



# Enforcement of Waste Receptacle Offences Deregulation Act 2015

This briefing explains the changes to the Environmental Protection Act 1990 and the London Local Authorities Act 2007 as a result of the Deregulation Act 2015. It also summarises the lobbying work that London Councils undertook on behalf of boroughs.

## Overview

The Deregulation Act 2015 has changed the processes for issuing penalties for waste receptacle offences by households under both the Environmental Protection Act 1990 and the London Local Authorities Act 2007. Boroughs are still able to issue Fixed Penalty Notices and Penalty Charge Notices under the respective legislation, but it is extremely difficult to issue either for a first offence, the process is lengthier and individuals have greater opportunity to appeal. In addition, the ability to prosecute and fine individuals for failure to comply with the Environmental Protection Act 1990 has been removed. These changes come into force on 15 June 2015.

### Background to PCNs and FPNs

A Penalty Charge Notice (PCN) is a penalty paid when an individual is in contravention of regulations e.g. traffic, parking and waste which are under civil enforcement. The recipient of a PCN can make representations against the penalty to the local authority. If the authority rejects the representations, the individual can appeal to an independent adjudicator who will confirm or reject the PCN. Any failure to pay can be pursued by the local authority through the County Court. This is a similar mechanism to that currently undertaken with parking enforcement.

Fixed Penalty Notices (FPNs) are payable for a range of offences, including moving traffic offences (e.g. speeding and driving through red lights), as well as anti-social behaviour such as littering, spitting and public disorder offences. Normally, a fixed penalty notice is a conditional offer – one can accept guilt, pay the fixed penalty, and close the matter; or reject the fixed penalty notice and be summoned to court. There is no formal route of appeal. However, the government's Deregulation Act 2015 has changed FPNs for waste receptacles; they have introduced a route of appeal and any unpaid FPNs are recoverable as civil debt, and are no longer a criminal offence.

# Analysis

## Environmental Protection Act 1990

Previously Section 47ZA of the Environmental Protection Act 1990 permitted boroughs to issue Fixed Penalty Notices (FPNs) to tackle household or business failure to comply with regulations the borough has made; for example regarding the use of certain waste receptacles (bins or boxes), what must be placed in them, and where and when they may be placed for collection etc.

Section 58 of the Deregulation Act 2015 adds a series of clauses to the Environmental Protection Act 1990, changing the enforcement process for offences relating to household waste (Section 46A). Enforcement of commercial and industrial waste is unaffected.

- The enforcement process for household waste is much lengthier and is it now very difficult to issue an FPN for a first or one-off offence. The FPN enforcement process for commercial and industrial waste remains the same.
- An offence is now committed only if:  
*There has been a failure to comply with requirements a local authority has made; and 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.*
- It is no longer possible in England to prosecute individuals (S.58(2)). The FPN is the only enforcement route.
- As the government intended to decriminalise waste receptacle offences, it has changed the conventional FPN system. For waste receptacle offences, there is now a route of appeal and unpaid FPNs are recovered as civil debt.

The new route for enforcing household waste and the unchanged route for enforcing commercial and industrial waste using the Environmental Protection Act 1990 are set out below:

Environmental Protection Act 1990, as amended by the Deregulation Act 2015 <sup>1</sup>	Environmental Protection Act 1990
<i>Route required from 15 June 2015 for household waste enforcement. It cannot be used for commercial or industrial enforcement.</i>	<i>This route is no longer available for household waste. It is still possible to use it for commercial and industrial waste enforcement.</i>
Offence committed – it must breach regulations set by the council and cause a nuisance or be detrimental to local amenities (see Section 46A(1)(b)).	Offence committed in breach of requirements (S.47(2) and (4)).
Local authority decides whether to issue a written warning. <i>If the council intends to take further enforcement action, a written warning must be issued.</i>	Opportunity to discharge criminal liability by paying a FPN, and avoid being taken to court. 14 days to pay. (Section 47ZA)
<u>If the failure to comply is continuous</u> the council must specify a date on the written warning for compliance (see Section 46A(3)(d)). If the person fails to comply, a Notice of Intent can be issued. The individual has 28 days to make representations to the council  <u>If the failure to comply is not continuous</u> , only if an individual <b>commits another same or similar offence</b> within one year of the first offence can a Notice of Intent be issued (see Section 46A(7)). The individual has 28 days to make representations to the council.	Not possible to appeal an FPN. Failure to pay results in a court appearance.
table continues	

<sup>1</sup> Sections and clauses refer to Deregulation Act 2015

If the representations are rejected by the council, a Final Notice is issued. The FPN is payable within 28 days or the individual can appeal. There is a reduced amount if paid within 14 days.	
Appeal possible to a First-Tier Tribunal, which either confirms FPN is payable or rejects it. 28 days to pay from ruling.	
Further appeal possible. If it reaches the High Court or county court, it is recoverable as a civil debt.	

The Deregulation Act 2015 reduces the previous level of FPN (£100) to a scale of between £60 and £80, with an early payment amount of no less than £40. London boroughs and the City of London are able to set their own amount of penalty (within the range permitted) if they wish to continue using FPNs to enforce this legislation.

### London Local Authorities Act 2007 (LLAA 2007)

Section 23 of the LLAA 2007 created a penalty charge provision, allowing boroughs to issue penalty charge notices to individuals and businesses who fail to comply with the requirements of the local authority with regards to the use of certain waste receptacles; for example what must be placed in them, where and when they may be placed for collection.

This decriminalised route was introduced in London to reduce the costs of enforcement, especially as the criminal route, used when FPNs were unpaid, could be expensive and lengthy for councils.

Schedule 12 of the Deregulation Act 2015 makes similar changes to the LLAA 2007 as it does for the Environmental Protection Act 1990, except that the changes are to the operation of the penalty charge system.

- The enforcement process for *household* waste is much lengthier and is it now very difficult to issue a PCN for a first or one-off offence. The PCN enforcement process for commercial and industrial waste remains the same.
- The level of penalty payable for *household* waste offences has been reduced from £110. The Deregulation Act 2015 sets a scale of £60-£80, with an early payment amount of no less than £40. London Councils' Transport and Environment Committee must set the level of penalty (within the range permitted) before the legislation can be enforced.

The LLAA 2007 already had a requirement to prove nuisance or detriment to the amenities in the locality (see Section 19 for household waste and Section 21 Clause 1 for commercial and industrial waste). This is therefore unchanged by the Deregulation Act 2015.

Under the new system, the legislation makes it difficult to issue a penalty charge for a first offence, unless the failure to comply is continuous and the individual fails to comply within the period given by the Written Warning.

The enforcement routes for household and commercial and industrial waste using the LLAA 2007 legislation are set on the following page.

London Only	
<b>Deregulation Act 2015<sup>1</sup></b> <i>Route required from 15 June 2015 for household waste enforcement if using the LLAA 2007. It cannot be used for commercial or industrial enforcement.</i>	<b>London Local Authorities Act 2007</b> <i>This route is no longer available for household waste. It is still possible to use it for commercial and industrial waste enforcement.</i>
Offence committed – it must be in breach of the council’s regulations and cause a nuisance or be detrimental to the local amenities.	Offence committed – it must be in breach of the council’s regulations and cause a nuisance or be detrimental to the local amenities.
Local authority decides whether to issue a written warning. <i>If the council intends to take further enforcement action, a written warning must be issued.</i>	Penalty charge notice issued to occupier of the premises. 28 days to pay. Either pay, or make representations to the borough that issued it.
<p><u>If the failure to comply is continuous</u> the council must specify a date on the written warning for compliance (see Section 20A(3)(d)). If the person fails to comply, a Notice of Intent can be issued. The individual has 28 days to make representations to the council.</p> <p><u>If the failure to comply is not continuous</u>, only if an individual <b>commits another same or similar offence</b> within one year of the first offence can a Notice of Intent be issued (see Section 20A(7)). The individual has 28 days to make representations to the council.</p>	If the representations are rejected by the council, the penalty charge is payable within 28 days or the individual can appeal to an independent adjudicator within 28 days.
If the representations are rejected by the council, a Final Notice is issued – the penalty charge is payable within 28 days or the individual can appeal. There is a reduced amount if paid within 14 days.	Independent adjudicator either upholds penalty charge notice and individual has to pay within 28 days; or adjudicator rejects charge and matter is closed.
Appeal possible to independent adjudicator. <sup>2</sup> Independent adjudicator either upholds penalty charge notice and individual has to pay within 28 days; or adjudicator rejects charge and matter is closed.	No automatic right of appeal. Can request a review of the decision on very limited grounds: <ul style="list-style-type: none"> <li>• The decision was wrongly made because of an error by administrative staff;</li> <li>• The individual failed to appear or be represented at a hearing for some good reason;</li> <li>• There is new evidence, the existence of which could not have been reasonably known of or foreseen before the decision; or</li> <li>• The interests of justice require a review.</li> </ul> If the adjudicator has wrongly interpreted the law then the decision can be reviewed at the High Court (a Judicial Review).
No automatic right of appeal. Can request a review of the decision on very limited grounds: <ul style="list-style-type: none"> <li>• The decision was wrongly made because of an error by administrative staff;</li> <li>• The individual failed to appear or be represented at a hearing for some good reason;</li> <li>• There is new evidence, the existence of which could not have been reasonably known of or foreseen before the decision; or</li> <li>• The interests of justice require a review.</li> </ul> If the adjudicator has wrongly interpreted the law then the decision can be reviewed at the High Court (a Judicial Review).	

<sup>1</sup> Sections and clauses refer to Deregulation Act 2015

<sup>2</sup> PATAS acts as the independent adjudicator for all London boroughs for waste receptacle offences (as well as parking and moving traffic offences)

## Commentary

London Councils strongly opposed these changes throughout the passage of the Deregulation Bill. We secured cross-party support from members of the House of Lords, and proposed amendments that would effectively exempt London from the legislation at several stages during the Bill's passage in Parliament. We met and discussed the issues with the minister who refused to allow a London exemption. We therefore tabled an amendment at the final stage in the Lords to make the changes we believed were desirable, but despite strong support, it was defeated.

The changes are disappointing, as London led the way on securing PCN powers in the 2007 Act that offered a decriminalised route which was more streamlined and less expensive, especially compared to the situation when FPNs are unpaid. We feel the Deregulation Act 2015 has created a bureaucratic and more heavily regulated system of enforcement, on entirely unjustified grounds. We also feel that the much reduced level of penalty (from £110 to a maximum of £80) is extremely unhelpful in acting as a deterrent and in reflecting the costs of enforcement for boroughs, especially with a lengthier enforcement route.

The length of the process and costs involved are likely to deter boroughs from using the powers. The complexity of enforcement is likely to undermine efforts by boroughs to require households to recycle, and recycle correctly. Contamination is a major problem for the recycling industry; reducing the amount of waste boroughs can recycle as well as reducing the quality of the end product.

Notwithstanding these concerns, our informal research during the lobbying process indicated that boroughs were not currently using the enforcement powers in the LLAA 2007 for households, but only businesses. The enforcement mechanisms for businesses are unchanged and there may in practice be little impact on boroughs. However, boroughs currently issuing FPNs using the Environmental Protection 1990 Act to households, together with those wishing to use the powers in future, are likely to find the process lengthier and more difficult to enforce.

London Councils will revise its Good Practice Guide on the use of the LLAA 2007 waste receptacles powers to reflect the Deregulation Act 2015 changes.

London Councils' Transport and Environment Committee must set a new penalty charge level for the waste receptacle powers in the LLAA 2007 as the Deregulation Act has removed the previous level. Officers will recommend TEC sets the level at the highest possible scale of £80.

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### Links:

[Deregulation Act Section 58](#)

[Deregulation Act Schedule 12](#)

[Regulations on penalty levels](#)

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