

## **Explanatory Memorandum to the Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019**

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Hannah Blythyn

**Deputy Minister for Housing and Local Government**

29 January 2019

## 1. Description

The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 (“the Regulations”) will amend the Environmental Protection Act 1990.

The Regulations introduce new powers that will allow enforcing authorities in Wales to issue a fixed penalty notices to householders who breach their waste duty of care. Under these powers the local authorities will be able to retain the money received from the fixed penalties to help contribute to the enforcement and clear-up costs of fly-tipping. Receipts from fixed penalty notices issued by Natural Resources Wales (NRW) will be paid to the Welsh Ministers.

## 2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations will be made in reliance on the powers exercisable by the Welsh Ministers, in section 2(2) of the European Communities Act 1972.

By virtue of section 59(2) of the Government of Wales Act 2006<sup>1</sup>, the Welsh Ministers may exercise the power conferred by section 2(2) of the European Communities Act 1972<sup>2</sup> in relation to any matter, or for any purpose, if they have been designated in relation to that matter or for that purpose, subject to any restriction in the designation. For the purposes of the European Communities Act 1972, the Welsh Ministers are designated in relation to the prevention, reduction and management of waste [S.I. 2010/1552]

Section 59(3) of the Government of Wales Act 2006 provides that when these powers are exercised, either the Assembly negative or affirmative procedure may be used.

These Regulations will amend primary legislation in relation to Wales (Part 2 of the Environmental Protection Act 1990<sup>3</sup>) in order to implement more effectively and proportionately the UK’s obligations under Article 13 (protection of human health and the environment) and Article 36 (enforcement and penalties) of EU Directive 2008/98/EC<sup>4</sup> (“the Waste Framework Directive”). The Directive provides a framework for EU member states in relation to reducing the adverse impacts of the generation and management of waste.

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<sup>1</sup> [Government of Wales Act 2006](#)

<sup>2</sup> [Section 2\(2\) of the European Communities Act 1972](#)

<sup>3</sup> [Environmental Protection Act 1990](#)

<sup>4</sup> [Directive 2008/98/EC on waste \(Waste Framework Directive\)](#)

The introduction of Fixed Penalty Notices (FPNs) will confer on Welsh enforcement authorities the power to offer a person an ability to discharge liability to criminal conviction for the relevant waste offence by payment of a fixed penalty.

As the Regulations amend primary legislation, and also confer on administrative officers a power to issue a penalty notice, it is considered appropriate the Regulations should be made subject to the Assembly's affirmative procedure.

### **3. Legislative background**

The Regulations will be made under powers contained in section 2(2) of the European Communities Act 1972. The purpose of the Regulations is to better implement the UK's obligations under Article 13 (protection of human health and the environment) and Article 36 (enforcement and penalties) of the Waste Framework Directive in relation to Wales..

The Regulations will insert provisions into the Environmental Protection Act 1990 (c.43) ("the Act") to allow enforcing authorities in Wales to issue a FPN for a failure to comply with the duty of care imposed by section 34(2A) of the Act (which is an offence pursuant to section 34(6) of the Act). Section 34(2A) places a duty on the occupier of any domestic property in Wales to take all such measures available to them as are reasonable in the circumstances to secure that any transfer by them of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.

### **4. Purpose & intended effect of the legislation**

#### Background

The Welsh Government is committed to tackling fly-tipping and waste crime. In 2017/18, local authorities reported over 35,000 incidents of fly-tipping in Wales. It is estimated to have cost the Welsh taxpayer just under £2 million to clear<sup>5</sup>. Whilst the source, size and nature of these incidents can vary, over 60% originates from domestic properties. Identifying who dumped this waste can prove difficult and there is often no traceable evidence. However, when evidence is found and it can be traced back to a householder, sometimes it is established the householder did not fly-tip the waste themselves but rather had not carried out the appropriate checks (their waste duty of care) and had allowed an unauthorised person to take it away.

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<sup>5</sup> [Annual fly-tipping data recorded by Welsh local authorities.](#)

## Waste Duty of Care

Under the waste duty of care occupiers of a domestic property are required to take all measures available to them, as are reasonable in the circumstances, to ensure that any transfer by them of household waste produced on their property is to an authorised person. For the purposes of applying the duty of care, household waste is generally considered to be any waste produced within a domestic property. This is not just regular black bin bag waste but can include other material that may be disposed from a domestic property, for example old mattresses, furniture and household appliances.

To help householders understand what these reasonable measures are and how the law is enforced, guidance is provided in the Waste Duty of Care Code of Practice<sup>6</sup>. The document provides advice on:

- Who the waste duty of care applies to;
- What waste is covered by the duty of care;
- How householders should dispose of their waste;
- What is considered a “reasonable measure” when transferring waste to a private business or private waste site; and
- What evidence is required to demonstrate a householder has met their waste duty of care.

The last point above is particularly important as, unlike businesses<sup>7</sup>, there is no legal requirement on householders to keep records when they check if a waste carrier is registered or a waste site is permitted or exempt. A lack of records also does not prove a householder did not meet their waste duty of care. However, if this transferred waste is subsequently fly-tipped and investigated by the enforcing authority, records can quickly show that a householder has met their waste duty of care.

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<sup>6</sup> [The Waste Duty of Care: Code of Practice \(England and Wales\)](#).

<sup>7</sup> Businesses are required to complete a transfer note describing the waste which they have produced when they transfer their waste to an authorised waste carrier.

## Existing penalties

If a householder fly-tips their domestic waste themselves then they can either be prosecuted or issued with a fixed penalty notice (FPN)<sup>8</sup>. However, at present the only criminal sanction available to an enforcing authority to deal with a householder who breaches their waste duty of care is to prosecute in an attempt to secure a criminal conviction.

FPNs are designed to offer an authorised officer with an alternative enforcement tool and negates the need for more formal action such as prosecution in court. However, the person can also decide not to accept the FPN and ask the matter be dealt with in court instead.

Generally, enforcing authorities use FPNs to deal with more minor offences, which can free up resources and time to concentrate on taking prosecutions through the courts for more major or serious cases and offences.

## Rationale for change

Every year there are a small number of successful prosecutions against householders who have broken the law by failing to make reasonable checks and giving their waste to an unauthorised person. However, local authority Enforcement Officers and other key stakeholders have indicated some householder waste duty of care offences are often of a type which makes a prosecution inappropriate. For example a householder may be left with a criminal record, even if they had no idea the waste was going to be fly-tipped and paid for its disposal in good faith.

In addition to this, prosecutions can often prove costly for the regulators and for the court. Local authorities have indicated where fines are imposed as a result of successful prosecutions, they are paid to the Court. Where courts have also awarded costs to local authorities, the amount of the awards is often less than the cost of investigation and prosecution.

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<sup>8</sup> [Section 33ZB of the Environmental Protection Act](#)

To help address these issues, proposals were developed to allow for a more flexible enforcement option which would not only offer a more efficient and effective mechanism to deal with such offences but also help support behavioural change.

## **5. Consultation on the new powers**

Proposals to introduce powers to allow Welsh enforcing authorities to issue FPNs for occupiers of domestic properties who breach their waste duty of care have been consulted upon. The consultation ran for 8 weeks between 15 January and 26 March 2018. This was undertaken jointly with the UK Government<sup>9</sup>. The consultation also sought views on a number of other waste crime proposals which are not dealt with under this specific piece of legislation.

The Welsh Government sought views on the key provisions of the proposed draft regulations and 42 responses were received in Wales from a range of individuals and organisations including:

- members of the public;
- Natural Resources Wales;
- local authorities;
- environmental organisations; and
- representatives from the waste industry.

There was strong support for the proposals in Wales, with 85% of respondents agreeing that the introduction of a new FPN for the offence of a householder failing to comply with the duty of care in relation to waste would help tackle fly-tipping. However, 95% of respondents felt householders were currently not sufficiently aware of their duties and the risk of prosecution when failing to ensure that they have taken all reasonable steps to ensure that they pass their waste to an authorised person. A range of measures were suggested to help address this issue.

In addition, 53% of respondents disagreed with the view that the existing Waste Duty of Care Code of Practice provided enough guidance on the reasonable measures that could be taken to meet their duty. The vast majority of respondents were also in favour of new guidance for regulators on the use of any new FPNs. A summary of the responses and the Welsh Government's response to this consultation have been published<sup>10</sup>.

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<sup>9</sup> A joint England and Wales consultation titled "[Reducing crime at sites handling waste, and introducing fixed penalties for waste duty of care](#)" was undertaken in 2018.

<sup>10</sup> [Consultation responses and Welsh Government response](#).

## Consultation on revised England & Wales Waste Duty of Care Code of Practice

In light of the concerns raised by respondents in the consultation that the existing England and Wales Waste Duty of Care Code of Practice was unclear, the Welsh Government and UK Government agreed to revise the document. Changes made included the following:

- The section that deals with the duty of care for occupiers of domestic property was moved to the end of the document to better separate it from the parts of the code of practice aimed at commercial operators;
- Greater detail was provided on what waste is covered by the duty of care, in particular where controlled waste is generated by a tradesperson working on the property; and
- more detail was provided on the reasonable measures an individual should take when transferring their waste, making it easier for them to comply with their duty of care.

The revised Waste Duty Care Code of Practice was consulted upon and this ran between 3 July and 27 August 2018<sup>11</sup>. The majority of 92 respondents (14 of which were either based in Wales or operated on an England and Wales basis) agreed the new guidance provided greater clarity for householders and, following some further minor adjustments to reflect views expressed in the consultation, the document has now been published<sup>12</sup>.

In Wales additional communications work will be undertaken to help raise householders awareness of their waste duty of care and to support local authorities in conveying this message to their residents.

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<sup>11</sup> The joint England and Wales consultation on the revised Waste Code of Practice can be found [here](#).

<sup>12</sup> [The Waste Duty of Care: Code of Practice \(England and Wales\)](#).

## New guidance for Welsh local authorities on how to enforce the new fixed penalties

To help support local authorities in implementing the new FPN powers, the Welsh Government has developed new guidance<sup>13</sup>. This document will provide advice on a range of areas and including:

- When FPNs can be issued;
- When FPNs cannot or should not be issued;
- How to issue FPNs; and
- Advice on dealing with non-payment of fixed penalties.

The Welsh Government developed this guidance in collaboration with local authorities and Fly-tipping Action Wales.

### **6. Final regulations**

The final Regulations are broadly in line with those proposals originally developed and consulted upon. However, during the consultation process a number of respondents suggested the level of fixed penalty should be set by the Welsh Government rather than left to individual local authorities. This viewpoint was based on the belief it would allow for a more consistent enforcement approach to be adopted across Wales and reduce any potential confusion when dealing with cross authority boundary cases. It was also felt it could help simplify any supporting communication messages to the general public.

Following further consideration of the evidence provided in the consultation and taking into account the initial calculations undertaken and the existing level of FPN penalty set for businesses who breach their waste duty of care, the Welsh Government has agreed that:

- a fixed penalty amount for £300 is set across Wales, applicable to both penalties issued by NRW and penalties issued by local authorities;
- an option for a discounted early payment option will be made available; and
- where a discounted early payment option is offered, the amount payable should be £150 if paid within 10 days of the issue of the FPN.

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<sup>13</sup> The Welsh Government's Guidance for Local Authorities on Household Waste Duty of Care Fixed Penalty Notices will be published on the Welsh Government's website once the regulations come into force.

## REGULATORY IMPACT ASSESSMENT

### Options

Two options have been considered in this RIA:

Option 1: Do nothing. The Environmental Protection Act 1990 Act (“the 1990 Act”) would not be amended and enforcement authorities would have to use existing powers to prosecute or issue a warning to householders who breach their waste duty of care.

Option 2: Amend the 1990 Act to enable enforcement authorities to issue an FPN to householders who breach their waste duty of care. **(Preferred option)**

### Cost-benefit analysis

#### Option 1 – No action taken

This is the baseline option and as such there are no additional costs associated with this option.

The waste duty of care requires occupiers of a domestic property to take all measures available to them, as are reasonable in the circumstances, to ensure that any transfer by them of household waste produced on their property is to an authorised person. This requirement aims to reduce the chances of this waste ending up in the hands of those who could potentially dispose of it illegally, for example through fly-tipping or disposing of it an illegal waste site. More detail on this duty of care is set out in section 5 of the Waste Duty of Care Code of Practice<sup>14</sup>.

In 2017/18 over 35,000 incidents of fly-tipping were recorded in Wales, costing the Welsh taxpayer nearly £2 million to clear<sup>15</sup>. Whilst the source, size and nature of these incidents can vary, approximately 68% of the waste tipped over the last decade has originated from households<sup>16</sup>. Identifying who dumped this waste can prove difficult as fly-tipping usually occurs under the cover of darkness and there is often no traceable evidence. However, when evidence is

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<sup>14</sup> [The Waste Duty of Care: Code of Practice \(England and Wales\)](#).

<sup>15</sup> [Annual fly-tipping data recorded by Welsh local authorities](#).

<sup>16</sup> [Annual fly-tipping data recorded by Welsh local authorities](#).

found and it can be traced back to a householder, sometimes it is established the householder did not fly-tip the waste themselves but rather had not carried out the appropriate checks (their waste duty of care) and had allowed an unauthorised person to take it away. Powers already exist that would allow an enforcing authority to issue a FPN for the offence of fly-tipping.

Under the existing legislation the only option available to the enforcing authority (usually a local authority) to deal with such breaches of household waste duty of care is to take the householder to court. However, evidence gathered from local authorities in Wales suggests such powers are used infrequently<sup>17</sup> and that prosecution for such an offence is sometimes considered disproportionate given the nature of the offence. For example a householder could be left with a criminal record, even if they had no idea the waste was going to be fly-tipped and paid for its disposal in good faith.

## **Costs**

### **Option 2 – Introduce a new fixed penalty**

#### **Local authorities**

This proposal will introduce new powers which will enable authorised officers of local authorities and NRW to issue FPNs for householder waste duty of care offences. The proposal places no obligation on local authorities to exercise these powers 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 the powers available to local authorities will be used to tackle householder waste offences.

However, it is anticipated that if local authorities do choose to use FPNs to deal with householder waste duty of care offences, they will incur some small set-up costs for staff training and developing a suitable form of enforcement notice. We assume all 22 local authorities in Wales will incur a one-off administration familiarisation cost to familiarise themselves with the proposed changes. We have used data from the “Work Region Occupation” dataset from the Office of National Statistics to calculate wage rates in Wales. For local government administrative occupations, the average hourly wage is estimated to be £11.60. This figure has been updated by 30% to reflect non-wage labour costs. Using a central assumption of 90 minutes per local authority (therefore £22.62) the proposed changes could involve a one-off transitional cost of £500.

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<sup>17</sup> The prosecution data provided by local authorities on an annual basis is not categorised by offence type. However, information gathered from local authorities by the Welsh Government for this Impact Assessment identified that only three local authorities had used this power in 2017/18 and there were 16 successful taken forward.

Whilst the new powers may encourage local authorities who have previously undertaken limited enforcement action to become more proactive in their activities, we do not anticipate the overall number of duty of care cases to increase significantly. This is due to the fact that most breaches of the householder duty of care only come to light when a fly-tipping incident or illegal disposal of waste has been investigated and there is sufficient evidence available to enable an enforcement officer to trace the waste back to a householder. The same level of evidence is required when an enforcement officer issues an FPN that is required for existing prosecutions and such cases are low.

Local authorities have indicated the average cost of prosecuting a householder who has failed in their waste duty of care can average between £200 and £400. These prosecutions are often a consequence of domestic waste being fly-tipped and the subsequent investigations identifying evidence which can be traced back to the householder. If a prosecution is successful, the court may award costs to the local authority enabling them to recover some of this resource. If a prosecution is successful, the court may award costs to the local authority 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 incur, though will receive fine revenue.

### Natural Resources Wales

NRW currently undertake no enforcement activity relating to fly-tipping offences associated with breaches of householder waste duty of care. Under the "Fly-tipping Protocol" they are responsible for dealing with large scale, high risk or organised fly-tipping activity, this type of activity is not, generally, linked to householder breaches of duty of care offences. These types of offences usually involve low risk, small scale deposits and, under the above Protocol, responsibility for which falls to the local authority.

However, NRW does lead on investigations relating to illegal waste sites which are known to receive household and garden waste by illegal operators, therefore, such powers could provide them with an additional enforcement tool should action be required. In addition, unfortunately, there is also a small part of the industry, which fails to meet required standards or operates outside the law. These operators fail to either meet the required standards of their permit/exemptions or operate illegally with no permit/exemption in place. Both types of sites can cause pollution to the environment and endanger human health. Those responsible often leave public bodies and owners of land to clear

up the mess and deal with the consequences. NRW have powers to investigate illegal waste disposal and to take action against those responsible. They also keep a public register of all registered waste carriers, brokers and dealers in Wales which householders can use to check the person to whom they pass their waste is registered and an authorised carrier, and reduce the likelihood of these sites becoming established.

There may also be circumstances where NRW discover fly-tipped household waste on Welsh Government owned land and this may contain traceable evidence. It is possible, therefore, that NRW could choose to take enforcement action against householders once the powers are available. As NRW do not currently undertake duty of care investigations, it is anticipated they would incur small set-up costs for staff training and establishing a suitable form of enforcement notice. It is anticipated these costs would be similar to those incurred by local authorities.

### Businesses and occupiers of domestic properties

Waste generated by businesses is not covered under these powers. This is dealt with via a separate waste duty of care. Therefore, there will be no new financial burden placed on businesses. For those businesses operating in the waste industry, those that carry out their waste activities legitimately (i.e. are authorised waste carriers) will not experience any increased costs as a result of these proposals.

Occupiers of domestic properties who are found not to have met their duty of care obligations may potentially experience costs if the enforcing authorities decides the case merits issuing an FPN (for example costs associated with having to defend legal proceedings). However, it is anticipated these costs will be mitigated by enforcing authorities only issuing FPNs where they are satisfied they have the evidence to successfully prosecute the offence.

The FPN amount is to be set at £300 and local authorities will be provided with the option of offering a discounted rate for early payment at £150. To help reduce the risk of householders breaching their duty, revised guidance has been made available<sup>18</sup>. This document outlines what actions householders can take in order to prove they have met their duty of care and this can include retaining:

- Details of the business and of any vehicle used which can be linked to the authorised operator;

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<sup>18</sup> [The Waste Duty of Care: Code of Practice \(England and Wales\)](#).

- A record of the checks made, including the operators registration, permit or exemption number;
- A receipt for the transaction which includes the business details of a registered operator;
- A copy or photograph of the carrier's waste license or site's permit.

It is not anticipated that householders will incur any costs in order to meet these requirements.

It is not appropriate to include costs for business and households that carry out their waste activities illegally.

## **Benefits**

### **Option 2 – Introduce a new fixed penalty**

#### **Local authorities and Court Services**

The overall purpose of these powers is to introduce an additional enforcement tool for local authorities which will enable them to deal with duty of care offences in a more efficient and effective manner. This will help reduce costs for local authorities to tackle offenders and simplify the enforcement process.

Local authorities are legally responsible for clearing fly-tipped waste on public land. Whilst the use of the new powers is not dependent on a fly-tipping offence occurring (a failure to comply with the duty of care is an offence regardless of what subsequently happens to the waste), it is anticipated they will be primarily used in instances where a fly-tipping incident has occurred and fly-tipped waste can be traced back to a householder. Therefore, this may help enhance the current enforcement regime by making the enforcement of household waste duty of care offences a more feasible option. A reduction in fly-tipping as a result of reducing the waste being given to potential fly-tippers, could help reduce the overall clearance costs incurred by enforcement authorities.

It is likely the introduction of FPNs could lead to a small decrease in prosecutions for duty of care offences in the Magistrates' Courts. This will save resources of both local authorities and HM Courts & Tribunals Service. Using the prosecution costs derived from the small number of local authorities who have undertaken prosecutions, we estimate that those who choose to tackle a

breach of a householder's waste duty of care with an FPN rather prosecution in court will save an average of £500 per case.

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 34ZB(13) 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.

### Business

The introduction of FPNs for household waste duty of care may benefit legitimate waste businesses as (through improved householder awareness of the duty and of the potential penalties) householders seek legitimate businesses with waste carrier licenses rather than those operating illegally.

### Environment

Data submitted by local authorities indicate that household waste, in particular black bag waste and household items such as white goods and furniture make up the largest proportion fly-tipping in Wales<sup>19</sup>. The introduction of FPNs for householder waste duty of care, supported by appropriate awareness raising messages, could help reduce the amount of household waste being transferred to illegal operators and, therefore, being disposed of illegally. This would help reduce the impact of illegally disposed of waste on 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 such a reduction. 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.

### Summary of the preferred option

The preferred option is **Option 2**. A householder's breach of duty of care and the illegal disposal of waste is intrinsically linked and presents a significant problem for local communities. It can lead to the decline in the quality of the environment and result in substantial clear-up costs being incurred by local authorities and private landowners. Data gathered from local authorities

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<sup>19</sup> WasteDataFlow Fly-tipping Module (registration required):  
<http://www.wastedataflow.org/htm/datasets-ftm.aspx>

indicates that two thirds of fly-tipping waste originates from households. Accordingly we believe that addressing it requires a range of possible responses that are proportionate to the offence.

The introduction of new powers will allow enforcing authorities in Wales to deal more effectively with householder duty of care offences. In turn, this will help reduce the burden in taking some cases through the court system and act as an effective deterrent. An effective regulatory regime tackling the illegal disposal of waste can, therefore, have an important contributory impact across the following well-being goals in the Well-being of Future Generations Act 2015:

- a prosperous Wales;
- a resilient Wales;
- a globally responsible Wales;
- a healthier Wales;
- a more equal Wales; and
- a Wales of cohesive communities.

This approach also demonstrates the application of the five ways of working set out under the sustainable development principle in the Well-being of Future Generations Act 2015.

### **Specific impact tests**

#### **Welsh Language**

No direct positive or adverse impact on the Welsh Language identified. All consultation and supporting documentation will be made available bilingually. Any correspondence with local authorities and NRW will take into account language needs and be made available bilingually as requested. The new powers will be implemented by individual local authorities and provisions will be in place to ensure the necessary paperwork is made available bilingually.

#### **Children's Rights**

No conflict with UNCRC has been identified and there are no negative impacts on children and young people. Indirectly, the positive impacts on children from this legislation would be any likely health and wellbeing benefits from any improvement in the surrounding local environmental as a consequence of a reduction in illegal waste disposal and fly-tipping incidents associated with domestic waste.

## Privacy

No personal data has been kept by the Welsh Government as part of this process. Individual local authorities who adopt the powers and issue fixed penalties will have their own processes in place to deal with data protection.

## Justice Impact Assessment

A Justice Impact Assessment has been undertaken as part of the legislative development process and no significant impacts on the HM Courts & Tribunal system were identified as no new offences are being introduced. The enforcement and implementation of these powers mirror those recently made available in England

The new powers are intended to reduce the burden on the court system as they offer enforcement officers with an alternative enforcement tool to pursuing a prosecution. However, local authorities will be required to take court action in the event of non-payment of the fixed penalty.

## Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No

The competition filter test	
Question	Answer yes or no
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

**Post implementation review**

The Welsh Government will publish data on the use of the new FPNs as part of its annual reporting of fly-tipping incidents recorded by local authorities on WasteDataFlow. This data is analysed by NRW and the Welsh Government to help understand the nature of the issue and to monitor the ongoing effectiveness of policies and direct interventions.