

**Department for Environment Food and Rural Affairs**  
Local Authority Waste Performance (LAWP)  
Waste Strategy  
6/H15 Ashdown House  
123 Victoria Street  
London  
SW1E 6DE  
**Telephone** 08459 33 55 77 / +44 0207 238 6591  
**Website** [www.defra.gov.uk](http://www.defra.gov.uk)



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Dear Sir/Madam

I am writing to inform you of Defra's position on the collection of side waste, which has caused some concern amongst local authorities in recent months.

As you know, common practice amongst waste collection authorities is to provide a specified receptacle (e.g. a wheeled bin) to the householder and to refuse to collect any surplus waste left outside the bin – commonly referred to as 'side waste'.

Section 45(1) of the Environmental Protection Act 1990 (EPA 1990) imposes a general duty on waste collection authorities to arrange for the collection of household waste in their areas. Section 46 of the EPA 1990 gives waste collection authorities powers, by a notice served on the occupier of any premises ("section 46 notice"), to determine the arrangements for collection of household waste, including the size, number, and placing of receptacles for collection. Section 46(6) provides that a person who fails to comply with any of these requirements shall be liable to a fine.

Having taken advice on this issue and the relevant legislative provisions, the Department has come to the view that the duty under section 45 to "*arrange for the collection of household waste in its area*" is discharged when an authority prescribes receptacles under section 46, and makes arrangements for the collection of waste from those receptacles. It follows that section 45 imposes no further duty to collect household waste deposited in breach of the requirements of such notice other than the duty to keep relevant land clear of litter and refuse under section 89 of the EPA 1990.

We appreciate that there are concerns that this policy may lead to an increase in fly-tipping and the Clean Neighbourhoods and Environment Act 2005 has developed a range of more flexible tools for local authorities to deal with illegal waste activity. The act allows waste collection authorities to issue fixed penalty notices for offences under sections 46 and 47 of the Environmental Protection Act 1990.

Waste collection authorities can already serve notices on householders and businesses specifying, for example, that they must put their waste receptacles in a certain place to facilitate waste collection. People who fail to comply can be prosecuted through the courts, facing a maximum fine of £1,000. The Clean Neighbourhoods and Environment Act introduces a £100 fixed penalty notice as

a flexible alternative to prosecution. Defra will be consulting on the fixed penalty notice regulations and guidance from the Clean Neighbourhoods and Environment Act in October 2005 ready for the measures to be commenced in April 2006.

Authorities will be able to deal more effectively with, for example, householders that leave waste out on the streets against the terms of a notice, causing disruption and nuisance to the street scene and additional costs to the local authority who has to clear the waste quickly. Breaching a section 46 notice about the placing of receptacles could now incur a fixed penalty notice with the receipts hypothecated back to the local authority to allow them to carry out their functions.

This letter is being sent to all Waste Collection Authorities in England.

If you have any queries please send them via email sub headed 'Side Waste' to: [LAWPP@defra.gsi.gov.uk](mailto:LAWPP@defra.gsi.gov.uk)