# EXPLANATORY MEMORANDUM TO

# THE ENVIRONMENTAL OFFENCES (FIXED PENALTIES) (MISCELLANEOUS PROVISIONS) (AMENDMENT) REGULATIONS 2012

## 2012 No. 1151

# THE ENVIRONMENTAL PROTECTION ACT 1990 (AMENDMENT OF FIXED PENALTY AMOUNT) (ENGLAND) ORDER 2012

## 2012 No. 1150

**1.** This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

## 2. Purpose of the instruments

2.1 The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012 amends the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 (S.I. 2007/175) ("Environmental Offences Regulations") to reduce the range and level of fixed penalties under section 47ZB of the Environmental Protection Act 1990 ("EPA") which can be specified by a waste collection authority. The Environmental Protection Act 1990 (Amendment of Fixed Penalty Amount) (England) Order 2012 amends section 47ZB of the EPA to reduce the default amount if a local authority does not specify the amount of the penalty under the fixed penalty notice.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

## 4. Legislative Context

4.1 Under section 46 of the EPA, local authorities (as waste collection authorities) may, by means of a notice, specify how householders present their waste for collection. Currently, householders who fail without reasonable excuse to comply with requirements in such a notice can be subject to a criminal conviction and a fine of up to £1000 (section 46(6)). Alternatively, local authorities have the option of issuing a fixed penalty notice (section 47ZA). Section 47ZB provides that the amount of any fixed penalty is the amount specified by the waste collection authority or, if no amount is specified, is £100. The Environmental Offences Regulations (made under section 47ZA(4)) prescribes that the amount a waste collection authority may so specify must fall within the range of £75 to £110, and that where a waste collection authority makes provision for early payment of a lesser amount before the end of a specified period, that amount must not be less than £60.

4.2 The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012 amends the Environmental Offences Regulations to reduce the prescribed range for a fixed penalty to between £60 and £80. They also reduce the figure specified as the minimum amount for early payment from £60 to £40. If waste collection authorities do not specify the amount of the penalty under the fixed penalty notice, the default amount is currently set at £100 in the EPA. The Environmental Protection Act 1990 (Amendment of Fixed Penalty Amount) (England) Order 2012 amends the EPA to reduce that default amount to £60.

## 5. Territorial Extent and Application

5.1 Both instruments apply in England only.

## 6. European Convention on Human Rights

Lord Taylor has made the following statement regarding Human Rights:

In my view the Environmental Protection Act 1990 (Amendment of Fixed Penalty Amount) (England) Order 2012 is compatible with the Convention rights.

As the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012 is subject to negative resolution procedure and does not amend primary legislation, no statement is required in relation to those Regulations.

## 7. Policy background

7.1 Under Section 46 of the EPA, local authorities may instruct householders how to present their rubbish for collection. Where these instructions are not followed, local authorities may prosecute and apply a fine of up to £1000. As an alternative, they may apply a fixed monetary penalty of £75 to £110. Although few local authorities seem to use their current powers to bring a criminal prosecution, many write to householders pointing out that they face criminal conviction and a fine of £1,000 if they fail to comply.

7.2 The Government believes that this is inappropriate, particularly as there is no differentiation made between genuine mistakes and those who persistently cause problems for their neighbours. They would like to see local authority powers in this area to be made more proportionate, and better targeted, with fixed penalties no higher than those for shoplifting or parking offences.

7.3 Following a review of waste policy, the Government indicated that it intended to replace the criminal sanctions applying to householders who present their waste for collection incorrectly with civil sanctions, and to ensure that the level of penalties was appropriate. To ensure local authorities use enforcement powers appropriately, the Government also proposed to set "harm to local amenity" as a test before a civil penalty can be imposed. This would mean that any penalties are targeted appropriately at householders whose behaviour has a detrimental impact on their local neighbourhood. The Government also indicated that, as an interim measure, it intended to reduce the level of fixed penalties to a fairer level (see paragraphs 130-132 of the Waste Policy Review, published on 14 June 2011[1]).

7.4 These two instruments make these interim changes to the levels of fixed penalties to make them more proportionate. The Government considers that an individual should not be at risk of receiving a fixed penalty for not closing a bin lid that is higher than a penalty notice issued to a shoplifter for theft (a Penalty Notice for Disorder of £80 may be issued for a first shoplifting offence under the Theft Act 1968[2]). The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations 2012 reduces the range applying under section 47ZB from £75 - £110 to £60 - £80, and reduces the minimum amount that applies upon early payment of the penalty, from £60 to £40. The Environmental Protection Act 1990 (Amendment of Fixed Penalty Amount) (England) Order 2012 makes a proportionate reduction to the default amount (if local authorities do not specify an amount), from £100 to £60.

## 8. Consultation outcome

[1] http://www.defra.gov.uk/publications/files/pb13540-waste-policy-review110614.pdf.
[2] See the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (S.I. 2002/1837), as amended.

8.1 A formal consultation was launched on 16 January on the long-term changes outlined in the Waste Review (such as the removal of the criminal offence) - this closed on 9 March. A formal consultation has not been carried out on these interim changes, but Lord Taylor wrote to chief executives in all local authorities in England seeking their views on these. Forty-two local authorities responded to his letter. About 60% of those expressing a view supported, or did not object to, the proposed changes. Those agreeing with the change considered the reduced penalty levels were more reasonable, more proportionate and more likely to be paid. Some authorities who disagreed with the change considered that existing levels were appropriate for those who blatantly flout good environmental practice.

## 9. Guidance

9.1 No formal guidance is considered necessary as the legislation does not require any change in the behaviour of local authorities or others who collect municipal waste.

## 10. Impact

10.1 The instruments are not considered as having an impact on business, charities or voluntary bodies.

10.2 The instruments are not considered as having an impact on the public sector.

10.3 An Impact Assessment has not been prepared for these instruments.

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 There is no need to carry out a review on these amending instruments as they are not considered as having an impact on businesses, charities, voluntary bodies or the public sector.

## 13. Contact

13.1 **Andrew Baxter** at the Department for Environment, Food and Rural Affairs Tel: 020 7238 6151 or email: Andrew.Baxter@defra.gsi.gov.uk can answer any queries regarding the instruments.