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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation – summary of response

## **Consultation on introducing Fixed Penalty Notices (FPN) for small scale fly-tipping in Wales**

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

# Consultation on introducing Fixed Penalty Notices (FPN) for small scale fly-tipping in Wales

## Summary and Welsh Government response

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## Overview

In total 171 responses were received to the consultation with a wide range of respondents including Local Authorities, regulatory bodies, trade unions, representatives from various private landowners, the Third Sector and members of the public.

### **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?**

#### **Summary of Responses**

Over 90% of respondents to our consultation supported the introduction of Fixed Penalty Notices (FPNs) for small-scale fly-tipping in Wales. Of the small number who opposed it, most did so believing Local Authority waste management policies were the root cause of the problem and, therefore, only changes to these would ultimately result in a decline in fly-tipping.

Amongst the 11 Local Authorities who responded to the consultation, there was a consensus FPNs would offer a more efficient and proportionate response to tackling small-scale incidents. There was widespread agreement this approach would help them to release resources internally, improve their existing enforcement action and easing the burden on the court system. However, some Local Authority respondents, along with others, suggested guidance was required to define “small-scale” and to help outline when it would be appropriate to issue FPNs.

Responses from private landowners, or those who represented this sector (for example Housing Associations and Farming Unions), were again predominately in favour of introducing FPNs, although some voiced concerns over the lack of provision for their use on private land. In particular, it was feared the current approach would lead to a “two-tier” enforcement system across Wales and would encourage more fly-tipping on private land. To avoid this, a small number of respondents suggested the investigation of fly-tipping should be made a statutory duty for Local Authorities on all types of land.

There was broad support for the new powers from those representing the third sector and community organisations, although some called for improvement amongst Local Authorities in how they engaged with communities, especially in relation to raising awareness of local waste management policies. It was felt this was particularly important where Local Authorities were considering changes to civic amenity site provision.

The majority of responses from members of public were in favour of additional enforcement capabilities, although a small number of responses expressed concern

as to how Local Authorities would apply them (for example the potential for FPNs to the wrong person). Some respondents also questioned whether issuing FPNs would be appropriate for those who repeatedly offend or for those who fly-tip on a large scale. There was also a degree of scepticism from some members of the public as to how effective the new powers would be if Local Authorities did not have the capacity to enforce them. Some raised the issue of the difficulty in finding evidence to enable offenders to be caught.

## **Welsh Government Response**

The Welsh Government welcomes the support received for its proposal and will now seek to introduce these new powers in Wales. We acknowledge the calls for greater clarity around how small-scale fly-tipping is defined and will work with Fly-tipping Action Wales (FtAW) and Local Authorities to determine what level of guidance is required.

Under the new regulations it is proposed an authorised officer can issue a FPN if they have reason to believe a person has committed a waste deposit offence (under section 33 of the Environmental Protection Act 1990) in the area of the Local Authority. Therefore, these additional powers are intended to be made available for use on both publically and privately owned land. However, we note the concerns raised by some of those representing private landowners regarding the potential for Local Authorities to concentrate their enforcement activities on public land and the perceived implications this will have. We recognise addressing this particular aspect of fly-tipping does present a number of challenges and we will continue to work with FtAW, land owners and their various representatives to explore how best to address them.

Regarding the views expressed on the appropriateness of issuing FPNs for repeat offenders and larger scale incidents, the Welsh Government anticipates Local Authorities will exercise their existing criminal prosecution powers in such instances rather than rely on FPNs. However, this can be explored further should supporting guidance be developed. We also intend to continue working with FtAW and other key partners to help improve the existing enforcement capacity of Local Authorities. This could include the sharing of resources (for example surveillance cameras), improvements to intelligence gathering and developing best practice.

## **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?**

### **Summary of Responses**

A large proportion of respondents agreed the proposed range was sufficient, although a number did recommend either increasing the lower figure to £200 or the higher figure to £500. However, a significant number of respondents felt the current range was too low with some suggesting it should increase to £1000. Amongst those advocating for higher levels of fines, the reasons varied from the belief that higher amounts would act as a greater deterrent, to concerns the existing amounts would not adequately cover the costs incurred by Local Authorities in clearing the illegally disposed waste. A number of respondents also felt the level of fine should be set at a sufficient enough level to avoid acting as disincentive for those wishing to legally dispose of waste i.e. it should be higher than the cost of hiring a skip.

Respondents also suggested a number of alternative mechanisms for setting the amount of fines and these included, amongst others, operating a sliding scale in relation to the severity of the offence. For example, an offence for disposing of a small number of black bins bags would result in a £200 fine and for a van full of rubbish a £500 fine. A number of responses made reference to the need for fines to increase in amount should there be evidence of repeat offending. There were also calls to ensure consistency with the amounts set by English Councils near border areas so as to discourage fly-tippers targeting Wales.

Local Authorities were predominately supportive of the current proposed levels, with one respondent citing the need for the FPN to be high enough to act as a deterrent but not so high as to discourage payment, especially in deprived communities. It was also noted that high rates of non-payment would result in greater Local Authority resources being used to chase cases through the court system.

Of those responses from organisations representing private landowners, there were calls for the money received from FPNs issued on private land to be shared with the landowner as a means of helping to cover removal costs.

### **Welsh Government Response**

When deciding to set their own fixed penalty amounts, Local Authorities will often take into consideration a number of factors including the likely deterrent factor, the ability of its residents to pay the fine and the level of fines imposed locally for the relevant offence in magistrates' courts. Whilst the Welsh Government recognises the call from a large number of respondents to increase the level of fines beyond those currently proposed, the intention is for FPNs to deal with small-scale, low volume fly-

tipping incidents. Should the fly-tipping be of significant size that it would warrant a higher level of fine then we would expect the Local Authority to seek a criminal prosecution using existing powers rather than issue a FPN.

We also have concerns that, should a fine be set at too high a level, then there is a risk the FPN would become a disproportionate penalty for the offence and this could result in higher rates of non-payment. For example, if the upper range of the fine was £1000 then someone who had disposed of a few bags of rubbish would likely challenge such a high level of fine. This would ultimately result in a greater burden on both Local Authorities and Magistrates Court, something which would undermine the original rationale for introducing FPNs. It should also be noted the current proposed range is broadly equivalent to those available for other types of environmental crimes, for example Local Authorities in Wales have the ability to set the level of fine between £75 and £150 for littering

On this basis we believe the range proposed, in the consultation document, should be adhered to and Local Authorities will have the option to set the amount based on local circumstances.

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

#### **Summary of Responses**

The majority of respondents agreed there should be a discount offered to encourage early payment of an FPN, however there were varying degrees of support amongst those in favour. For example some respondents felt the discount was a good idea but the minimum amount should be increased from £120 to £150 (with the lower level of fine also increased to £200) whilst others supported it in principle only if the discount still covered the cost of removing the waste.

Of those Local Authorities who responded, the majority were in favour of such schemes with some noting this would reassure the public that FPNs were an enforcement tool rather than an income generating mechanism. Other respondents commented such schemes would help incentivise payments and reduce the need to pursue offenders through the court system.

However, a large proportion of respondents were opposed to offering any type of early repayment scheme, with many believing such discounts either trivialised the original offence or would undermine the deterrence aspect of the fine.

## **Welsh Government Response**

The Welsh Government recognises the provision of an early payment is consistent with other types of financial penalties, for example littering, and can decrease the rate of non-payment. This in turn removes the need for Local Authorities to pursue non-payments through the court system, which can be timely and resource intensive, as well as adding unnecessary pressure on the courts. It should be noted the proposed £120 amount is a minimum level and this can be increased by Local Authorities should they decide a higher amount will still not prove to be a disincentive for payment. Whilst the Welsh Government acknowledges the views of those opposing the inclusion of such option, we believe the balance of advantages and disadvantages favours the inclusion of such a mechanism in this instance and will ensure consistency with other environmental regulatory powers.

### **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)?**

#### **Summary of Responses**

The vast majority of respondents agreed there was some merit in allowing other authorised officers to issue FPNs for small scale fly-tipping, however a large proportion of responses did not identify any specific organisation or authority. Amongst those who did, the main suggestions included Natural Resource Wales (NRW) officers, National Park Authority Officers and Police Community Support Officers (PCSOs)/ Police Officers. This support was often based on the sentiment that the more officers using the power the greater would be the coverage of enforcement action, which, in turn, would have a greater deterrent impact.

Views on this approach varied amongst Local Authorities, with some noting small-scale incidents have traditionally been the responsibility of Local Authorities rather than NRW, which is in accordance with the current Fly-tipping Protocol between the organisations. However, others were more supportive of widening the powers, although most did not provide any further evidence to support this viewpoint. Within the wider support for this proposal, a number of respondents suggested the powers should only be extended if appropriate training and resources are made available to the other organisations and suitable intelligence sharing amongst authorised officers is established.

## **Welsh Government Response**

Responses on this question suggested there was significant support for extending these new powers beyond Local Authorities, although views varied on how this should operate and who should receive the powers. Whilst the Welsh Government acknowledges this support is based on the view that more enforcement action could be taken if other authorities had such powers, caution is needed when identifying who is suitable to take on such responsibilities. Only those authorities empowered to prosecute in relation to the illegal deposit of waste could be appropriate candidates and only some of those would have relevant expertise. We will consider the matter further before taking forward the FPN proposal.

A number of respondents made specific reference to the “Fly-tipping Protocol”. This document identifies Local Authorities as the organisations who focus on clearing small-scale fly-tipping on publicly owned land, including roads and lay-bys and NRW as focusing on large-scale fly-tipping of non-hazardous wastes, certain hazardous wastes, the involvement of organised crime in fly-tipping and illegal waste management. There were concerns if the powers are extended to NRW, the need to revise the protocol to reflect these changes could, potentially, cause confusion over who has responsibility to deal with small-scale fly-tipping incidents.

The Welsh Government will consider this issue further and, before making a decision, we will discuss with key partners the potential implications of extending the proposed power beyond Local Authorities.

**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.**

### **Summary of Responses**

Amongst those who responded to this question (133 of the 171) there appeared to be a consensus there was already sufficient ‘in house’ expertise in Local Authorities to implement a new FPN regime, although some felt there was a need for a standardised training programme to help improve consistency across Wales. There were a number of calls for the development of specific guidance to accompany the new FPNs, especially in relation to defining “small-scale”. Local Authority respondents in particular were keen to receive additional support, although views varied as to how prescriptive this should be. For example, one Local Authority suggested the development of a simple matrix, whilst another felt extensive advice was required to help determine when FPNs should be issued.

Aside from requests for specific training, concerns were also raised over the appropriateness of Local Authorities contracting out discharge of enforcement functions to private enforcement companies and the perceived risk of FPNs being



issued inappropriately. It was suggested that, should such an approach be taken, training and guidance should also be extended to these enforcement officers.

### **Welsh Government Response**

The Welsh Government is satisfied Local Authority Officers already have the existing skills and capabilities to implement a new FPN regime, although we acknowledge additional guidance may be required to help officers to undertake their duties. We intend to work with FtAW and other key partners to explore what support can be provided and how best to deliver this.

**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.**

Due to the specific nature of this question, a large proportion of respondents either did not comment or indicated they did not feel they had the necessary expertise to offer an opinion. Of those who disagreed with the figures provided, a large number felt the costs did not capture those incurred by landowners (especially those in rural areas) and, therefore, did not present an accurate picture. Others felt the data used was either incomplete (for example there was no inclusion of costs associated with chasing non-payment) or that it relied on outdated figures. Responses from Local Authorities varied with some respondents suggesting the costs were too low, while others felt they were reasonably accurate given the small-scale nature of the offence. Both FtAW and the Chartered Institute for Wastes Management (CIWM) offered to assist in improving the existing data set.

### **Welsh Government Response**

The Welsh Government acknowledges the need for robust data and recognises there are gaps in existing data. However, for the purposes of this Impact Assessment we believe the information available does enable a suitable baseline from which to calculate costs. Going forward, we will continue to work with both Local Authorities and FtAW to help improve data quality. We also welcome the CIWM offer to assist in the data gathering process.

**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**

A number of respondents used this opportunity to express views on a wide range of issues. These included the operation of existing Local Authority waste management services (or changes to these services), wider local environment quality issues (for example dog fouling and littering) and current enforcement activity. Of those who commented on local waste provision, most were members of the public who offered anecdotal evidence of how these services are being operated by their Council. They perceived failings in these services to be contributing to fly-tipping in their locality. Whilst no specific evidence was provided to support these claims, there appears to be a strong belief amongst some that individual Local Authority service requirements (for example charges for the removal certain waste) were acting as a barrier to those wishing to legally dispose of their waste.

In addition to these concerns, a number of respondents felt a current lack of resources and enforcement capabilities in Local Authorities is undermining the fight against fly-tipping. In order to address this a number of suggestions were made; these included the need to improve existing surveillance capabilities, increasing the level fine that could be awarded, ring fencing of Local Authority funding to specifically tackle fly-tipping and carrying out extensive awareness campaigns, especially when offenders are caught. Also highlighted was the need for effective data and intelligence sharing amongst the various agencies involved in dealing with fly-tipping. Respondents felt this is particularly important in relation to FPNs as the acceptance of a fine essentially results in the offender discharging their liability and, therefore, this would not result in a criminal record.

A number of respondents also suggested greater emphasis was needed on tackling fly-tipping on private land, especially in the context of privately rented properties and in rural areas where legal waste disposal may prove more difficult. Concerns were expressed about the requirement for landowners to pay for the fly-tipped waste to be cleared from their land and the subsequent financial burden this places on individuals/ organisations. To help address this several recommendations were put forward, including on the need for Local Authorities to investigate fly-tipping on private land, the development of more consistent messaging to highlight the problem of fly-tipping and for a wider range of enforcement measures to be made available, for example the ability to confiscate vehicles.

A number of views were provided on how best to prevent fly-tipping from occurring in the first place and these ranged from improving the knowledge of “Duty of Care” amongst residents and businesses, reducing packaging to help tackle the increasing waste generation and improved education.

## **Welsh Government response**

A number of wider issues beyond the scope of the consultation were raised under this question and these are addressed below.

### **Local Authority waste collection and provision of facilities**

A number of respondents highlighted concerns over Local Authority waste collection services and the perception these were contributing to fly-tipping in their areas. Whilst the Welsh Government is unable to comment on individual Local Authority policies, it should be noted that until the recorded increase fly-tipping incidents in 2015-16 they had been steadily declining since 2008/09 and during this period a number of changes have been made by Local Authorities to waste collection services without any apparent impact on fly-tipping figures. However, the Welsh Government continues to work with Local Authorities, FtAW, WRAP Cymru and other key partners to understand the behavioural drivers behind fly-tipping and to look at other ways of influencing it alongside FPNs.

### **Wider Local Environmental Quality issues**

Local Authorities in Wales have a statutory duty to ensure highways, public walkways and recreational areas are kept clear of litter. To assist them with this duty the Welsh Government provides annual funding to help tackle a wide range of local environment quality issues. In 2016-17 the Welsh Government allocated over £900,000 from the Environment and Sustainable Development Local Government Single Revenue Grant to help Local Authorities undertake project work in their areas. These projects included waste amnesty days (for example providing skips to allow local communities to dispose of their bulky waste free of charge), awareness raising campaigns, educational events, organising litter picks and bringing unused or neglected land back into community use.

The Welsh Government also provides funding to organisations such as Keep Wales Tidy and Groundwork Wales to support community groups, residents, individuals, schools and businesses to help them transform their local community into a place they are proud to live and work in.

### **Data and intelligence sharing/ surveillance**

Since 2014, the Welsh Government has provided funding to NRW to develop FlyMapper, a web-based system which uses a smartphone app. FlyMapper accurately and effectively records in the field the type, size and coordinates of fly-tipping incidents quickly. Centralising the data in an easy to use website, it allows analysis and reporting to build an accurate picture of fly-tipping hot spots, so Local Authorities can target action and monitor interventions. FtAW continues to work with Local Authorities, NRW and private landowners in order to expand the use of FlyMapper across Wales.

In order to improve intelligence sharing across Wales, FtAW have also established a pilot with a small number of Local Authorities so they can utilise NRW's Memex intelligence database. It is hoped by sharing resources it will be easier to store and access intelligence, which in turn will help partners improve enforcement outcomes. Work is ongoing to expand this trial to other Local Authorities across Wales. In addition to this, work is also progressing on, amongst other things, the development of an "eyes and ears" reporting campaign, exploring opportunities for Third Sector involvement and the sharing of best practice. FtAW is also able to loan surveillance cameras to Local Authorities in Wales to help support enforcement action.

### Duty of Care

Section 34 of the Environmental Protection Act 1990 imposes a Duty of Care on everyone involved in handling controlled waste, from the person who produces it to the person who finally disposes of or recovers it. In March 2016, a revised and updated Waste Duty of Care Code of Practice<sup>1</sup> was published for England and Wales. The document sets out practical guidance for waste carriers to ensure they meet their duty of care requirements (this applies to household, industrial and commercial waste).

An internet campaign titled "Right Waste, Right Place"<sup>2</sup> has been developed to help raise the profile of the Duty of Care requirements to waste producing businesses (particularly small and medium sized enterprises). FtAW also continues to raise awareness of the duty of care responsibilities of householders with regards to waste generated within a household by visiting tradesmen and professionals.

### Reducing packaging

The Welsh Government is in the process of commissioning a consultancy to undertake an independent feasibility study covering key food and drink related packaging to define potential Extended Producer Responsibility (EPR) schemes in Wales. EPR ensures producers bear the net cost of the management of the products and packaging they put onto the market. This includes the costs for litter prevention and management. The research is planned to be completed by December 2017.

### Education and awareness raising

Waste minimisation is one of the eight topics covered by the Eco-Schools programme along with litter, healthy living, biodiversity, energy, water, transport and global citizenship. Eco-Schools is an international programme set up 22 years ago and now involves 64 countries worldwide<sup>3</sup>. The Welsh Government provides funding

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<sup>1</sup> Waste Duty of Care Code of Practice for England and Wales - <https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice>

<sup>2</sup> Right Waste, Right Place - <http://www.rightwasterightplace.com/>

to Keep Wales Tidy to run the scheme in Wales and over 90% of schools in Wales are registered, which is one of the highest participation rates in the world. As part of the programme, many schools run litter-pick projects, both in their playgrounds and in surrounding areas. They also work with local communities on activities such as beach, woodland and river clean-ups, which concentrate on dealing with litter and fly-tipping. The aim is to encourage pupils, through their teaching at an early age, to develop positive environmental attitudes into adulthood.

FtAW has also recently worked in partnership with the Eco-schools programme to deliver the “Catch a Fly-tipper” teacher resource pack and they continue to work with Local Authority education departments to help raise awareness of fly-tipping amongst school children. Local Authorities can also bid for funding, via the Welsh Government’s the Environment and Sustainable Development Local Government Single Revenue Grant, to help develop specific local environmental quality teaching programmes.

#### Welsh Government final response.

The Welsh Government takes the issue of fly-tipping very seriously and is fully committed to tackling the problem in Wales. We welcome the wide range of views submitted to the consultation and for the level of support we have received for the new powers. We now intend to proceed with the introduction of these new powers.

Whilst progress has been made in Wales through the implementation of our strategy “*A Fly-tipping Free Wales*”<sup>4</sup> and our continued funding of FtAW, we recognise there is still much work to be done if we are to achieve our long-term goals. The state of our natural resources is the most crucial legacy we will leave for future generations. To create a more prosperous and resilient future for Wales we must sustainably manage our land, air and water. We believe everyone in Wales should be supported by a clean, healthy and safe environment. To secure greater success we will continue to work with our partners in developing our flagship projects across the whole of Wales.

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<sup>4</sup> Welsh Government’s Fly-tipping Strategy - <http://gov.wales/docs/desh/publications/150226-fly-tipping-strategy-en.pdf>