

Regulatory Appraisal – The Dog Fouling (Fixed Penalty) (Wales) Order 2003

Purposes and Intended Effect

1. Section 4 of the 1996 Act provides for the payment of a fixed penalty to discharge any liability to conviction for the offence of failing to remove dog faeces under section 3 of the Act. The level of the fixed penalty notice in Wales is currently set at £25 by virtue of section 88(6) of the Environmental Protection Act 1990 and may be amended by secondary legislation. Failure to pay the fixed penalty within 14 days can result in prosecution and a maximum fine of £2,500. The offence of leaving litter may be committed in any public open space or other place listed in section 87(3) of the 1990 Act.
2. The intended effect of this Instrument is to increase the amount of the fixed penalty payable in pursuance of a notice issued under section 4 of the Dogs (Fouling of Land) Act 1996 for dog fouling offences committed under section 3 of the 1996 Act in Wales from £25 to £75.

Risk Assessment

3. Fixed penalty notices for dog fouling offences were raised in England from the current level of £25 to £50 with effect from 1 April 2002. This was done in conjunction with a pilot project in which a number of English local authorities were reimbursed by DEFRA for the receipts from the fixed penalty notices which under current legislation they are required to surrender to the Treasury. The fact that local authorities are not allowed to retain these monies and use them to offset enforcement costs is thought to be a major factor behind low enforcement rates. This was part of a general review by DEFRA of the law on litter begun by the publication of the DEFRA discussion document, "Living Places", in October 2002 which covered a number of issues including litter, graffiti, and fly-posting and dog fouling.
4. It was decided not to raise the level in Wales until the outcome of the pilots was known and primary legislation was changed to allow local authorities to retain the revenue raised from enforcing these penalties. The Assembly Government's waste management strategy issued in June 2002 stated that the Assembly would press for the necessary changes to primary legislation and examine the findings of the review and then consider the need for secondary litter legislation in Wales. This included the introduction of secondary legislation in the Assembly to increase the level of fixed penalty notices for litter offences in line with England. The strategy also stated that enforcement action on litter should be co-ordinated with other comparable enforcement action such as dog fouling. It would therefore make sense to consider increasing the level of fixed penalty notices for dog fouling at the same time as littering.

5. In November 2002, primary legislation was introduced to remove the requirement on local authorities to surrender fixed penalty notice receipts for litter and dog offences. The Local Government Act 2003 received the Royal Assent in September 2003 and will be commenced in Wales by the end of November 2003. With the introduction of this legislation last autumn it was decided to start the consultation process in November 2002 prior to introducing Assembly legislation in line with Assembly Government policy.
6. There is a possibility that, combined with the changes to primary legislation allowing local authorities to retain the receipts from fixed penalty notices, the increased level of penalty notices will make more authorities enforce the law relating to dog fouling to a greater degree and thus incur additional costs, especially if there are a large number of cases that have to go to court. This is however, entirely a discretionary matter for local authorities to make and additional costs can be offset by increase receipts from the notices.

Options

7. There are three options:
 - retain current level of fixed penalty notice at £25. This would be difficult to justify in the light of the increase to £50 in England and changes to primary legislation allowing local authorities to retain the receipts from the penalty notices.
 - increase the level to £50 in line with England, and as outlined in the Assembly Government's Waste Strategy.
 - increase the level of penalty notice to a higher rate, eg. £75 . This would demonstrate the Assembly's determination to tackle this problem and would be consistent with current Government thinking on this and other anti-social behaviour.

Benefits

8. In deciding to go for the third option and increase the level to £75 the Assembly and local authorities will be able to send a clear message that dog fouling, which is perceived to be a growing problem in Wales and throughout the UK will not be tolerated. Together with s.119 of the Local Government Act 2003, which allows local authorities to retain the receipts from penalty notices, the increased level will at least partially offset enforcement costs.

Costs

9. Any impact on local authority costs will be positive for the reasons already stated above. It is unlikely that all enforcement costs will be

covered by the revenue from the penalty receipts but that would be a discretionary matter for authorities. As already stated there is a possibility that authorities would be more inclined to enforce the law relating to dog fouling and so incur greater enforcement costs but, once again, that it an entirely discretionary matter.

Consultation

10. A three-month consultation exercise was carried out between November 2002 and February 2003, involving local authorities and other interested stakeholders in public and private sectors; e.g. Environment Agency Wales, CBI Wales, Wales Tourist Board, National Parks, FUW, NFU etc. A full consultation list is attached. Consultees were asked to consider if the level of fixed penalty notices should be increased and, if so, by £50 or £75. Of those who responded, all were in favour of an increase. Opinion was divided over the level of increase, roughly equal numbers wanting £50 and £75 with a few wanting increases even higher. It would not be possible to consider an increase to a higher figure than £75 that was not specifically consulted upon. Consequently it was decided at Ministerial level to opt for an increase to £75. The EPC Committee identified this order for scrutiny in a letter from the Chair, to Chair of Business Committee dated 21st July. The EPC subsequently scrutinised this instrument on 8th October where it was unanimously approved.

Review

11. It is intended that littering and dog fouling offences be included in the waste data base being developed by the Assembly's Waste Policy Support Unit. Local authorities will be asked to submit details of their enforcement of the laws on littering and their level of success in obtaining the penalties or taking the matter to court if the offender refuses to pay the penalty.

Summary

12. It is necessary to increase the level of fixed penalty notices for littering offences in Wales for the following reasons:
 - changes to primary legislation to remove the requirement that local authorities surrender the receipts from fixed penalty notices to the Treasury are taking place and therefore remove the reasons for not increasing the current level in Wales and allow local authorities to partly offset enforcement costs;
 - it is in line with current UK Government policy focusing on litter and other forms of anti-social behaviour;

- raising it to £75 will demonstrate the Assembly Government's determination to tackle this problem and send out a clear message that this kind of anti-social behaviour will not be tolerated. It will also increase the amount by which local authorities will be able to offset enforcement costs.