



FIXED PENALTY NOTICES FOR SMALL SCALE FLY-TIPPING

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WLGA • CLILC

INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities and the three fire and rescue authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. WLGA welcomes the opportunity to comment on Welsh Government's consultation on fixed penalty notices for fly-tipping.
4. Responses to the questions in the consultation document are provided below:

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?

Yes. The ability to issue FPNs will save the time and money involved in prosecutions. This is particularly important at a time when Environmental Services in local authorities are under severe financial strain. At present, the costs and effort required to pursue offenders act as a disincentive.

There will be a need to clarify the term 'small scale'. Generally, Natural Resources Wales investigate anything involving more than a lorry/tipper load of waste (or tipping that includes hazardous waste or that is undertaken by organised gangs).

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?

Yes, although if £200 is the default then a range of £200 to £400 may be more appropriate (see also answer to Q3). Use of FPNs should act as a deterrent, especially if there is good publicity when they are issued. Much depends on the balance of costs and benefits. For the small scale, occasional household offender a fine of this order would be substantial compared to any benefit (real or perceived) from disposing of the waste this way. For larger

scale and/or more regular tippers who are receiving income for disposing of the waste it may depend on how the penalty compares to the income they can generate.

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

Yes. If the range is set at £200 to £400 an early payment of £150 could be offered. £120 may be too low in relation to the 'cost-benefit' calculation (although it is noted that, proportionately, £120 would be the equivalent proportion applied to other environmental FPNs).

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)?

No. It would increase the potential for confusion if NRW were to become involved in small-scale fly-tipping incidents. Having clarity over who is responsible for small-scale and large-scale tipping is important in terms of accountability (and hence the need for clarity over definitions of small and large scale).

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.

Enforcement officers in most local authorities are already used to issuing FPNs for other offences (and the sensitivity of the role) and therefore there should not be any significant need for training. There may be a need for guidance if unforeseen issues arise in the course of issuing FPNs for fly tipping.

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.

Overall, the clean-up costs appear to be on the low side. The quoted figures of 36,000 incidents costing £2.1m (based on LA returns) suggest the average cost of clearance is just under £60. For half of cases, the document reports an average figure of £27.18. If the clear-up is simply a question of throwing a couple of black sacks into a van that may be reasonable. However, often the tipped waste will need to be picked up manually, taking time. Also, if tipping is in remote locations there are the costs of travel time and fuel to take

into account when dealing with incidents. It is not clear whether the reported figures include these 'indirect' costs. There is also the 'opportunity cost' of time spent clearing tipped material that could have been used more productively on other activities.

As the RIA notes, though, these costs are relatively small in relation to the costs of progressing a prosecution which are generally not fully recovered by local authorities. There will be costs incurred issuing and enforcement of FPNs but, as local authorities will retain the full penalty income, this should help in terms of covering costs. Whilst the discount for early payment will hopefully encourage prompt payment this will have to be monitored closely as the cost of pursuing non-payers could become significant.

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:

It will be important to consider the impact, if any, of the introduction of the Landfill Disposals Tax (Wales) Act in April 2018. The tax will extend to unauthorised disposals of waste and a separate, higher tax rate is to be introduced for such disposals. Those caught disposing of waste without permission will therefore be liable, potentially, for a FPN, tax and/or prosecution. How this works in practice and how decisions are made on the most appropriate sanctions will have to be carefully considered.

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