- Decide the level of penalty charge and the level of reduction for early payment, and whether different levels should be set for different cases or different classes of case.
- Decide whether to set an immobilisation release charge and if so, at what level.

The penalty levels and level of release charge consulted on can be found at paragraph 44.

## **Background to the London Local Authorities and Transport for London Act 2013 (“the 2013 Act”) and this consultation**

1. The 2013 Act was the last in a series of private legislation that London Councils promoted through Parliament on behalf of boroughs and the City of London and jointly with Transport for London (TfL). Every borough, the City of London and TfL were asked to propose provisions they wished to see included in the draft Bill.
2. The provisions in Part 3 of the 2013 Act in respect of builders’ skips contraventions and immobilisation of builders’ skips were originally requested for inclusion by the City of Westminster in 2007. Every borough, the City of London and TfL was then consulted on whether it supported the proposed provisions. Each had to approve the draft provisions at Full Council before the legislation could be laid in Parliament.
3. In January 2015 London Councils was approached by LB Croydon as to whether the penalty charge levels for builders’ skips contraventions had been set. As they had not, officers sought approval from TEC at its March 2015 meeting to undertake a public consultation.
4. A public consultation ran from 10 April to 22 May 2015. That consultation found respondents were supportive of the principle of setting penalty charge levels for builders’ skips contraventions under section 9 of the 2013 Act, but there was no consensus as to whether the proposed penalty charge levels were appropriate. Officers reported to TEC in June 2015 that London Councils would undergo further work to establish appropriate penalty charge levels before undertaking a second public consultation in the summer.
5. LB Croydon then notified London Councils that it would not use the powers, so officers sought confirmation from the London Environment Directors Network and TfL that at least some highways authorities would do so before proceeding with further work. Five authorities indicated they would be interested in doing so. One borough identified in its response to the initial consultation that it would also like TEC to set a release charge for the immobilisation of skips (under section 13 of the 2013 Act). The TEC Executive agreed on 16 July 2015 that setting appropriate release charges for the immobilisation of skips could also be included within the next round of consultation.
6. London Councils ran a second public consultation from 14 August to 25 September 2015 after working with highways authority officers on revised penalty levels.

### **Powers to set penalty charge levels and the immobilisation release charge**

7. Part 4 of the London Local Authorities Act 2007 (“the 2007 Act”) provides the London local authorities, acting jointly through a “joint committee” of which they are all a member, with the power to set penalty charge levels which are payable to them by virtue of a penalty charge provision.
8. Section 9 of the 2013 Act is a penalty charge provision for the purposes of Part 4 of the 2007 Act. The powers are conferred on all London local authorities and TfL in respect of the highways for which they are the highway authority, and the powers are discharged through a joint committee of which they are all a member (in this case, TEC). TEC therefore has the power to set penalty charge levels for building skip contraventions

under section 66 of the 2007 Act which will come into force subject to there being no objection by the Secretary of State; after which time TEC is required to publish the penalty charge levels. Different levels may be set for different areas in Greater London, and for different cases and different classes of case.

9. Section 13 of the 2013 Act also provides TEC as the joint committee with the power to prescribe a release charge where a skip has been immobilised using powers in the 2013 Act. That charge must be set in accordance with certain provisions under Part 4 of the 2007 Act, and the charge may also be set at different levels for different areas in Greater London and for different cases or classes of case. As with the penalty charges, the charge may only come into force should the Secretary of State not object, after which time TEC is required to publish the charge levels.
10. Each of the highway authorities must take its own decision to bring the powers relating to builders' skips contraventions and immobilisation in Part 3 of the 2013 Act into operation in respect of the roads for which they are the highways authority. In doing so they are required to publish details of that decision, the date when the provisions will come into effect and notice of the general effect of the provisions. Therefore the provisions are likely to take effect at different times, if they are brought into operation at all.

#### **Enforcement options' relating to builders' skips**

11. The 2013 Act makes provision for 'decriminalising' existing offences relating to builders' skips. Currently criminal enforcement routes are available to highways authorities, details of which are set out below. Adopting the new powers in the 2013 Act is entirely a voluntary decision for highways authorities.

#### *The Highways Act 1980 ("the 1980 Act")*

12. This Act allows highways authorities to prosecute owners of skips for failure to comply with the relevant requirements in the 1980 Act. Successful prosecution may result in the owner of the skip being liable to a fine not exceeding level three on the standard scale of fines for summary offences, currently £1,000.

#### *The London Local Authorities and Transport for London Act 2003 ("the 2003 Act")*

13. The London Local Authorities and Transport for London Act 2003 (another piece of private legislation) established a system of Fixed Penalty Notices (FPNs) for the offences contained in the Highways Act 1980. These are only applicable in London.
14. The 2003 Act did not repeal the Highways Act 1980 and highways authorities can pursue both methods, for example issuing a FPN for a first offence and prosecution after repeat offences. Highways authorities decide whether to adopt the powers in the 2003 Act, and practice is mixed across London.
15. TEC is responsible for setting the levels of fixed penalty for offences in the 2003 Act. TEC set the fixed penalty level on 27 January 2004 at £100, reduced to £50 if paid within 14 days.

#### *The London Local Authorities and Transport for London Act 2013 (the "2013 Act")*

16. The 2013 Act makes provisions for decriminalising the above offences, meaning that the contraventions will instead be enforced by penalty charges. The contraventions are found at section 9 (3) of the 2013 Act, and are not yet in force.

(a) a builder's skip is deposited on a highway without a permission granted under section 139 of the 1980 Act (control of builders' skips);

(b) a builder's skip has been deposited on a highway in accordance with a permission granted under the said section 139 but the owner of the skip does not secure that—

(i) the skip is properly lighted during the hours of darkness;

(ii) the skip is marked or lighted in accordance with regulations made under the said section 139 requiring builders' skips to be so marked or lighted;

(iii) the skip is clearly and indelibly marked with the owner's name and with his telephone number or address;

(iv) the skip is removed as soon as practicable after it has been filled;

(v) each of the conditions subject to which the permission was granted is complied with;

(c) the owner of a builder's skip who, under subsection (2) of section 140 of the 1980 Act (removal of builders' skips), is required to remove or reposition the skip or cause it to be removed or repositioned has failed to comply with the requirement as soon as is practicable.

17. Before the powers in the 2013 Act may be exercised, penalty charge levels must be set under the 2007 Act through a joint committee (TEC).

18. By setting the penalty levels, TEC does not presuppose that highways authorities in London should make use of these powers. It is for each and every highways authority to determine themselves whether to bring the provisions into operation on the highways for which they are responsible, and to comply with the relevant statutory requirements relating to publication under section 3 of the 2013 Act. In taking such a decision, the 1980 Act and 2003 Act offences will be repealed on those roads and a decriminalised system of enforcement will operate. A criminalised system of enforcement (through fixed penalties and/or prosecution and fines) cannot co-exist with a decriminalised system (penalty charges and appeals).

### **Grounds for setting penalty levels and the rationale for the penalty levels consulted on and proposed**

19. In setting penalty levels for the builders' skips contraventions under the 2013 Act, different levels may be set for different areas in Greater London, and for different cases or classes of case (in the case of builders' skips, this would mean different penalties for not having a permit compared to not covering a skip, for example). In setting the level of penalty charges, regard should be had to the reasonable or expected costs of administering and enforcing the provisions.

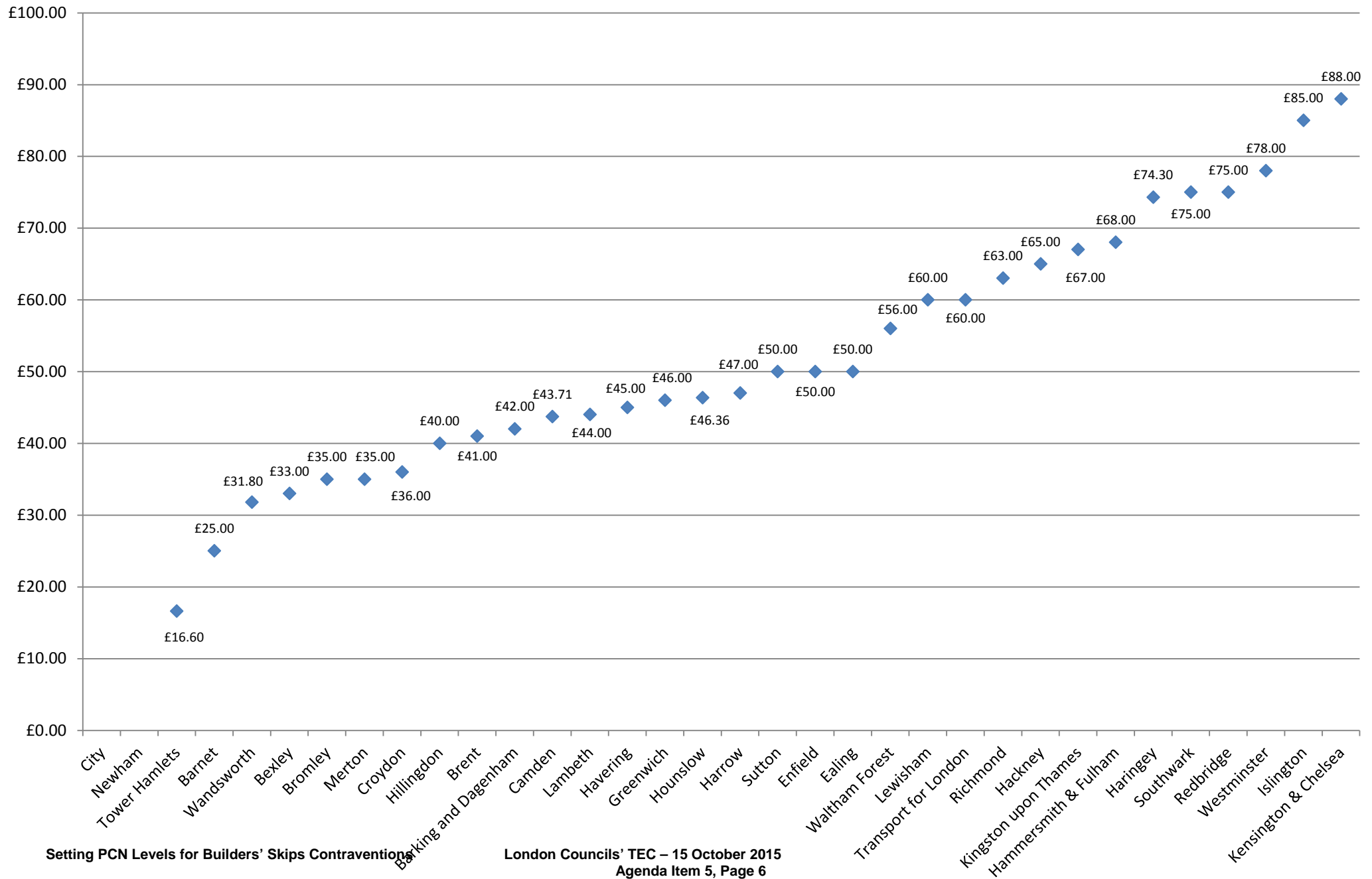
20. In addition TEC may want to have regard to other considerations such as those considered when setting other types of penalty:

- a) Setting penalties at the lowest level possible to secure deterrent, as the purpose of penalties is not to create a revenue stream;
- b) Avoiding a patchwork of differing penalty levels across London;
- c) The penalties set need to be reasonable and proportionate;
- d) Clamping of vehicles and release is not punitive, but instead aims to be cost neutral to the highways authority;

- e) The purpose of immobilisation of vehicles is to secure payment that would otherwise not be paid.

21. Initially officers took the view that builders' skips represented a highways obstruction and so penalty charge levels in line with highways obstructions (£130 reduced to £65) were initially proposed and consulted upon earlier in the year. The consultation responses did not support these levels on the basis that they were too low and would undermine compliance; specifically as the reduced penalty charge level would be cheaper than many highways authority skip permit prices.
22. Officers then mapped highway authority skip permit prices to seek to identify a level that would not undermine compliance. Skip permits vary in length, and so information about the minimum price payable to a highways authority for a skip permit in London is given below. The City of London only permits skips to be placed on the highway within hoardings which are licensed separately. LB Newham does not make its skip permit price publically available as only approved skip companies may apply for a skip permit.

## Minimum price of a skip permit for each highways authority in London



23. The penalty charge level of £200, reduced to £100 if paid within 14 days was proposed as not undermining compliance at the reduced rate, as well as allowing scope for highways authorities at the highest end of the skip permit scale to increase this permit price over time if appropriate. The immobilisation release charge of £100 was considered as inseparable from the penalty charge levels set as an immobilised skip would cost the owner between £200 (if the penalty charge was paid within 14 days) and £300. Potentially additional charges for lights and removal/storage could also apply, depending on the circumstance. Whilst skips cost around £800 to purchase new, the costs of disposal of the waste within the skip have to be taken into account in a skip owner's decision to abandon a skip or pay a penalty charge and release charge.
24. Discussions with officers from authorities that had expressed an interest in using the powers indicated they consider that these penalty levels would act as a deterrent and cover enforcement costs, whilst also not being so high as to encourage the abandoning of skips.
25. Setting different penalties for different contraventions (such as the failure to light a skip, have a skip permit, mark a skip) was considered by officers. Due to a lack of accurate information about whether there are different enforcement costs for enforcing certain contraventions, and a desire to make the system straightforward for enforcement officers and skip companies to understand, a single level of penalty charge for each contravention is proposed. This is consistent with the approach taken for the 2003 Act and Fixed Penalty Notices.

### **Initial consultation on setting the penalty charge level**

26. 31 responses were received to the initial consultation. 19 of these were from highways authorities, 8 were from skip companies or business groups and four were from members of the public. 74 per cent of respondents supported setting the level of penalty charge for builders' skips contraventions. However, only 52 per cent of respondents supported setting the penalty charge level at £130 and reducing the penalty charge by half to £65 if paid within 14 days. Respondents generally felt the levels were too low and it was highlighted that the fifty per cent reduction at this level would undermine compliance as it would make it cheaper to risk paying the penalty charge than pay for a skip permit from some highways authorities.

### **Second consultation on setting the penalty charge level**

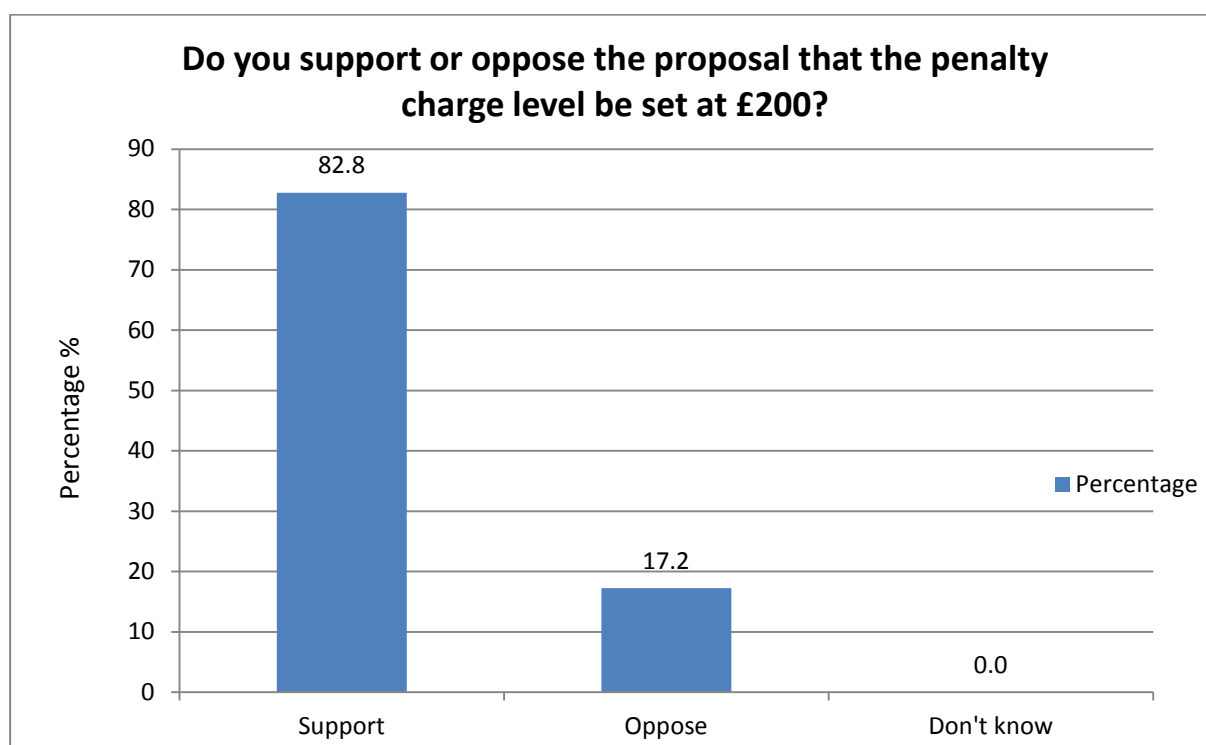
27. London Councils ran a second consultation from 14 August to 25 September 2015 with revised penalty levels. The survey and results are outlined below. Respondents were given information about the powers and an explanation of the proposals as well.
28. The consultation questions were as follows:
- What is your name?
  - What is your email address?
  - What is the name of your organisation? Please state N/A if you are responding as a member of the public.
  - Which of the following best describes who you are responding on behalf of?
    - Highways authority / local authority
    - Other public sector
    - Skip company / industry representative
    - Road safety group
    - Business group / representative

- Member of the public
- Other (please state)
- Do you support or oppose the proposal that the PCN be set at £200? Do you have any comments on this proposal?
- Do you support or oppose the proposal that the PCN be reduced by half, to £100, if paid within 14 days? Do you have any other comments on this proposal?
- Do you support or oppose the proposal that after 28 days, if the PCN remains unpaid, the highways authority may issue a Charge Certificate to the skip owner, doubling the PCN payable to £400? Do you have any comments on this proposal?
- Do you support or oppose the proposal that the immobilisation release charge be set at £100? Do you have any comments on this proposal?

### Consultation results summary

29. 29 responses to the consultation were received. 23 were from highways authorities, five were from members of the public and one from a business group. A response was also received from one borough notifying London Councils that as the borough did not intend to use the powers it would not be responding to the consultation.

30. 82.8 per cent of respondents supported setting the penalty charge level at £200. 17.2 per cent opposed this level.



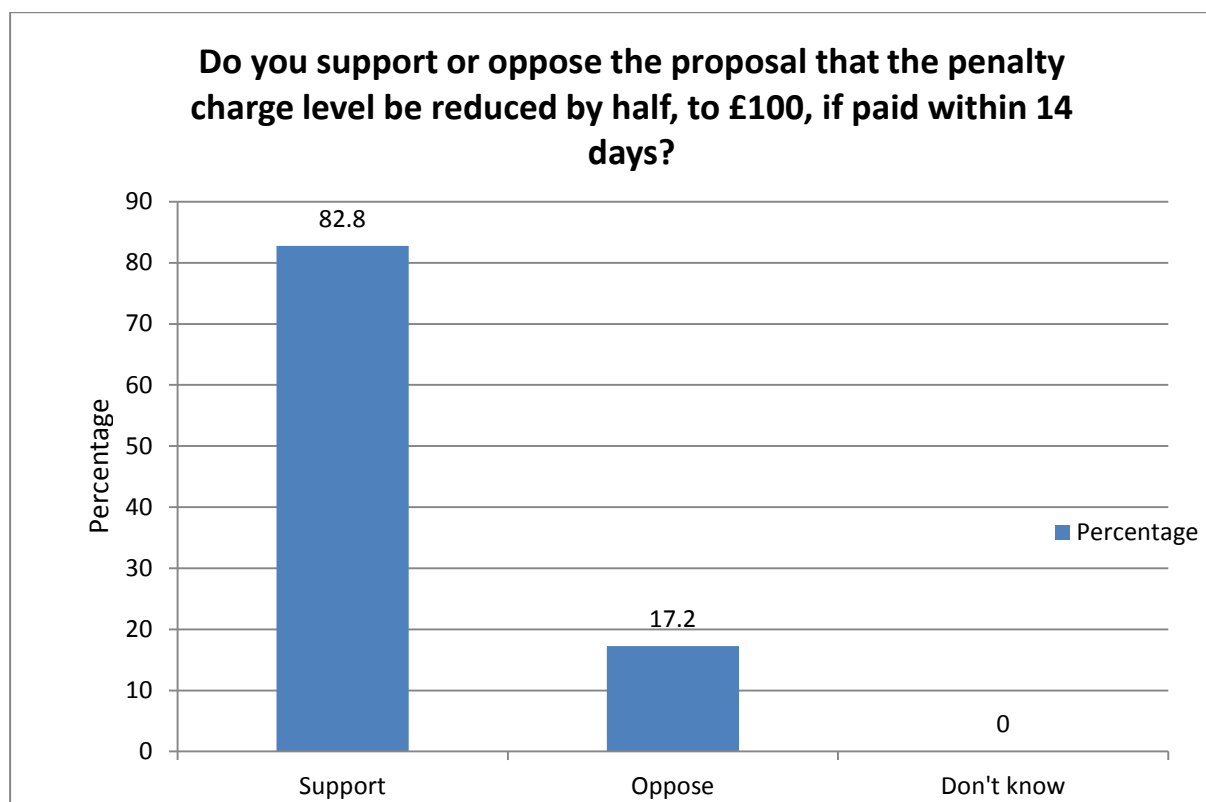
31. Fourteen comments were received on this proposal. A summary is provided below.

- a) Five borough respondents felt the level would encourage compliance and would increase the risks to illegally operating skip companies.
- b) Four respondents (two boroughs and two members of the public) felt the penalty was too low and wanted it to be higher. One of the members of the public acknowledged a higher penalty could lead to more abandoned skips.



- c) One member of the public wanted hirers of skips to receive the penalty as they reported that some householders bully skip drivers into taking overloaded skips. (However, the legislation is clear that the penalty charge notice has to be issued to the skip owner.)
- d) One business respondent sought a two-tier system of penalty charges with one penalty level for a single breach and a higher level for multiple breaches. (It is possible to issue multiple penalty charges for breaching multiple conditions under the legislation.)
- e) One borough respondent did not support the proposals because they did not support decriminalising the offences; and does not intend to switch from their current enforcement using fixed penalties and prosecution where necessary.
- f) One member of the public felt the consultation was a waste of time and money.
- g) One borough respondent felt the levels were too high and preferred the levels previously consulted on (£130 reduced to £65).

32. 82.8 per cent of respondents supported reducing the penalty charge by half to £100, if paid within 28 days. 17.2 per cent opposed this level.

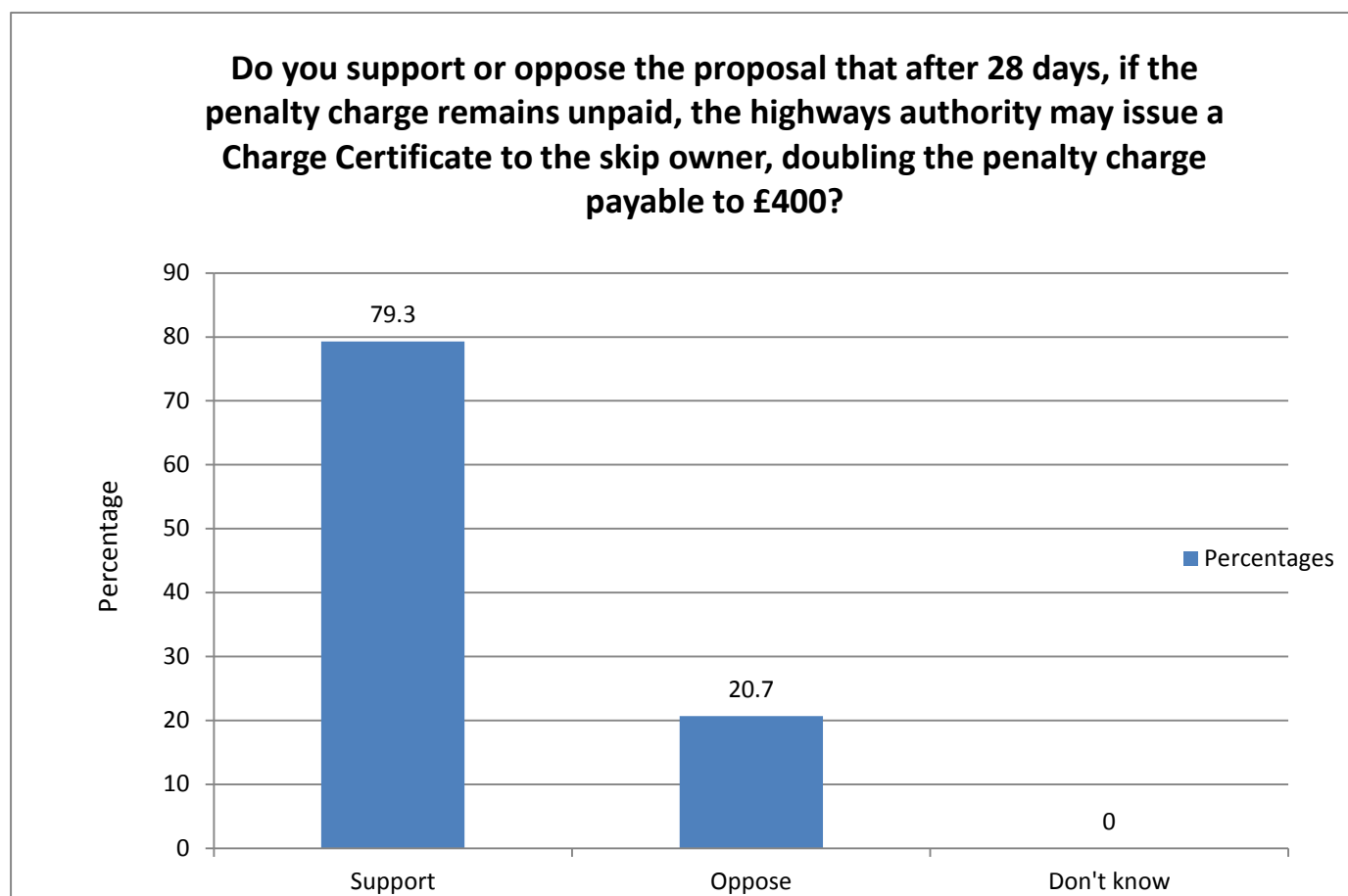


33. 12 comments were received on this proposal. A summary is provided below:

- a) Seven respondents (five boroughs and two members of the public) felt that this reduction was consistent with other penalty charge practice and would encourage prompt payment. One of these respondents (from a borough) repeated their concern that the overall level proposed (£200) was too high, and another (a member of the public) would prefer a lower discount rate.
- b) Another member of the public felt skip owners needed to give clear instructions to hirers about what was acceptable in terms of filling a skip.

- c) One borough respondent felt the reduced penalty charge level was too low and risked making it cheaper to abandon the skip. They felt the penalty charge level was the right level for lights and lack of name/telephone number information.
- d) One borough respondent queried whether the reduction would cover overheads. One business respondent felt that the reduced penalty charge would not cover the cost of skip lights, and would undermine compliance. They highlighted higher enforcement costs at night to check whether skips were lit. They sought a lower discounted rate of 20 per cent rather than 50 per cent. (Highways authorities that place lights on skips can recharge these costs to the owner separately to the penalty charge, and this is the same for any covering or marking of the skip.)
- e) One borough respondent did not support the proposal as the borough did not wish to stop using fixed penalties.

34. 79.3 per cent of respondents supported issuing a Charge Certificate after 28 days if the penalty charge remains unpaid, doubling the penalty charge payable to £400. 20.7 per cent opposed this.

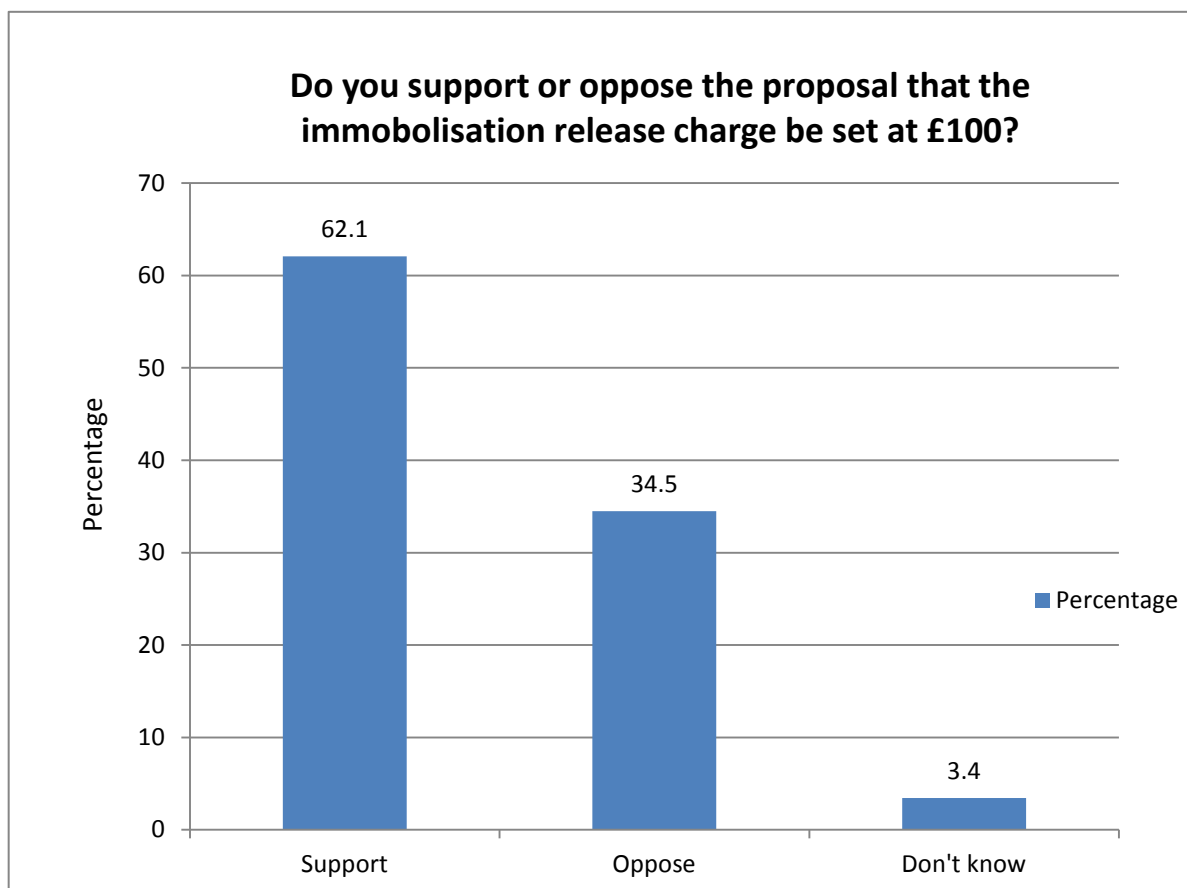


35. 14 comments were received on this proposal. A summary is provided below:

- a) Eight respondents supported the proposal. Of these, two borough respondents added it would help cover costs at this stage of the enforcement process. A third felt it would act as a deterrent to avoiding payment of the penalty charge and a fourth borough respondent welcomed the consistency across London and that it would clarify that it is the skip owner that is responsible rather than the hirer. One member of the public supported the proposal and also felt skips should be impounded.

- b) One borough felt the proposed Charge Certificate level was too low, and that £500 would better cover administration, haulage and storage costs. (Highways authorities can use powers in the Highways Act 1980 to remove skips and charge these costs and the costs of storage to the owner.)
- c) One borough respondent felt the proposed Charge Certificate level was too high and would encourage skip companies not to pay. A second borough respondent supported the concept of doubling the penalty charge but felt the starting amount was too high, and so opposed the proposed level as too high.
- d) Two borough respondents queried the doubling of the Charge Certificate. One felt the courts would view it as a mathematical solution and £350 would be more palatable. Another preferred for the Charge Certificate for builders' skips to follow the parking penalty charge regime where the Charge Certificate increases by half, and instead proposed £300.
- e) One borough respondent repeated that they would not be using this route of enforcement and so opposed the proposal.

36. 65.5 per cent of respondents supported setting an immobilisation release charge at £100. 31.0 per cent opposed this. 3.4 per cent (one member of the public) did not know.



37. 17 comments were received on this proposal. A summary is provided below:

- a) Four highways authority respondents felt that immobilisation of skips compounded the problem and that skips ought to be removed instead; some cited that this was their authority's policy or that it would be in this case.

- b) Two borough respondents welcomed the proposed charge, with one citing it as a good deterrent. This respondent highlighted the costs of removing abandoned skips and suggested that these costs needed to be taken into account before immobilising a skip. Another two borough respondents supported having the option to immobilise skips. Both respondents indicated their authorities would also remove skips. Both highlighted their experience of skips being abandoned by skip companies for the local authority to remove.
- c) A different borough respondent stated they were not able to carry out immobilisation but the release charge should be high enough to deter non-compliance. It is implied, but not clear, if this borough respondent felt the release charge should be higher.
- d) Two members of the public felt that the immobilisation release charge could be higher. One business group respondent felt the immobilisation release charge did not take into account the costs of affixing an immobilisation device, such as transporting the device, travel time and costs and administration involved. Four borough respondents felt the release charge should be higher, with one suggesting £200 and a second suggesting the same amount as the penalty charge (£200) or higher. Two of these respondents felt removal and storage was more appropriate and so wanted the costs of removal of skips covered by the immobilisation release charge. (The purpose of the immobilisation release charge is for a skip owner to pay for release of the skip. Costs of removal and storage of skips can be claimed from the owner if the skip is collected.)
- e) One member of the public felt that skips abandoned when skip companies go out of business should be removed by highways authorities as they become a fire risk and they take up parking space. This respondent felt if skips were not claimed the highways authority should sell the skip. (Highways authorities can use powers in the Highways Act 1980 to do this.)

## **Code of Practice**

38. The stage two consultation asked respondents whether a Code of Practice would be useful and their views on a drafted version. All those who responded to this part of the consultation responded positively to having a Code of Practice but this report focuses on setting penalty levels which is the statutory function of TEC for this legislation. If a Code of Practice is useful to highways authorities then this can be produced separately as and when any highways authority takes up the powers and in consultation with highways authorities.

## **Setting up an appeals system for builders' skips penalty charges**

39. As with other penalty charges that boroughs issue, for example for parking or waste receptacles contraventions, an individual receiving a penalty charge notice can make representations to the council which issued it, which must be considered. If the council rejects the representations and the individual still does not agree to pay the penalty charge, the individual may appeal to the independent adjudicator, which would be the Environment and Traffic Adjudicators, part of London Tribunals.
40. The information below has been taken from Appendix 3 of a report presented to TEC on 11 June 2009 in relation to setting penalty charge levels for waste receptacles and littering from vehicles under the London Local Authorities Act 2007 (LLAA 2007). It has been included at the request of London Tribunals to be indicative of the costs of establishing a penalty charge appeals system. All references to PATAS should be taken to be Environment and Traffic Adjudicators, part of London Tribunals.

- a. *Part 4 of the London Local Authorities Act 2007 provides for representations against a PCN to be made to the local authority and for appeals to go before adjudicators if those representations are not accepted.*
- b. *Under the 2007 act, the Parking and Traffic Appeals Service (PATAS) will be responsible for hearing appeals against the service of PCNs. Under the current system, boroughs contribute to the fixed costs of running PATAS based on the annual number of PCNs they issue. Boroughs also pay a unit cost, set annually by the Committee, for each appeal received against a PCN that has been issued. In order to estimate a cost for PATAS to process appeals from PCNs issued under the 2007 act, London Councils would need a detailed forecast of the volumes of PCNs issued and also some estimate of how many appeals were expected. This is difficult to estimate at this stage.*
- c. *There would also be start-up costs to consider. As these are new offences a new type of appeal would need to be created, either manually or added to the existing IT system. If the number of appeals was below 1,000 per year, it would be possible to operate this from a manual system, which would have lower set-up costs. If the number of appeals is higher, it would have to be added to the existing IT system. As an example, the most recent amendments made to the IT system when PATAS took over the appeals handling process for moving traffic offences resulted in a cost of £170,000-£200,000 for IT development. There would be additional costs from employing more administrative staff and adjudicators if necessary.*
- d. *London Councils officers are in discussions with PATAS over the practicalities of setting up the appeals framework. The approach is to work on the basis of setting up a manual system and to scale this up if the numbers of appeals increase. A manual system should be in place by the time the penalty charges come into force.*

## Next steps

41. If TEC decides to set penalty charge levels, it is for individual highway authorities to decide whether they wish to adopt the powers.
42. If TEC sets the penalty levels, it must write to the Secretary of State, notifying him of the level that TEC has set (s.67 of the LLAA 2007). The Secretary of State has one month to object, otherwise the level(s) will come into force in that authority's area. If the Secretary of State considers the level of penalty excessive, he can make regulations reducing the level of penalty. In the event that the Secretary of State did make regulations, TEC would not be able to set any further penalty levels for 12 months.
43. TEC must then publish the level (s.66 (5) of the LLAA 2007).
44. The proposed penalty levels that were consulted on are given below.

Contravention	Proposed penalty charge level	Proposed reduction if paid within 14 days	Proposed increase if unpaid after 28 days
<b>Section 9(3)(a)</b> A builder's skip is deposited on a highway without a permission granted under section 139 of the 1980 act (control of builders' skips).	£200	Reduced by half to £100	Doubled to £400

<b>Contravention</b>	<b>Proposed penalty charge level</b>	<b>Proposed reduction if paid within 14 days</b>	<b>Proposed increase if unpaid after 28 days</b>
<b>Section 9(3)(b)</b> A builder's skip has been deposited on a highway in accordance with a permission granted under the said section 139 but the owner of the skip does not secure that –  (i) The skip is properly lighted during the hours of darkness;	£200	Reduced by half to £100	Doubled to £400
<b>Section 9(3)(b)</b> A builder's skip has been deposited on a highway in accordance with a permission granted under the said section 139 but the owner of the skip does not secure that –  (ii) The skip is marked or lighted in accordance with regulations made under the said section 139 requiring builders' skips to be so marked or lighted;	£200	Reduced by half to £100	Doubled to £400
<b>Section 9(3)(b)</b> A builder's skip has been deposited on a highway in accordance with a permission granted under the said section 139 but the owner of the skip does not secure that –  (iii) The skip is clearly and indelibly marked with the owner's name and telephone number or address;	£200	Reduced by half to £100	Doubled to £400
<b>Section 9(3)(b)</b> A builder's skip has been deposited on a highway in accordance with a permission granted under the said section 139 but the owner of the skip does not secure that –  (iv) The skip is removed as soon as practicable after it has been filled;	£200	Reduced by half to £100	Doubled to £400
<b>Section 9(3)(b)</b> A builder's skip has been deposited on a highway in accordance with a permission granted under the said section 139 but the owner of the skip does not secure that –  (v) Each of the conditions subject to which the permission was granted is complied with.	£200	Reduced by half to £100	Doubled to £400
<b>Section 9(3)(c)</b> The owner of a builder's skip who, under	£200	Reduced by half to £100	Doubled to £400

<b>Contravention</b>	<b>Proposed penalty charge level</b>	<b>Proposed reduction if paid within 14 days</b>	<b>Proposed increase if unpaid after 28 days</b>
subsection (2) of section 140 of the 1980 Act (removal of builders' skips) is required to remove or reposition the skip or cause it to be removed or repositioned has failed to comply with the requirement as soon as is practicable.			
<b>Section 13(2)</b> Immobilisation release charge	£100	N/A	N/A

### **Options for the Committee:**

45. TEC can:

- a) Approve the levels consulted on.
- b) Approve some but not all of the levels consulted on.
- c) Set higher levels for all or some of the levels consulted on.
- d) Set lower levels for all or some of the levels consulted on.
- e) Not set any of the levels consulted on. In this case, the powers would not be able to be used. If this is the option preferred by TEC, officers recommend that this position is reviewed in three years' time.

46. Members are reminded of the importance of a strong and well considered justification for the level of penalty set for contraventions as the levels have to be approved by the Secretary of State. In a situation where higher levels than those consulted on are considered, TEC will need to provide additional justification for a higher level of penalty.

**Recommendations:** The Committee is asked to:

- Consider the outcome of the consultation.
- Decide whether to set a penalty charge level for contraventions relating to builders' skips, and if so;
- Decide the level of penalty charge and the level of reduction for early payment, and whether different levels should be set for different cases or different classes of case.
- Decide whether to set an immobilisation release charge and if so, at what level.

The penalty levels and level of release charge consulted on can be found at paragraph 44.

## **Financial Implications**

47. There are no financial implications to London Councils arising from this report.
48. Highways authorities that wish to use the 2013 Act to adopt decriminalised enforcement of contraventions for builders' skips should note the indicative costs of establishing an appeals system, as set out in paragraph 40 above.
49. Schedule 4 of the 2007 Act sets out specific financial provisions relating to penalty charge receipts.

## **Legal Implications**

50. The power to set penalty charge levels for builders' skips contraventions under the 2013 Act is held by a joint committee including members from each of the London highways authorities. Those authorities have delegated the exercise of functions under the 2007 Act to set penalty charge levels to TEC which is the joint committee. These powers were delegated to the joint committee by the Second Further Variation to the TEC Governing Agreement dated 8 June 2009 which varied the TEC Governing Agreement dated 13 December 2001.
51. Any decision to set penalty charge levels must be:
  - a) taken lawfully by TEC operating within its powers;
  - b) rational, taking account of all relevant matters and ignoring irrelevant matters;
  - c) be procedurally fair by ensuring in this case that: there has been proper and appropriate consultation at a formative stage; consultees have been provided with sufficient information and time to allow for a proper and informed response; and that decision-makers take into account the consultation responses in a conscientious and open-minded way.
52. Should a highways authority decide to bring the 2013 Act provision into operation in respect of the highways for which it is responsible, doing so will cause the 1980 Act and 2003 Act provisions to be repealed and a decriminalised enforcement regime will operate for builders' skips contraventions on those highways.

## **Equalities Implications**

53. An Equalities Impact Assessment has been undertaken, and is reproduced below.



**LONDON COUNCILS EQUALITIES IMPACT ASSESSMENT**  
**FORM A: Relevance Test**

Name of policy, service or function being assessed:

Penalty Charge Notices, Charge Certificate and Immobilisation Release Charge for Builders' Skips (LLAA & TfL 2013 Act)

Mark on the grid below whether the policy/function might have an adverse impact on any of the grounds indicated.

<b>Equality Area</b>	<b>No adverse impact</b>	<b>Low adverse impact</b>	<b>Medium adverse impact</b>	<b>High adverse impact</b>
<b>Race</b>	✓			
<b>Gender</b>	✓			
<b>Disability</b>	✓			
<b>Religion/belief</b>	✓			
<b>Sexual orientation</b>	✓			
<b>Age</b>	✓			

Relevance test completed by:

**NAME**                      **Jennifer Sibley**  
**DIVISION**                **PAPA**  
**DATE**                      **1 October 2015**

**If a medium or high adverse impact has been identified for any area then a full impact assessment must be undertaken using Form B.**