

Validation Impact Assessment

Title of regulatory proposal	The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016
Lead Department/Agency	Department for Environment, Food and Rural Affairs
Expected date of implementation	April 2016
Origin	Domestic
Date	22 nd December 2015
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Unique ID	Defra1997

Rationale for intervention and intended effects

In 2014/15, local authorities reported 900,000 incidents of fly-tipping in England, costing taxpayers an estimated £50 million to clear. The precise scale of the problem on private land is unknown but landowners estimate fly-tipping costs them £50m-£150m per annum.

We are proposing to make the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 in spring 2016. These will amend [the Environmental Protection Act 1990](#) (the 1990 Act) to introduce a new fixed penalty notice (FPN) provision for offences under section 33(1)(a) of that Act.

This will provide local authorities in England with a more efficient and proportionate response to small-scale fly-tipping of waste, instead of enforcement solely by way of prosecution, as is currently the case.

Local authorities have indicated that the cost of investigating a fly-tipping incident, bringing prosecutions and ultimately clearance and disposal of material are significant. Without addressing this, individuals may perceive a low probability of enforcement incentivising fly-tipping.

FPNs may act as a deterrent to offenders and those local authorities who use them may therefore see a decrease or a slow-down in growth, in the number of small scale fly-tipping incidents.

Viable policy options (including alternatives to regulation)

Option 0: Do nothing. The 1990 Act would not be amended and enforcement authorities would have to use existing powers to tackle fly-tipping and prosecute offenders in the courts.

Option 1: Introduce secondary legislation to amend the 1990 Act to enable local authorities to issue an FPN for small scale fly-tipping. Detailed elements of Option 1 are set out on pages 4 and 5.

Option 1 is our preferred approach because it will provide local authorities with a more efficient and proportionate response to small scale fly-tipping, which will act as an additional deterrent and could result in a decrease in the number of fly-tipping incidents.

Initial assessment of business impact

The proposed Regulations will not impose any additional direct costs on businesses or individuals that comply with waste legislation.

Tackling non-compliant waste producers, operators and waste criminals will be welcomed by the legitimate industry that makes up the vast majority of operators and there may be some indirect benefits from levelling the playing field for legitimate business.

One-in, Three-out status: No burden on Business

This proposal imposes no costs on legitimate business, the EANCB = 0. It is also a manifesto commitment.

Rationale for fast track

This proposal is a manifesto commitment and imposes no costs on legitimate business. This measure qualifies for the fast track process.

Departmental signoff (SCS): Richard Pullen Date: 18/12/2015

Economist signoff (*senior analyst*): John Walsh Date: 22/12/2015

Better Regulation Unit signoff: Mustafa Siddique Date: 24/12/2015

Supporting evidence**1. The policy issue and rationale for Government intervention**

In 2014/15, local authorities reported nearly 900,000 incidents of fly-tipping in England, costing taxpayers an estimated £50 million¹ to clear. Roughly 50% of all incidents were a car boot load or less (i.e. less than one cubic metre of waste). Local authorities have indicated that fly-tipping incidents of this size cost on average of £29 to clear. The precise scale of the problem on private land is unknown but landowners estimate fly-tipping costs them £50m-£150m per annum².

The cost to local authorities of investigation, bringing prosecutions and ultimately clearance and disposal of fly-tipping remains significant. Local authorities have indicated that where fines are issued as a result of successful prosecutions, they are paid to the Court and prosecuting authorities have to seek to recover their costs as a separate process. For many local authorities and waste partnerships, this application often results in an award of significantly less than the cost of investigation and prosecution.

[The CLG Select Committee report on litter and fly-tipping](#) (published March 2015) recommended that *“the Government should introduce a national fixed penalty notice for small amounts of fly-tipping, which would require the lower standard of proof required for a civil penalty”*.

¹ [Fly-tipping statistics for England, 2014/15](#)

² [National Fly-tipping Prevention Group's Fly-tipping Partnership Framework](#)

The [2015 Conservative Party Manifesto](#) (published April 2015) included a commitment to “*allow councils to tackle small scale fly-tipping through Fixed Penalties rather than costly prosecutions*”. This proposal will fulfil this commitment.

A [call for evidence on other measures to tackle waste crime and entrenched poor performance in the waste management industry](#) (which closed on 6 May 2015) sought views on the case for introducing FPNs for fly-tipping offences and asked what level of fine would act as a suitable deterrent. There was overwhelming support for the introduction of FPNs (92% of 79 respondents), with views expressed that they would be a proportionate response to small scale fly-tipping. Local authorities recognised the value of FPNs as an enforcement tool, because they enable them to pursue offenders outside of the Courts.

In the [Government’s response to the call for evidence](#) and to the [CLG Select committee report](#), the Government set out its intention to introduce a new FPN for small scale fly-tipping.

2. Policy objectives and intended effects

Fly-tipping is a significant problem for local communities and a risk to the environment, with substantial clear-up costs incurred by local authorities and private landowners. However, the size and scale of fly-tipping varies and accordingly we believe that addressing it requires a range of possible responses that are proportionate to the offence. This proposal will meet the manifesto commitment to introduce FPNs to tackle small scale fly-tipping.

Local authorities have indicated that the cost of investigating a fly-tipping incident, bringing prosecutions and ultimately clearance and disposal of material are significant. This has been backed up by evidence gathered by Buckinghamshire County Council on behalf of the National Fly-tipping Prevention Group. The evidence from 29 local authorities suggested that the average cost of an investigation, bringing prosecutions and ultimately clearance and disposal of fly-tipping³ was £655.14; and the average costs awarded to local authorities was £404.60. This means that on average the 29 local authorities who responded only recovered 60% of costs when they prosecuted a fly-tipping case.

Consistent receipt of significantly less than the cost of prosecutions can provide a disincentive to local authorities to bring prosecutions for fly-tipping. This is compounded by significant budgetary pressures for local authorities, which has implications for the resourcing of discretionary activity. The limited compensation for prosecuting authorities can be directly linked to the reduction in prosecutions that are brought. Although the number of fly-tipping incidents increased by 5.6% in 2014/15 (from 842,000 to nearly 900,000 incidents), the number of actual prosecutions for fly-tipping offences dropped by 9.6% in the same period (from 2,002 to 1,810). The introduction of a new FPN will be a proportionate response to small scale fly-tipping incidents and a more efficient use of local authority resources.

³ Average costs include prosecutions for the whole range of fly-tipping from small scale incidents to more complicated prosecutions for multiple offences.

We expect that the introduction and use of a new FPN for small scale fly-tipping will act as a deterrent to potential offenders and could contribute to a fall in the number of small scale fly-tipping incidents (the potential deterrent effect has not been quantified).

The new FPN will not be an appropriate sanction for operators in the waste management industry, repeat offenders or those responsible for large-scale fly-tipping or the fly-tipping of hazardous waste. Such cases will continue to be prosecuted in the Courts.

3. Policy options considered, including alternatives to regulation

Option 0: Do nothing. The 1990 Act would not be amended and enforcement authorities would have to use existing powers to tackle fly-tipping and prosecute offenders in the courts.

Option 1: Introduce secondary legislation to amend the 1990 Act to enable local authorities to issue an FPN for small scale fly-tipping. **(Preferred option)**
Prosecution of a fly-tipping offence is expensive and local authorities have reported that they recover at most 60% of their costs of doing so. Accordingly, the introduction of an FPN as a response to small scale fly-tipping incidents would be an efficient use of local authority resources. It will allow authorities to tackle offenders without the need to take them to court. Once used, it will also act as a deterrent to small scale fly-tipping since local authorities will be more likely to take enforcement measures and may lead to a reduction in the number of fly-tipping incidents.

The proposal will introduce a new default FPN of £200, equivalent to the existing FPN penalty for fly-tipping in Scotland and the FPN penalty for abandoning a vehicle in England. It will also give local authorities the flexibility to select an alternative fine from a wider range (£150 to £400), taking into account what they think is appropriate as regards the readiness of people in their area to pay and the levels of fines imposed in local Magistrates' Courts. We believe that if fixed penalties are set too high for local conditions, this is likely to lead to substantial non-payment and will be counter-productive, as will penalties that are higher than the likely fine ordered by a Magistrates' Court in the event of non-payment of the penalty (in which case prosecution of the original offence is commenced).

The proposed Regulations will specify that FPN penalties must be paid within 14 days. As with other environmental FPN schemes, such as litter, we believe there should be a reduction for early payment within 10 days of receipt of the FPN. This should encourage early payment and avoid the need for costly prosecution of the original offence in the event of non-payment of the penalty.

Experience of other environmental FPNs (i.e. failure to provide a waste transfer note; domestic and commercial waste receptacle offences; littering etc) provided for in [the 1990 Act](#) has demonstrated that, where discounts are offered, they encourage improved payment rates. It should also reassure the public that the new FPN is an enforcement tool rather than a money-generating exercise.

The proposal will set a minimum level of penalty for early repayment of not less than £120, an equivalent proportion to other environmental FPNs in [the 1990 Act](#), but will

allow local authorities the flexibility to define an early repayment level that is equal to or above this. This should encourage early payment and avoid the need for costly prosecution of the original offence in the event of non-payment of the penalty. Using enforcement powers and issuing FPNs to offenders will incur costs to local authorities. As with other environmental FPNs in [the 1990 Act](#), local authorities will be able to retain the receipts. These receipts will contribute to the enforcement and clear-up costs of fly-tipping.

4. Expected level of business impact

Costs for business

Businesses that carry out their waste activities legitimately will not experience costs as a result of these proposals.

Businesses that carry out waste activities illegally (in this case, fly-tipping waste) will experience costs as a result of these proposals, for example through either finding legitimate disposal routes, or as a direct result of been issued with an FPN. It is not appropriate to include costs for business that carry out their waste activities illegally and we have not incorporated them in our conclusion that the proposal delivers indirect benefits from levelling the playing field for legitimate business.

Costs to enforcement authorities

Local authorities are responsible for investigating and clearing waste from littering or from small-scale fly-tipping on public land.

This proposal will introduce new powers which will enable authorised officers of local authorities to issue FPNs for fly-tipping offences. The proposal places no obligation on local authorities to exercise these powers to issue FPNs or to prosecute for the original offence in the event of non-payment of the penalty. This is the case under the existing legislation as there is no obligation to assume that the powers available to local authorities will be used to tackle fly-tipping.

Local authorities that choose to use FPNs to tackle small scale fly-tipping will incur some small set-up costs for staff training and developing a suitable form of enforcement notice (see annex 1 for more detail). But as local authorities already have the ability to issue FPNs for a range of offences in [Part 2 of the 1990 Act](#), it is envisaged that those local authorities that take up these powers will do so within their existing resources.

Local authorities have indicated that the average cost of investigating a fly-tipping incident, bringing a prosecution and clearance of any dumped material is £655.14⁴. If a prosecution is successful, the court may award costs to the local authority (£404.60 on average) enabling them to recover some of this resource.

If local authorities choose to issue an FPN to an individual rather than prosecute them in the Magistrates' Courts, they will be unable to seek any reimbursement of costs they

⁴ Average costs include prosecutions for the whole range of fly-tipping from small scale incidents to more complicated prosecutions for multiple offences.

incur though will receive fine revenue. If enforcement is approached proportionately, then the FPNs will only be used as a response to small scale fly-tipping where their use offers a reduction in the prosecution and enforcement loss.

Benefits

The overall purpose of these additional powers is to introduce a new enforcement tool for local authorities that will enable them to tackle small scale fly-tipping in a proportionate way. This will reduce costs for enforcement authorities to tackle offenders, simplify the enforcement process and will be welcomed by the legitimate waste industry and many in local communities.

Any subsequent reduction in fly-tipping incidents which may result following the introduction of FPNs would increase the quality of the local environment and generate associated improvements in public perception, health, civic pride and inward investment. Wildlife habitats that would otherwise be adversely affected by illegal waste disposal would also benefit from a reduction in fly-tipping. Benefits such as these are particularly hard to quantify and the impact on the economy, society and the environment will depend on how robustly the regimes are enforced in future.

Benefits for business

These proposals should act as a deterrent to fly-tippers and help level the playing field for businesses dealing with waste. This deterrent should also bring an indirect benefit as individuals and businesses will need to find a legitimate outlet for their waste.

Bringing more people into the regulated community and financially penalising those who do not comply will go some way to levelling the playing field. This is consistent with calls from the waste industry.

Benefits for Enforcement authorities

Local authorities are legally responsible for clearing fly-tipped waste on public land. The proposals will enhance the current enforcement regime; make the enforcement of small scale fly-tipping a more feasible enforcement option; and allow local authorities to recover some of the enforcement and clearance costs without having to take a case to court.

The proposed amendment will allow local authorities to keep the receipts from FPN penalties. They will be able to use the receipts for the purposes of their functions under Part 2 of the 1990 Act, including enforcement of offences. It will be for local authorities to allocate the receipts within that budget. Depending on local circumstances, these receipts will go some way to covering the full costs of running an enforcement service and clearing fly-tipped waste. Local communities and the environment will benefit from less blight as a result of this use of receipts in relation to functions dealing with waste on land. For simplicity however, we still calculate this proposal will benefit in terms of a saving to local authorities.

The introduction of the FPN will be an additional deterrent to potential fly-tippers, which may lead to a reduction of fly-tipping incidents. This could mean reduced waste in local

environments and improved amenity. Additionally this could mean a reduction in the overall clearance costs incurred by fly-tipping enforcement authorities. However, this will depend on the extent to which the law is enforced.

It is likely that the introduction of FPNs will lead to a decrease in prosecutions for small-scale fly-tipping in the Magistrates' Courts. This will save resources of both local authorities and HM Courts & Tribunals Service. Using the prosecution costs in the national [fly-tipping statistical notice](#) we estimate that local authorities that choose to tackle a small scale fly-tipping incident with an FPN rather prosecution in court will save between £52 and £182 per case (see the annex for further details).

At the same time, we expect the proposal will result in a small number of new cases being prosecuted for the original offence in the Magistrates' Courts as a result of non-payment of the penalty and there may be a small number of offences prosecuted under new section 33ZA(9) of the 1990 Act (for giving false details). Overall we believe there should be a net decrease in the caseload of HM Courts and Tribunals Service.

We calculate that those local authorities which decide to issue FPNs will benefit from a saving in overall enforcement and clearance costs.

Comparison of costs and benefits to business

There are no costs to businesses that carry out their waste business legitimately and we do not include costs to businesses which are currently failing to comply with the law.

There are no direct benefits to legitimate business. The introduction of FPNs are another enforcement option for local authorities, which may act as a deterrent meaning that there is an indirect benefit to legitimate business from a more level playing field. As such, we believe there is a zero net benefit to business from adopting the preferred option.

The size of this benefit to business increases as enforcement authorities make greater use of the powers and the deterrent to fly-tip increases.

Small and micro businesses

The proposals in this measure will have no adverse impacts, including costs, on compliant small and micro businesses as they are aimed at those businesses and individuals that are non-compliant with waste regulation. The proposed Regulations should help small and micro businesses to become more competitive as they will help to create a level playing field in the waste industry.

Annex: Indicative Costs

Potential Cost Savings from FPN relative to Court Action:

For the purposes of assessing the potential savings to local authorities through the adoption of a fixed penalty notice for small scale fly-tipping we utilized enforcement and prosecution data from the Fly-tipping incidents and actions reported by local authorities in 2013-14.

Local authorities stated that a single incident involved investigation action costs of £33 and £26.52 for clearance of small-scale fly-tipping (single black bag to a car boot or less). We have assumed there are additional costs to FPN enforcement of £33 per action (which is consistent with stated FPN cost within the dataset).

For the purposes of comparison we calculated average prosecution action costs per Local Authority and using the assumption that small scale fly-tipping would be associated with relatively lower prosecution costs, we calculated averages for the first two quarters of the data points to provide upper and lower estimates of the prosecution costs for small-scale fly-tipping.

Costs of taking a case to court

	Low	Central	High
Investigation	£33.00	£33.00	£33.00
Prosecution costs	£85.00	£150.00	£215.00
Clearance Costs	£26.52	£26.52	£26.52
Total Costs	£144.52	£209.52	£274.52

Costs associated with issuing an FPN

	Low	Central	High
Investigation	£33.00	£33.00	£33.00
FPN Enforcement Costs	£33.00	£33.00	£33.00
Clean Up for Small Scale	£26.52	£26.52	£26.52
Total Costs	£92.52	£92.52	£92.52

Potential Cost Saving	£52.00	£117.00	£182.00
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Administrative Burden from Familiarization:

We assume that all 326 local authorities in England will incur a one-off administration familiarisation cost to familiarise themselves with the proposed changes (the introduction of a FPN for small scale fly-tipping). We have used a 'Local government administrative occupations' wage rate taken from the Annual Survey of Hours and Earnings (ASHE) 2014. This has been uprated by 30% to reflect non-wage labour

costs. Using a central assumption of 90 minutes per local authority the proposed changes could involve a one-off transitional cost of £7,926.69.

Time (mins)	60	90	120
Occupation	Local government administrative occupations		
Wage	£12.47		
Uprated for non-wage costs	£16.21		
No. LAs in England	326		
Cost	£5284.46	£7,926.69	£10,568.92