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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Fixed Penalty Notices for Small Scale Fly-tipping

Date of issue: 12 January 2017
Action required: Responses by 06 April 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

The Welsh Government's "A Fly-tipping Free Wales: Our Strategy for Tackling Fly-tipping" gave a commitment to investigate the introduction of Fixed Penalty Notices (FPNs), or other enforcement tools, for fly-tipping incidents. This consultation seeks your views on the Welsh Government's proposals for the introduction of FPNs for small-scale fly-tipping in Wales.

How to respond

The closing date for responses is 6 April 2017

You can respond by:

Completing the [online consultation response document](#)

Or by email to: EQR@wales.gsi.gov.uk

Or by post to;
Environment Quality & Regulation Branch
People & Environment
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

www.wales.gov.uk/consultations
www.cymru.gov.uk/ymgyngoriadau

Contact details

For further information:

Name: Environment Quality & Regulation Branch

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CF10 3NQ

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telephone: 02920 823162

Data protection

How the views and information you give us will be used:

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future

consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Fly-tipping in Wales – Background

Over 36,000 incidents of fly-tipping were recorded in Wales during 2015/16 costing the Welsh tax payer over £2.1 million to clear. These incidents varied in size from a few bin bags of rubbish to large lorry loads of construction and demolition waste. Fly-tipping is a significant problem for local communities, especially in the most deprived areas of the country; it is also a risk to the environment and, at times, a cause of local flooding.

Currently the only options available for dealing with fly-tippers are to prosecute in an attempt to secure a criminal conviction in the Courts, or for enforcement officers to issue a caution. Responses to the Welsh Government's Fly-tipping Strategy consultation in 2012¹ indicated there was strong support amongst stakeholders for the introduction of Fixed Penalty Notices (FPNs) for small scale fly-tipping offences. Respondents felt by adopting this approach it would allow Local Authorities to deal more effectively and proportionately with high volume, small scale offences and would help reduce the burden on local magistrates' courts. It was also suggested FPNs could act as an effective deterrent and even encourage behavioural change.

Current Situation

Wales

Figures submitted by Local Authorities across Wales in 2015/16 show 21,494 fly-tipping incidents were investigated, however there were only 53 successful prosecutions against fly-tippers. This represents just 0.2% of all incidents investigated during that period. The cost to Local Authorities of investigation, of bringing prosecutions and of clearance and disposal of fly-tipping remains significant. Local Authorities have indicated where fines are issued as a result of successful prosecutions, they are paid to the Court and prosecuting authorities have to seek to recover their costs through a separate process.

For many Local Authorities this application often results in an award of significantly less than the cost of investigation and prosecution. For example in 2014 one Local Authority in Wales incurred £8,000 in court costs alone but was only awarded £4,256. Consistent receipt of significantly less than the cost of prosecutions can provide a disincentive to Local Authorities to bring prosecutions for fly-tipping.

England

The introduction of FPNs came into force in England on 9 May 2016². The new regulations set the default penalty at £200 to provide a sufficient deterrent for small scale fly-tipping, whilst being affordable to a range of offenders. The maximum penalty is £400. As with other environmental FPN schemes, a reduction for early payment of the penalty was included (£120 for payment within 10 days), and Local Authorities are able to retain the receipts from FPNs to help contribute to enforcement and clear-up costs of fly-tipping.

¹ Welsh Government Fly-tipping Strategy Consultation and Responses – 2014:
<http://gov.wales/betaconsultations/environmentandcountryside/draft-fly-tipping-strategy/?lang=en>

² The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016:
<http://www.legislation.gov.uk/uksi/2016/334/made>

Scotland

Scottish FPNs for fly tipping were introduced via the Antisocial Behaviour (Scotland) Act 2004³ and the FPN level from £50 to £200 in 2014 following public consultation in 2013.

Requirement for change

In addition to the responses to the Welsh Government's Fly-tipping Strategy consultation, we undertook, during 2015⁴, a joint consultation and call for evidence with the Department for Environment, Food and Rural Affairs (Defra), to seek views on a range of measures related to waste crime, including the introduction of FPNs for fly-tipping. The majority of respondents were supportive of adopting this approach, stating it would provide a valuable additional enforcement tool and offer a relatively simple, quick and cheap way of dealing with offenders.

Enforcing authorities can currently issue FPNs for a number of environmental crimes, for example littering, graffiti, dog fouling and fly posting. This is often considered a more straight-forward, and potentially less costly way, of penalising an offender as an alternative to prosecution through the Courts. It can also prove a costly and onerous challenge for enforcement officers to prosecute small scale fly tipping offenders – for example someone who has dumped a couple of black bin bags of domestic waste. The introduction of these regulations will provide enforcement officers with an alternative to taking offenders to Court.

It is anticipated the option to issue FPNs for small scale fly-tipping will provide a more useful way of penalising offenders while reducing the burden on the judicial system of cases for littering being brought to Court. This in turn will reduce costs for enforcing authorities and the judicial system. An additional aim of introducing an FPN capability is the potential longer term deterrent affect it may have once awareness of the penalty increases, thereby helping to reduce small scale fly-tipping.

The draft Regulatory Impact Assessment which accompanies this document outlines the anticipated costs and administrative impacts of introducing these regulations in Wales.

³ Anti-social Behaviour (Scotland) Act 2004: <http://www.legislation.gov.uk/asp/2004/8/contents>

⁴Waste crime: improving enforcement powers to reduce persistent non-compliance at waste handling sites (Defra): <https://www.gov.uk/government/consultations/waste-crime-improving-enforcement-powers-to-reduce-persistent-non-compliance-at-waste-handling-sites>

Proposed draft regulation to introduce FPNs for Small Scale Fly-Tipping Incidents in Wales

The proposed regulations will insert provisions into the Environmental Protection Act 1990 (c.43) (“the Act”) to allow a Local Authority in Wales to issue an FPN for a contravention of section 33(1)(a) of the Act. Section 33(1)(a) prohibits a person from depositing controlled waste or extractive waste in or on any land unless in accordance with an environmental permit. It is proposed the new provisions will mirror those already in force in England. A brief overview of the provisions is provided below:

Who will be able to issue the FPNs?

It is proposed the FPNs will be issued by an authorised officer of a Welsh Local Authority, for example a Waste Enforcement or Environmental Health Officer.

How much will the fixed penalty be?

Local Authorities will have the ability to set the fixed penalty amount at between £150 and £400 depending on their local circumstances. If no amount is specified then the default will be £200.

Will there be a provision for early payment?

Yes, it is proposed those issued with an FPN would be able to pay an amount of not less than £120 for early payment (up to 10 days following the date of the notice).

Who will keep the money from the fixed penalties?

It is proposed Local Authorities will retain the receipts from FPNs to help contribute to the enforcement and clear-up costs of fly-tipping.

Are there any other proposals?

As with other FPNs for environmental crimes it will be an offence to:

- fail to give a name or address;
- give a false or inaccurate name or address.

Well-being of Future Generations (Wales) Act 2015

Fly-tipping disproportionately affects our most deprived communities. A significant proportion of fly-tipped waste in Wales is dumped in those urban areas that suffer overcrowding, poverty and unemployment and in remote rural areas where the risks of being caught are perceived as being low. A clean, safe, accessible and attractive local environment is an essential part of the Wales we want for future generations.

Improving the quality of the local environment can lead to increased inward investment and economic activity. Fly-tipping also undermines legitimate local waste businesses, with illegal operators avoiding waste disposal costs and undercutting those who abide by the law.

Fly-tipped waste can have an adverse impact on the resilience of local ecosystems through the contamination of soil and water and it can also pose a risk to human health, for example fly-tipped building waste containing asbestos.

An effective regulatory regime tackling fly-tipping can, therefore, have an important contributory impact across the following well-being goals in the Well-being of Future Generations Act 2015⁵:

- a prosperous Wales;
- a resilient Wales;
- a healthier Wales;
- a more equal Wales; and
- a Wales of cohesive communities.

The Fly-tipping Free Wales Strategy (2015) that has led to these FPN proposals has been developed through an actively collaborative partnership between Welsh Government, Natural Resources Wales, Local Authorities and other key organisations. This partnership has sought to develop a truly integrated approach to tackling the problem of fly-tipping. The strategy has had a strong focus on early preventative action and, although FPN enforcement occurs after an offence has been committed, the longer term effects of such enforcement are themselves preventative.

These approaches together demonstrate application of the five ways of working set out under the sustainable development principle in the Well Being and Future Generations Act. They will help ensure the realisation of the FPN proposals are well founded in their contribution to the goals listed above.

⁵ Well Being of Future Generations Act <http://gov.wales/topics/people-and-communities/people/future-generations-act/?lang=en>

Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Question 1: Do you think introducing Fixed Penalty Notices for small scale fly-tipping will be a useful tool for Local Authorities to tackle small scale fly-tipping?

Question 2: Do you believe the proposed amount for the fixed penalty (between £150 and £400) will act as a sufficient deterrent for small scale fly-tipping?

Question 3: Do you agree with inclusion of an option for early payment of the fixed penalty and with the lowest amount suggested?

Question 4: Should the power to issue FPNs for small scale fly-tipping be extended to other authorised officers besides those designated by Local Authorities, for example officers in Natural Resources Wales (NRW)?

Question 5: What training and guidance support, if any, do you believe enforcing authorities require when implementing FPNs for small scale fly-tipping? Please provide details.

Question 6: Are the figures used in the impact assessment an accurate reflection of the costs incurred by Local Authorities when investigating/ prosecuting/ clearing small scale fly-tipping incidents? If not, please provide further details.

Question 7: We have asked a number of specific questions. If you have any related issues which we have not been specifically addressed, please use this space to raise them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: