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Natural Resources Wales response to Welsh Government's consultation on Fixed Penalty Notices for Small Scales Fly-Tipping

Natural Resources Wales welcome the opportunity to comment on the proposals to introduce Fixed Penalty Notices for small scale fly tipping offences in Wales.

Natural Resources Wales is the regulatory authority in Wales for a wide range of environmental legislation, including many which relate to waste and resource management. We share the responsibility, defined within the fly-tipping protocol of investigating fly-tipping offences with the Local Authorities across Wales.

One of the key outcomes of the draft Welsh Government strategy, 'A Fly Tipping free Wales', published in 2014, was to ensure that anybody who fly-tips is caught and punished appropriately. Currently, the only options for punishing fly-tippers are to either take a case to court or issue a caution. We believe the introduction of Fixed Penalty Notices will provide a useful and proportionate alternative to prosecution in small-scale fly tipping cases, many of which would have gone unpunished previously.

These notices will provide a quick, visible and effective way of dealing with certain fly tipping cases, and act as an alternative to prosecution. This approach avoids taking "small" scale offences to the courts and reduces demands on officers preparing prosecution files.

In response to the specific questions raised in the consultation, we make the following comment:

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?

We believe that the use of Fixed Penalty Notices (FPN) may provide an appropriate tool for local authorities to use when dealing with certain fly tipping offences. Many cases of fly tipping, whilst having a detrimental effect on local communities are relatively small offences. Many of these cases involve relatively small amounts of waste, and if taken through formal court processes would likely result in relatively small punishments. The level of fine is likely to significantly exceed the costs of investigation and pursuing the case through the judicial system. FPN would provide an alternative mechanism to pursuing action through the court system and offers a more proportionate response and is welcomed.

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?

The scale of notice mirrors that which has been employed in England and Scotland. We would encourage Welsh Government to investigate whether there is any evidence available to indicate that this level of penalties provides a sufficient deterrent against fly tipping and covers the cost of investigation

We believe that the level of any FPN should be proportionate and only considered when it exceeds the cost of lawful management of the waste deposit plus an additional financial penalty to cover costs and offer appropriate deterrent. It is essential that any notice levy significantly exceeds the cost of lawful management of the waste deposited for two main reasons:

- If the FPN does not exceed the cost of managing the waste properly, it provides no deterrent to potential tippers. Fly-tipping will continue to be seen as a cheaper alternative to appropriate management.
- Secondly, the FPN must at least recover enough money to ensure that the waste can be removed and managed appropriately.

We believe it would be beneficial for Welsh Government to provide issuing authorities with additional guidance on the use of fixed penalty notices. This guidance should provide information on how to assess whether a FPN is an appropriate response, and should ensure that they are used consistently across Wales. There may be merit in amending the Fly Tipping Protocol Matrix a, to provide clear guidance to authorities when determining whether the issuing of a FPN is an appropriate response.

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

The principal of an early payment discount to encourage early payment, seems reasonable. As set out above, it is important that the resultant fine paid exceeds the financial benefit gained from not managing the waste correctly, to ensure that it does not undermine the enforcement action taken. Therefore the potential of early payment discount should be included in the consideration whether the use of a Fixed Penalty Notice is appropriate.

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)?

The current Fly Tipping Protocol states that Natural Resources Wales should generally only lead on large scale cases of fly tipping, or those involving hazardous materials. We would not expect these kind of offences to be dealt with via FPN.

Natural Resources Wales manages a significant proportion of all land in Wales. The Fly Tipping Protocol, in its current form, does leave some uncertainty around whether NRW or local authorities should be investigating fly tipping incidents on Natural Resources Wales managed land. This is further compounded by the fact that investigating fly tipping is not a statutory duty of local authorities.

We believe that it would be beneficial to allow authorised officers from Natural Resources Wales to issue FPN's in certain situations for small-scale fly tipping, particularly in instances of fly tipping on NRW controlled land.

If this power is extended to NRW, Fixed Penalty Notice receipts may assist with recovering costs of clearing waste on our land which amounts to tens of thousands a pounds each year.

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.

Appropriate training and guidance must be put into place to ensure that these notices are issued legally and only where appropriate to ensure a consistent approach across Wales.

Guidance on the use of Fixed Penalty Notices in England is available on the .gov.uk webpage. We recommend that Welsh Government considers whether the principles within the guidance in Wales deliver Welsh Governments strategic objectives.

We also feel it may be beneficial to maintain a system which records all Fixed Penalty Notices issued. Such a system should ensure that repeat offenders are identified, and patterns in activity are easily identified. One of the key actions in the draft 'A Fly Tipping Free Wales' strategy is to support the introduction of a shared intelligence database across Wales. This should allow Authorities to share information on fly tipping offences, and identify repeat offenders and problematic waste streams. It is critical that this system is delivered to ensure

that FPN's are only used where appropriate. A FPN would not be a suitable enforcement option for a repeat offender.

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.

We understand that Fly Tipping Action Wales data will be gathering information on the costs of fly-tipping clearance through 2017, to ensure accurate up to date costs are obtained. These figures will then replace the old figures in WasteDataFlow which are over 10 years old. The adoption of the FlyMapper system should help provide a better understanding of the true impact of fly tipping, than has previously been possible using Fly Capture.

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:

No further comments

If you have any further queries relating to this response, then please contact Gareth Lewis on the email address above.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Isobel Moore', written in a cursive style.

Isobel Moore
Head of Regulation & Permitting.