

## **REGULATORY APPRAISAL**

### **ENVIRONMENTAL PROTECTION, WALES**

#### **THE ENVIRONMENTAL OFFENCES (FIXED PENALTIES) (MISCELLANEOUS PROVISIONS) (WALES) REGULATIONS 2007**

##### **Purpose and intended effect of the measure**

1. These Regulations prescribe the ranges within which the amounts of certain fixed penalty notices for certain environmental offence, such as litter and dog fouling can be specified by a local authority. The ranges are from £75 to £150, for those offences with a default amount of £75, and from £100 to £150, for offences with a default amount of £100. The default amount is specified by Clean Neighbourhoods and Environment Act 2005 and is the amount that will apply if no other figure is forthcoming from the Local Authority. In determining the level for a fixed penalty, local authorities will need to take into account the deterrent effect of different levels and also peoples' readiness to pay and the levels of fines imposed locally for the relevant offence in the magistrates' courts.
2. These Regulations also prescribe the minimum amount of fixed penalty that a local authority may treat as full payment where an amount less than the full value of the fixed penalty is paid within a period of 14 days or less. In relation to offences where the range is £75 to £100, the minimum is set at £50 and for offences with a range of £100 to £150 the minimum is £60 (this should be specified by the local authority in the notice).
3. These Regulations make provision relating to the use of fixed penalty receipts by community councils and the supply of information in relation to those amounts to the National Assembly for Wales.
4. The Regulations also prescribe the condition that must be satisfied before a person may be authorised by a community council for the purposes of giving a notice of a fixed penalty, i.e., that persons issuing fixed notice penalties will have first attended a training course.
5. These Regulations will be made in tandem with The Dog Control Orders (Miscellaneous Provisions) (Wales) Regulations 2007 and The Control of Dogs (Non- Application to Designated Land) (Wales) Order 2007.

##### **Risk Assessment**

6. These Regulations will ensure increased, effective enforcement against a variety of environmental offences such as fly-tipping, litter, fly-posting, abandoned vehicles and other nuisances. Therefore, if these Regulations were not made the general deterioration of the local environment, which

disrupts the social harmony in communities, encourages anti-social behaviour and can promote fear of crime and crime itself would continue.

## **Options**

### Option 1: Do Nothing

7. The absence of these Regulations would mean that the various relevant sections of the Clean Neighbourhoods Act 2005 (CNEA) (when commenced) could lead to significant inconsistencies in the range of prices of Fixed Penalty Notices (FPNs) being issued across Wales.

### Option 2: Make the Legislation

8. These Regulations set maximum and minimum amounts for FPNs, thus prescribing the range of penalties that can be issued, and give local authorities the ability to give discount for early payment. This bracket range of fines facilitates a consistent approach across all Welsh Local Authorities. Also, these Regulations ensure that a person must have successfully completed a fixed penalty training course before a Community Council may authorise him or her to issue fixed penalty notices on its behalf.

## **Benefits**

9. Introducing these Regulations will ensure increased, effective enforcement against a variety of environmental offences such as fly-tipping, litter, fly-posting, abandoned vehicles and other nuisances. Therefore, they will improve the local environment and could lead to a reduction in anti-social behaviour and crime. Also, they will provide for flexibility, consistency and clarity in the use of the FPN regime in Wales.

## **Costs**

10. There are no financial implications for the Assembly as a result of implementing these Regulations. Local authorities already have powers to issue fixed penalty notices therefore there are no costs to them. However, there are potential cost savings for local authorities as a result of the increased charges. It is not possible to quantify these savings as they would depend on the number of fixed penalty notices issued by each local authority. There may be potential costs to community councils in Wales, whose officers will be required to attend formal training before they are authorised to issue a fixed penalty notice. The cost of attending this training has not been quantified at present. In addition, there would be increased costs to those who commit environmental offences due to the increase in the level of charges.

## **Competition Assessment**

11. The proposed legislation does not affect business, charities and/or the voluntary sector.

## **Consultation**

### With Stakeholders

12. A consultation on these Regulations was undertaken between 6 October 2006 and 29 December 2006. A list of consultees is attached at Annex A. No comments were received in relation to these Regulations.

### With Subject Committee

13. These Regulations were notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation on 28 September 2006 (EPC(2)-12-06(p.3) Annex 2, item no.29) and were identified for detailed scrutiny.

14. The Regulations were scrutinised by the Environment Planning and Countryside Committee on 25 January 2007 (EPC(2)-01-07 (p.3). Members raised the following points of clarification:

- whether the Regulations provide any new powers to local authorities to enforce penalties in relation to human noise such as shouting neighbours. It was clarified that human noise lay outside the scope of these Regulations. The Regulations covered only the levels of fixed penalties for existing environmental offences.
- why did the Regulations specify a maximum level for fixed penalties? It was clarified that is usual for Regulations to set maximum penalties. The levels needed to be capped at an appropriate level to ensure that penalties were not set too high and any necessary follow-up enforcement action could then not be dealt with in a magistrates court; and
- whether it would be possible to challenge a fixed penalty in court? The Minister for Environment, Planning and Countryside confirmed that it would be possible to challenge a fixed penalty in court.

15. The Committee recommended approval of the Regulations without amendment. A copy of the transcript is attached at Annex B.

16. In addition, the Minister for Environment, Planning and Countryside wrote to the Chair of the Local Government and Public Services Committee on 30 January 2007 enclosing a copy of the legislation. No comments have been received to date.

## **Review**

17. No formal arrangements are planned for the review of these Regulations, as the range of fines available gives scope to the local authorities to adjust the Fixed Penalty Notice regime as the local context demands.

**Summary**

18. These Regulations will provide an efficient, consistent Fixed Penalty Notice regime for Welsh Local Authorities, Community Councils, and the Environment Agency, to deal with fly-tipping, litter, fly-posting, abandoned vehicles and other nuisances.

## **ANNEX A**

### **List of Consultees**

All local authorities in Wales  
All Community Councils in Wales  
ADAS  
Age Concern  
All Wales Ethnic Minority Association  
Arena Network  
ASH in Wales  
Association for Environment Conscious Building  
Association of National Park Authorities  
Asthma UK Cymru  
Black Environment Network  
Black Voluntary Sector Network in Wales  
Brecon Beacons National Park  
British Heart Foundation  
British Lung Foundation  
British Medical Association  
Campaign for the Protection of Rural Wales  
Cardiff Chamber of Commerce  
Cardiff University  
Carmarthenshire Local Health Board  
Centre for Ecology and Hydrology  
Chartered Institute of Environmental Health  
Chartered Institution of Water and Environmental Management  
Chester, Ellesmere Port & North Wales  
Civic Trust for Wales  
Civil Engineering Contractors association  
Coed Cymru  
Commission for Racial Equality Wales Office  
Confederation of British Industry Wales  
Confederation of Passenger Transport  
Country Land & Business Association  
Countryside Council for Wales  
Disability Rights Commission  
Energy Saving Trust Wales  
Engineering Employers Association Wales

Environment Agency  
Equal Opportunities Commission  
Farmers Union of Wales  
Farming and Wildlife Advisory Group (FWAG Cymru)  
Federation of Master Builders for Wales  
Federation of Small Businesses  
Forestry Commission, Wales  
Freight Transport Association  
Friends of the Earth  
Groundwork Wales  
Health and Safety Executive  
Hybu Cig Cymru (Meat Promotion Wales )  
Institution of Civil Engineers  
Institute of Biological Sciences  
Institute of Directors Wales  
Institute of Environmental Science,  
Institute of Geography and Earth Sciences  
Institute of Grassland and Environmental Research  
Institute of Rural Studies  
Institute of Welsh Affairs  
Keep Wales Tidy  
Local Authority Chief Environmental Health Officers  
Local Authority Chief Executives  
Local Health Board Chief Executives  
Mid & West Wales Regional Office  
Minority Ethnic Women's Network (MEWN) Cymru  
National Farmers Union Wales  
NFU Cymru  
North Wales Economic Forum  
North Wales Regional Office  
NSCA  
NSRI Cymru  
One Voice Wales  
Plaid Cymru  
Princes's Trust Wales  
Regional Health Boardes  
RICS Wales  
Royal Pharmaceutical Society  
RSPB Cymru  
School of Biological Sciences  
Setpoint Wales  
Snowdonia National Park  
South & East Wales Regional Office  
Sustainable Energy  
Sustainable Wales  
The Carbon Trust in Wales

The Lesbian, Gay, Bisexual Forum Equal Opportunities  
The Wales Environmental Standards Group  
TUC Cymru  
University of Glamorgan  
Wales Automotive Forum  
Wales Biomass Centre  
Wales Council for Voluntary Action  
Wales Environment Trust  
Wales Environmental Link  
Wales Social Partners Unit Ltd  
Wales Women's National Coalition  
Welsh Agriculture Organisations Society  
Welsh Conservative Party  
Welsh Institute of Rural Studies  
Welsh Labour Party  
Welsh Liberal Democrats  
Welsh Local Government Association  
Wales Environmental Service Association (WESA)  
West Wales ECO Centre  
WWF Cymru

## **Annex B – Committee Transcript**

**Glyn Davies:** I will ask Joaneast, who is here as our legal adviser to point out whether or not there is any scope for us in terms of the regulations. We should do that before considering these things. Is there any scope for us on this item?

**Ms Jackson:** Does the Minister wish to introduce the regulations before I make any contribution?

**Carwyn Jones:** The regulations are self-explanatory. There is a difference in terms of what we propose to do in Wales compared with England, and that is to do with the range of fines that will be available to local authorities to impose under the Act. For example, in Wales, our range of fines for offences relating to litter, graffiti, fly-posting, dog control and audible intruder alarms range between £75 and £150 compared with between £50 and £80 in England. For offences relating to street litter control notices, waste receptacles and noise from dwellings and licensed premises, our range is between £100 and £150 compared with £75 to £110 in England. That is the range, although it will be important that, when they are set, the level of fines is at such a level that is reasonable and not too high, which could encourage an unreasonable amount of non-payment. That is the major difference between our proposals and those in England.

**Glyn Davies:** Do you want to add anything beyond that?

**Ms Jackson:** I do not think that I need to add anything beyond that.

**Glyn Davies:** Are there any questions or comments, or is the committee fairly happy with that position?

**Jocelyn Davies:** I have one or two points for clarification. I am sure that we have all received constituency cases where people complain of noise from other people. Some local authorities tell me that they have no powers to do anything about human noises, in terms of people shouting and being unreasonably loud. Would these regulations give local authorities those powers? I understand it in terms of making a noise, as the Minister mentioned, with an intruder alarm that goes off and carries on for hours, or with a stereo, or something like that, but what about shouting and generally being very loud? Would the regulations give the local authorities any discretion to do something about that?

**Carwyn Jones:** Noise from dwellings is covered. In terms of what the Act says about the type of noise, there is no definition before me, so the assumption that I make at the moment is that it covers all noise. I do not know whether Jasper or Julie have anything to add.

**Ms Osmond:** These regulations just deal with the penalties. They do not deal with the creating of an offence if that is not covered by existing legislation. These



regulations do not amend that.

**Glyn Davies:** Joanest has said that she will come back to you on that, Jocelyn.

**Jocelyn Davies:** Thank you. The other thing that I wanted to ask is, in terms of the control of dogs Orders, how would a member of the public know which land was covered by such an Order?

**Carwyn Jones:** We are onto another item there.

**Glyn Davies:** They are all under item 6. We will deal with the first Order first.

**Carwyn Jones:** There is another change with the first item of legislation—although this is not as major as the difference in fines—in that community councils will be able to have certain powers under our proposals, whereas, in England of course, they do not have any. There are also provisions for the training needs of community councils. In terms of the legislation itself, it creates the penalties for the offences that already exist. However, you could have an interesting debate on how far that goes in scope, if I can put it that way. However, that is what the primary legislation would cover.

**Elin Jones:** What is the reasoning behind setting a maximum penalty for local authorities to administer? I can understand why the legislation would want to set a minimum, but why does it need to set a maximum, not allowing local authorities to set their own maximum fine or their own penalty?

**Carwyn Jones:** It is commonplace to include a maximum penalty when drafting new offences. For some offences, such as contempt of court, the penalty is a fine, which is unlimited, but that is exceptionally serious. For offences such as this, it is the norm to say what the maximum fine would be. Part of the reason for that is that there are levels of fines, particularly in the magistrates' courts. The magistrates' courts have jurisdiction only up to a certain level of fine, which, if I remember rightly, is currently £5,000. If a local authority were able to set its own fine level, it could say 'We will have a maximum fine of £6,000 or £7,000', in which case, the matter would have to be tried in the Crown court and that would take it up to a new level of seriousness. The idea is that the offences should be treated as fixed-penalty offences rather than as offences that would lead to trials either in the magistrates' court or in the Crown court. So, it is quite normal for a maximum penalty to be imposed here to reflect the fact that these, in the main, are fixed penalties.

**Lorraine Barrett:** Jocelyn has touched on the fact that many of us have constituents coming to us to complain about noise. I am just thinking through how these regulations would work. If, for instance, a neighbour is playing music that booms right down the street, and the next-door neighbour who is affected the most rings the 101 number—which is a joint number for the council and the

police in Cardiff—to report it as anti-social behaviour, the matter is reported, but nothing much happens. It is difficult to get the environmental health officer out at 11p.m., the council says that it cannot take any action because they are private houses and so the offending neighbours are not council tenants, and the poor neighbours next door are distraught because it has been going on for years. I have that scenario in my constituency at the moment.

**Glyn Davies:** My understanding is that that is not part of this at all; all that this covers is the fine.

**Lorraine Barrett:** I am coming to it, Chair. I cannot see how a council could impose a fine on a neighbour in that sort of instance, which I am sure is the sort of thing that Jocelyn is talking about. Shouting also comes into this particular scenario. How would the council impose the fine? Would the council have to take that neighbour to court or would it be a fixed penalty? Could the council slap a fixed penalty on anyone who has been playing music too loudly at 11 p.m.? Is it as easy as that?

**Carwyn Jones:** It is possible to challenge a fixed penalty in court. In any event, it is and has always been possible for people to take their neighbours to court to obtain an injunction in the civil courts to stop them from playing music at too loud a level. It would be an injunction because of nuisance, which has a legal definition. I should not give legal advice, I know, but that is available to people, although it is a more convoluted and possibly more expensive process than taking what are, in effect, criminal sanctions against people. The difficulty that we have is that we are setting the levels of fines, but the definition of 'noise' may well lie in primary legislation.

**Glyn Davies:** Does anyone else have a comment on that? I see that no-one does. If no-one has any objection, we will accept these and give them our support.

We will move on to the dog control Orders. Who wanted to ask a question about that?

**Jocelyn Davies:** I have one or two questions for clarification. As a member of the public, how would you know which land is subject to an Order?

**Ms Jackson:** If you turn to regulation 3 of the miscellaneous provisions set of regulations, which sets down the consultation that the councils have to take before they make the Order, you can see that there is a requirement to publish the proposal on the website and to post a notice under regulation 3(b) on the land. That is how the regulations propose to notify the public of the proposal. Regulation 5 sets out the procedure after making the Order.

**Glyn Davies:** That is quite an important issue, as I get a lot of complaints about it. If this would make it easier for local authorities to prosecute people, I am all in favour of it, as it is a real issue.

**Jocelyn Davies:** Yes, but my point is that if I go to another area, as a visitor, I may not have been consulted or been on the website to see which bits of land are subject to an Order. It seems that land could be subject to an Order, and you would not necessarily know.

The other point is this issue of enforcement. I regularly visit a beach in west Wales, where there is a sign that says, 'No dogs allowed on this side of the beach'. That is the side that I go to, and there are dogs there and dogs' mess, because no-one seems to enforce it. The regulatory appraisal says that there does not seem to be active enforcement of bye-laws at present, and it is difficult. However, if there were a telephone number on the 'No dogs' sign, I would telephone and say, 'Guess what? There are dogs on your beach—come and have a look'. Would the Minister consider provision for the public to ensure that the Orders are enforced? In those places where local authorities have gone to the trouble of putting up a sign, there could be a telephone number on the sign, should breaches be noticed by the public. I do not know whether the Minister has a view on that.

**Glyn Davies:** It seems sensible. I do not know whether that should be in the regulations. Do you wish to comment on that, Minister?

**Carwyn Jones:** It is an interesting suggestion. On whether someone would know whether a particular area was affected by a dog control notice, regulation 3(b) says that there is an onus on local authorities—though not a requirement—to display notices as it considers sufficient to draw the attention of members of the public using that land to the effect of the proposed Order. To me, that says that if local authorities were challenged—if someone said, 'We have been fined, but we did not know that there was a dog control Order in place'—the local authority would have to explain where the notices were, why it believed that the notices were sufficient, and, if there were no notices, why it was not practicable to put them there. So, that is where the answer would lie.

I suppose that what Jocelyn is suggesting in her second point is an amendment to the regulations that would require the enforcing authorities to provide a telephone number that people could ring. That would have to be discussed with the councils, I suspect, as the enforcement authorities.

**Jocelyn Davies:** I am just asking the Minister whether he would consider it. Usually, guidance goes along with this, and, as the Minister points out, it is not being actively enforced at present. I am sure that the public would telephone that number. I know that I would, when I am on that beach. I do not want to approach the person with the dog to say, 'Do you know that you are not allowed on this side of the beach? Take your dog somewhere else'. People are ignoring the sign at present. Perhaps local authorities would also benefit from knowing when these bye-laws are being breached, and so maybe the Minister could include it in the guidance that he issues, or he could consult local authorities. If a sign has to go up anyway, it is only a little more information to add, is it not?

**Glyn Davies:** Would it be reasonable, Minister, to suggest that you discuss this with the Welsh Local Government Association, to see how it might suggest to local authorities a practice—rather than regulations—of including a telephone number?

**Carwyn Jones:** Yes, that would be reasonable, as there are difficulties with including it in the legislation. I suppose that you would be asking local authorities to provide a 24-hour line, in effect, that people could use to report incidences on the beach, because—especially in the summer—people would be out as late as 8 p.m. or 9 p.m., and would see this kind of thing outside normal working hours. However, I will ensure that the matter is raised with the WLGA, and I will express the committee's concerns on that. I will encourage it to have some kind of contact telephone number for at least part of the day, so that people can report incidents.

**Glyn Davies:** Is that all right, Jocelyn, to deal with that?

**Jocelyn Davies:** Yes.

**Glyn Davies:** It is a good point.

**Jocelyn Davies:** According to the regulatory appraisal, a consultation was carried out, although it does not tell us the results of that consultation. Councils were consulted, but that is limited consultation on something that affects so many people. So, I would appreciate it if the Minister took that on board. If there is further consultation on stuff like this, perhaps it could be a bit wider, and maybe the committee could be told the outcome.

**Glyn Davies:** Jocelyn, are you saying that you are content with the regulations but you think that there should be some discussion with the WLGA as to how they should be made?

**Jocelyn Davies:** I would have quite liked to see barking included, as well.

**Glyn Davies:** That is part of that Act, is it not?

**Jocelyn Davies:** Perhaps it is.

**Brynle Williams:** Just going on from that, Chair, dogs fouling on private land is also quite a serious problem, where the public have access to it via public footpaths, and yet the landowner seems to have no redress. I am also concerned about the health risk from that, with the risk of tapeworms and so on being passed on to livestock and, more than that, to human beings. In an awful lot of villages now, there is no provision for people with pets and so they just take them out onto private land via a public footpath. If you complain, the answer you get is, 'I have a right to be here', but they do not have a right to allow their dogs to foul on land to which the public have access, as Jocelyn said.

**Glyn Davies:** What is the position on that, Minister? First, on public footpaths, is the council able to take action, and what about land to which only the right to roam applies?

**Carwyn Jones:** You have to consider the third item of legislation, which deals with the situation with highways: the Controls on Dogs (Non-application to Designated Land) (Wales) Order 2007. Under that legislation, effectively, dog control Orders would not apply on roads. The regulations relating to dog fouling would of course apply on roads, but it is not the intention to ban people from walking dogs on the pavement—that is, on the highway, if I can put it that way. However, this gives local authorities an advantage in terms of land. For example, if a sports field were owned by a local authority and used by rugby or football teams, and there was a problem with people taking their dogs onto the field and fouling there, that would be an offence, but catching them would be another matter, of course. However, it would be open to the local authority as land owner, or, indeed, in any event, to make a dog control Order for that land, which helps with the fouling by keeping the dogs off the land in the first place.

**Glyn Davies:** Are there any other questions?

**Lorraine Barrett:** I just have the comment that local authorities have been trying for years to get the dog bye-laws through and approved.

**Glyn Davies:** They give up, in fact. The difficulty of enforcing it means that they just give up. So, these Orders are welcome.

Are there any comments on the Controls on Dogs (Non-application to Designated Land) Wales 2007, which the Minister just referred to, on the non-application to certain types of land, such as roads? I see that there are not. It looks as though we are all right on those, Minister, so we are supporting all the regulations.