

## **EXPLANATORY MEMORANDUM TO THE ENVIRONMENTAL OFFENCES (FIXED PENALTIES) (MISCELLANEOUS PROVISIONS) (WALES) REGULATIONS 2008**

**This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability and Housing and is laid before the National Assembly for Wales in accordance with Standing Order 24.1**

### **Description**

1. These Regulations prescribe the ranges within which local authorities in Wales are able to set the level of fixed penalty notices, for certain environmental offences, including graffiti and flyposting.

### **Matters of special interest to the Subordinate Legislation Committee**

2. None

### **Legislative Background**

3. The powers enabling this Instrument to be made are contained in section 11(1) of the Refuse Disposal (Amenity) Act 1978, section 9(1) of the Control of Pollution (Amendment) Act 1989, sections 29(1A)(b) and 98(1A)(b) of the Environmental Protection Act 1990, section 11(2A)(b) of the Noise Act 1996, section 47(1) of the Anti-social Behaviour Act 2003 and sections 9(2), 66(b), 81(1) and 98(1)(b) of the Clean Neighbourhoods and Environment Act 2005.
4. References to the National Assembly for Wales in these enactments should be read as references to the Welsh Ministers as section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 provides that the relevant Assembly functions are transferred to the Welsh Ministers."
5. These regulations will be made under the negative procedure.

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

6. These Regulations revoke and remake regulations 1 to 4 of the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2007. This is as a result of commencement of paragraph 15 of Schedule 4 to the Clean Neighbourhoods and Environment Act 2005 (c.16) which was commenced by the Clean Neighbourhoods and Environment Act 2005 (Commencement No.3) (Wales) Order 2007 (SI 2007/3371) by virtue of which the Welsh Ministers are now the appropriate person in relation to sections 43(A) (4) and (5) of the Anti-social Behaviour Act 2003 (c.38).

7. These Regulations prescribe the ranges within which the amounts of certain fixed penalties that are capable of being specified by a local authority (as variously described in the relevant legislation) are required to fall (*regulation 2*). 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 the amount that will apply if no other figure is forthcoming from a local authority (the default amounts are specified by the legislation which gives local authorities the power to specify the level for a fixed penalty). 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.
8. 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. For example 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)
9. 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.
10. These Regulations generally reflect Whitehall policy. However, there are some differences. In particular, the range within which the levels of Fixed Penalty Notices can be set locally is slightly higher in Wales than in England. In Wales, 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. This compares to ranges from £50 to £80 and from £75 to £110 in England.

## **Implementation**

11. It is intended that this Instrument should come into force on 7 April 2008.

## **Consultation**

12. This has not been necessary as consultation preceded the making of the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2007 which are now being revoked but remade.

## **Regulatory Impact Assessment**

13. A Regulatory Impact Assessment has been carried out in relation to this Instrument and is below.

### **Options**

#### **Option 1: Do Nothing**

14. The absence of these Regulations would mean that the Welsh Ministers would be unable to exercise the power in section 43A of the Anti-social Behaviour Act 2003 to make regulations in relation to the issue of Fixed Penalty Notices (FPNs) for flyposting and graffiti offences

#### **Option 2: Make the Legislation**

15. These Regulations set maximum and minimum amounts for FPNs, thus prescribing the range of penalties that can be issued by local authorities. They also prescribe the minimum amounts which local authorities can accept by way of a discount for early payment. This will facilitate 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**

16. Introducing these Regulations will ensure increased, effective enforcement against fly-posting and graffiti. They will also provide for flexibility, consistency and clarity in the use of the FPN regime in Wales.

### **Costs**

17. There are no financial implications for the Assembly Government 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 can be 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 inclusion of the flyposting and graffiti FPNs into the regime.

### **Competition Assessment**

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

### **Post Implementation Review**

19. 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**

20. These Regulations will provide an efficient, consistent Fixed Penalty Notice regime for Welsh Local Authorities, Community Councils, and the Environment Agency, to deal with flyposting and graffiti in particular, as well as fly-tipping, litter, abandoned vehicles and other nuisances.