

Overview

What is the problem under consideration? Why is government intervention necessary?

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.

Local Authorities have indicated the cost of investigating a fly-tipping incident, bringing prosecutions and ultimately clearance and disposal of material are significant. Without addressing this, individuals may perceive a low probability of enforcement incentivising fly-tipping.

What are the policy objectives and the intended effects?

Currently the only options available for dealing with fly-tippers are to prosecute in an attempt to secure a criminal conviction, or for enforcement officers to issue a caution. However, responses from Local Authority Enforcement Officers and other key stakeholders to two consultation exercises^{1, 2} have indicated some small scale fly tipping offences are often of a type which makes neither a simple caution nor a prosecution appropriate. To address this, regulatory bodies have advocated Fixed Penalty Notices (FPNs) be introduced, suggesting this would offer an alternative enforcement tool for cases where it may not be appropriate to pursue a formal prosecution case through the court system. Prosecution would, however, remain the ultimate sanction in cases of non-compliance with a notice.

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

² Joint Defra and Welsh Government consultation on enhanced enforcement powers and other measures to tackle waste crime and entrenched poor performance in the waste management industry:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/466879/waste-crime-consult-sum-resp.pdf

**What policy options have been considered, including any alternatives to regulation?
Please justify preferred option (further details in Evidence Base)**

Option A: Do nothing. The Environmental Protection Act (EPA) 1990 Act would not be amended and enforcement authorities would have to use existing powers to tackle fly-tipping and prosecute offenders in the courts.

Option B: Introduce secondary legislation to amend the EPA 1990 Act to enable Local Authorities to issue an FPN for small scale fly-tipping. Detailed elements of Option 1 are set out on pages 4 and 5 of this RTA.

Option B is our preferred approach as this will provide Local Authorities with a more efficient and proportionate response to small scale fly-tipping, which will act as an additional deterrent and could result in a decrease in the number of fly-tipping incidents.

Initial assessment of business impact

These proposed Regulations will not impose any additional direct costs on businesses or individuals that comply with waste legislation. Tackling non-compliant waste producers, operators and waste criminals will be welcomed by the legitimate industry that makes up the vast majority of operators and there may be some indirect benefits from levelling the playing field for legitimate business.

Supporting evidence

1. The policy issue and rationale for Government intervention

In 2015/16, Local Authorities reported over 36,000 incidents of fly-tipping in Wales, costing the Welsh taxpayer over £2.1 million to clear³. Around 50% of all incidents were a car boot load or less (i.e. less than one cubic metre of waste). Local Authorities have indicated fly-tipping incidents of this size cost on average of £27.18 to clear. The precise scale of the problem on private land is unknown.

The cost to Local Authorities of investigation, bringing prosecutions and ultimately 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 as a separate process. For many Local Authorities this application often results in an award of significantly less than the cost of investigation and prosecution.

³ Fly-tipping statistics for Wales: <https://statswales.gov.wales/Catalogue/Environment-and-Countryside/Fly-tipping>

Welsh Government's Fly-tipping Strategy consultation (2012)

Responses to the Welsh Government's Fly-tipping Strategy consultation in 2012 indicated there was strong support amongst stakeholders for the introduction of FPNs. 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 encourage behavioural change.

A key outcome of the Welsh Government's Fly-tipping Strategy "*A Fly-tipping Free Wales*", published in 2014⁴ was to ensure anybody who fly-tips is caught and punished appropriately. To meet this aim, a commitment was made to investigate introducing FPNs, or other enforcement tools, for such fly-tipping incidents.

Joint Department for Environment, Food & Affairs (Defra) and Welsh Government Waste Crime consultation and Call for Evidence (2015)

In 2015 the Welsh Government undertook a consultation and joint call for evidence with Defra which sought views on a range of measures related to waste crime, including the introduction of FPNs for fly-tipping. Again the majority of respondents (93%) 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. The removal of the financial and resource burdens currently being placed on both the court system and enforcement officers featured heavily in the rationale for this support.

2. Policy objectives and intended effects

Fly-tipping is a significant problem for local communities and a risk to the environment, with substantial clear-up costs incurred by Local Authorities and private landowners. However, the size and scale of fly-tipping varies and accordingly we believe addressing it requires a range of possible responses that are proportionate to the offence.

Local Authorities have indicated the cost of investigating a fly-tipping incident, bringing prosecutions and ultimately clearance and disposal of material are significant. Evidence gathered by Buckinghamshire County Council on behalf of the UK National Fly-tipping Prevention Group. The evidence from 29 Local Authorities

⁴ A Fly-tipping Free Wales – Our strategy for tackling fly-tipping:
<http://gov.wales/docs/desh/publications/150226-fly-tipping-strategy-en.pdf>

(including three from Wales), including suggested the average cost of an investigation, bringing prosecutions and ultimately clearance and disposal of fly-tipping was £655.14; and the average costs awarded to local authorities was £404.60. This means on average the 29 Local Authorities who responded only recovered 60% of costs when they prosecuted a fly-tipping case.

Consistent receipt of significantly less than the cost of prosecutions can provide a disincentive to Local Authorities to bring prosecutions for fly-tipping. Figures submitted by Local Authorities across Wales in 2015/16 show 18,139 fly-tipping incidents were investigated, however there were only 104 successful prosecutions (out of a total of 105) against fly-tippers; this represents just 0.3% of all incidents reported during that period⁵.

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. The introduction of a new FPN will be a proportionate response to small scale fly-tipping incidents and a more efficient use of Local Authority resources.

We anticipate the introduction and use of a new FPN for small scale fly-tipping will also act as a deterrent to potential offenders and could contribute to a fall in the number of small scale fly-tipping incidents (the potential deterrent effect has not been quantified).

The new FPN will not be an appropriate sanction for operators in the waste management industry, repeat offenders or those responsible for large-scale fly-tipping or the fly-tipping of hazardous waste. Such cases will continue to be prosecuted in the Courts.

3. Policy options considered, including alternatives to regulation

Option A: Do nothing. The 1990 Act would not be amended and enforcement authorities would have to use existing powers to tackle fly-tipping and prosecute offenders in the courts.

Option B: Introduce secondary legislation to amend the 1990 Act to enable local authorities to issue an FPN for small scale fly-tipping. **(Preferred option)**

⁵ Data for 2014/15 prosecutions have been used as part of this RIA as data for 2015/16 is incomplete.

As previously noted the prosecution of a fly-tipping offence is expensive. The introduction of an FPN as a response to small scale fly-tipping incidents would be an efficient use of Local Authority resources. It will allow authorities to tackle offenders without the need to take them to court. Once used, it may also act as a deterrent to small scale fly-tipping as Local Authorities will be more likely to take enforcement measures and may lead to a reduction in the number of fly-tipping incidents.

The proposal will introduce a new default FPN of £200, equivalent to the existing FPN penalty for fly-tipping in Scotland and England. It will also give Local Authorities the flexibility to select an alternative fine from a wider range (£150 to £400), taking into account what they think is appropriate as regards the readiness of people in their area to pay and the levels of fines imposed in local Magistrates' Courts. We believe if fixed penalties are set too high for local conditions, this is likely to lead to substantial non-payment and will be counter-productive, as will penalties that are higher than the likely fine ordered by a Magistrates' Court in the event of non-payment of the penalty (in which case prosecution of the original offence is commenced).

The proposed Regulations will specify FPN penalties must be paid within 14 days. As with other environmental FPN schemes, such as litter, we believe there should be a reduction for early payment within 10 days of receipt of the FPN. This should encourage early payment and avoid the need for costly prosecution of the original offence in the event of non-payment of the penalty.

Experience of other environmental FPNs (i.e. failure to provide a waste transfer note; domestic and commercial waste receptacle offences; littering etc) provided for in the EPA 1990 Act has demonstrated, where discounts are offered, they encourage improved payment rates. It should also reassure the public the new FPN is an enforcement tool rather than a money-generating exercise.

The proposal will set a minimum level of penalty for early repayment of not less than £120, an equivalent proportion to other environmental FPNs in the 1990 Act, but will allow Local Authorities the flexibility to define an early repayment level that is equal to or above this. This should encourage early payment and avoid the need for costly prosecution of the original offence in the event of non-payment of the penalty. Using enforcement powers and issuing FPNs to offenders will incur costs to Local Authorities. As with other environmental FPNs in the 1990 Act, Local Authorities will be able to retain the receipts. These receipts will contribute to the enforcement and clear-up costs of fly-tipping.

4. Cost and Benefit Analysis

Option A: Do nothing. The 1990 Act would not be amended and enforcement authorities would have to use existing powers to tackle fly-tipping and prosecute offenders in the courts.

Option B: Introduce secondary legislation to amend the 1990 Act to enable local authorities to issue an FPN for small scale fly-tipping. **(Preferred option)**

Costs for business

Businesses that carry out their waste activities legitimately will not experience costs as a result of these proposals. Businesses that carry out waste activities illegally (in this case, fly-tipping waste) will experience costs as a result of these proposals, for example through either finding legitimate disposal routes, or as a direct result of been issued with an FPN. It is not appropriate to include costs for business that carry out their waste activities illegally and we have not incorporated them in our conclusion the proposal delivers indirect benefits from levelling the playing field for legitimate business.

Costs to enforcement authorities

Local Authorities are responsible for investigating and clearing waste from littering or from small-scale fly-tipping on public land.

This proposal will introduce new powers which will enable authorised officers of Local Authorities to issue FPNs for fly-tipping offences. The proposal places no obligation on Local Authorities to exercise these powers to issue FPNs or to prosecute for the original offence in the event of non-payment of the penalty. This is the case under the existing legislation as there is no obligation to assume the powers available to Local Authorities will be used to tackle fly-tipping.

Local Authorities which choose to use FPNs to tackle small scale fly-tipping will incur some small set-up costs for staff training and developing a suitable form of enforcement notice (see annex 1 for more detail). But as Local Authorities already have the ability to issue FPNs for a range of offences in Part 2 of the EPA 1990 Act, it is envisaged those Local Authorities that take up these powers will do so within their existing resources.

Local Authorities have indicated the average cost of investigating a fly-tipping incident, bringing a prosecution and clearance of any dumped material is £813.48. If

a prosecution is successful, the court may award costs to the Local Authority (£404.60 on average⁶) enabling them to recover some of this resource.

If Local Authorities choose to issue an FPN to an individual rather than prosecute them in the Magistrates' Courts, they will be unable to seek any reimbursement of costs they incur though will receive fine revenue. If enforcement is approached proportionately, then the FPNs will only be used as a response to small scale fly-tipping where their use offers a reduction in the prosecution and enforcement loss.

Benefits

The overall purpose of these additional powers is to introduce a new enforcement tool for Local Authorities that will enable them to tackle small scale fly-tipping in a proportionate way. This will reduce costs for enforcement authorities to tackle offenders, simplify the enforcement process and will be welcomed by the legitimate waste industry and many in local communities.

Any subsequent reduction in fly-tipping incidents which may result following the introduction of FPNs would increase the quality of the local environment and generate associated improvements in public perception, health, civic pride and inward investment. Wildlife habitats that would otherwise be adversely affected by illegal waste disposal would also benefit from a reduction in fly-tipping. Benefits such as these are particularly hard to quantify and the impact on the economy, society and the environment will depend on how robustly the regimes are enforced in future.

Benefits for business

These proposals should act as a deterrent to fly-tippers and help level the playing field for businesses dealing with waste. This deterrent should also bring an indirect benefit as individuals and businesses will need to find a legitimate outlet for their waste.

Bringing more people into the regulated community and financially penalising those who do not comply will go some way to levelling the playing field. This is consistent with calls from the waste industry.

⁶ Figures based on England and Wales average derived from a survey undertaken on behalf of the UK National Fly-tipping Prevention Group

Benefits for Enforcement authorities

Local Authorities are legally responsible for clearing fly-tipped waste on public land. The proposals will enhance the current enforcement regime; make the enforcement of small scale fly-tipping a more feasible enforcement option; and allow Local Authorities to recover some of the enforcement and clearance costs without having to take a case to court.

The proposed amendment will allow Local Authorities to keep the receipts from FPN penalties. They will be able to use the receipts for the purposes of their functions under Part 2 of the EPA 1990 Act, including enforcement of offences. It will be for Local Authorities to allocate the receipts within that budget. Depending on local circumstances, these receipts will go some way to covering the full costs of running an enforcement service and clearing fly-tipped waste. Local communities and the environment will benefit from less blight as a result of this use of receipts in relation to functions dealing with waste on land. For simplicity however, we still calculate this proposal will benefit in terms of a saving to Local Authorities.

The introduction of the FPN will be an additional deterrent to potential fly-tippers, which may lead to a reduction of fly-tipping incidents. This could mean reduced waste in local environments and improved amenity. Additionally this could mean a reduction in the overall clearance costs incurred by fly-tipping enforcement authorities. However, this will depend on the extent to which the law is enforced.

It is likely the introduction of FPNs will lead to a decrease in prosecutions for small-scale fly-tipping in the Magistrates' Courts. This will save resources of both local authorities and HM Courts & Tribunals Service. Using the prosecution costs derived from WasteDataFlow we estimate Local Authorities that choose to tackle a small scale fly-tipping incident with an FPN rather prosecution in court will save between £220 and £1398 per case (see the annex for further details).

At the same time, we expect the proposal will result in a small number of new cases being prosecuted for the original offence in the Magistrates' Courts as a result of non-payment of the penalty and there may be a small number of offences prosecuted under new section 33ZA(9) of the 1990 Act (for giving false details). Overall we believe there should be a net decrease in the caseload of HM Courts and Tribunals Service.

We calculate those Local Authorities which decide to issue FPNs will benefit from a saving in overall enforcement and clearance costs.

Comparison of costs and benefits to business

There are no costs to businesses that carry out their waste business legitimately and we do not include costs to businesses which are currently failing to comply with the law.

There are no direct benefits to legitimate business. The introduction of FPNs are another enforcement option for local authorities, which may act as a deterrent meaning there is an indirect benefit to legitimate business from a more level playing field. As such, we believe there is a zero net benefit to business from adopting the preferred option.

The size of this benefit to business increases as enforcement authorities make greater use of the powers and the deterrent to fly-tip increases.

Small and micro businesses

The proposals in this RIA will have no adverse impacts, including costs, on compliant small and micro businesses as they are aimed at those businesses and individuals that are non-compliant with waste regulation. The proposed Regulations should help small and micro businesses to become more competitive as they will help to create a level playing field in the waste industry.

Annex A: Indicative Costs

Potential Cost Savings from FPN administration relative to Court Action (based on 2014/15 data):

For the purposes of assessing the potential savings to Local Authorities through the adoption of an FPN approach for small scale fly-tipping we utilised enforcement and prosecution data from the Fly-tipping incidents and actions reported by Local Authorities in 2014-15.

Local Authorities stated a single incident involved investigation action costs of £33 and £27.18 for clearance of small-scale fly-tipping (single black bag to a car boot or less)⁷. We have assumed there are additional costs to FPN enforcement of £33 per action (which is consistent with stated FPN cost within the dataset).

For the purposes of comparison we calculated average prosecution action costs per Local Authority and, using the assumption small scale fly-tipping would be associated with relatively lower prosecution costs, we calculated averages for the first two quarters of the data points to provide upper and lower estimates of the prosecution costs for small-scale fly-tipping.

Costs of taking a case to court

	Low	Central	High
Investigation	£33.00	£33.00	£33.00
Prosecution costs	£253.90	£753.30	£1431.22
Clearance costs	£27.18	£27.18	£27.18
Total costs	£314.08	£813.48	£1491.40

Costs associated with issuing an FPN

	Low	Central	High
Investigation	£33.00	£33.00	£33.00
FPN enforcement costs	£33.00	£33.00	£33.00
Clean up for small scale	£27.18	£27.18	£27.18
Total costs	£93.18	£93.18	£93.18

Potential cost saving	£220.90	£720.30	£1398.22
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⁷ Investigation and clearance costs have been derived from data inputted into WasteDataFlow.

Administrative Burden from Familiarization

We assume all 22 Local Authorities in Wales will incur a one-off administration familiarisation cost to familiarise themselves with the proposed changes (the introduction of a FPN for small scale fly-tipping). We have used data from the “Work Region Occupation” dataset from the Office of National Statistics to calculate wage rates in Wales. This has been uprated by 30% to reflect non-wage labour costs. Using a central assumption of 90 minutes per local authority the proposed changes could involve a one-off transitional cost of £720.06.

Time (mins)	60	90	120
Occupation	Local government administrative occupations		
Wages	11.19		
Uprated for non-wage costs	21.82		
No. LAs in Wales	22		
Cost (£)	480.04	720.06	960.08