

USE OF FIXED PENALTIES FOR WASTE RECEPTACLE OFFENCES: SUMMARY OF CONSULTATION RESPONSES

<u>Organisation</u>	<u>Response</u>	<u>Department's comments</u>
<p>Ards Borough Council (member of Arc21)</p>	<p>Agrees that it should be up to each individual council as to how and when this enforcement process is introduced and used. The Council would use these additional enforcement powers, but only after ensuring that all other methods to ensure compliance had been pursued including educational and home visits and again only if someone demonstrates persistent and wilful non-cooperation with regard to recycling.</p> <p>The form and content of the Departments proposed draft fixed penalty notice appears to be satisfactory.</p> <p>The Council would utilise its powers to offer a 50% discount for early payment.</p>	<p>Noted. The Department would agree with the proposed approach.</p> <p>Noted. Full details of the mandatory requirements to be included in a fixed penalty notice are stipulated in Article 10 of the Waste (Amendment) (Northern Ireland) Order 2007. However, to assist district councils, the Department intends to place a "model" notice on its website. District Councils would be free to adapt the form of this notice to suit their needs (provided of course that the mandatory requirements are satisfied).</p> <p>Noted. The legislation introduces a power for district councils to offer a discount for early payment of a fixed penalty. While the Department has the power to restrict the circumstances in which district councils can exercise this power, it does not intend to make use of this power at the present time. Once the legislation is in force, district councils would therefore be free to utilise this power to suit local circumstances.</p>

USE OF FIXED PENALTIES FOR WASTE RECEPTACLE OFFENCES: SUMMARY OF CONSULTATION RESPONSES

<p>Ballymoney Borough Council (member of NWRWMG)</p>	<p>Advocates activation of relevant powers.</p> <p>A discount of 50% if a fixed penalty is paid within 7 days would be beneficial.</p>	<p>Noted.</p> <p>Noted. See comments above on response from Ards Borough Council.</p>
<p>Belfast City Council (member of Arc21)</p>	<p>Requests that the proposals be implemented as soon as possible.</p> <p>A discounted amount of £60 – for payments made within 10 days – would be acceptable.</p>	<p>Noted.</p> <p>Noted. See comments above on response from Ards Borough Council.</p>
<p>Coleraine Borough Council (member of NWRWMG)</p>	<p>Supportive in principle but would not anticipate widespread use being made of the new powers due to potential enforcement difficulties.</p>	<p>Noted. The Department is of the view that a carefully thought out enforcement policy, a long lead-in period and a high profile communications strategy would help to avoid potential enforcement difficulties. However, there will be no compulsion on individual councils to introduce fixed penalties for the misuse of waste receptacles. Each council will be free to decide whether such an enforcement system would suit its own local circumstances.</p>
<p>Craigavon Borough Council (member of SWaMP)</p>	<p>Would utilise powers if commenced in the near future.</p> <p>Agrees that the public should be given advance notice of any proposal to implement the fixed penalty system, and notes that such communication may in itself lead to greater compliance with the legislation.</p> <p>A discount of 50% if a fixed penalty is paid within 7 days would be beneficial.</p>	<p>Noted.</p> <p>Noted. The Department would agree.</p> <p>Noted. See comments above on response from Ards Borough Council.</p>

USE OF FIXED PENALTIES FOR WASTE RECEPTACLE OFFENCES: SUMMARY OF CONSULTATION RESPONSES

<p>Derry City Council (member of NWRWMG)</p>	<p>Welcomes introduction of relevant powers. Would use them where the council considers their use is equitable, practical and in line with its enforcement concordat and other environmental policies.</p> <p>Would adapt the standard form provided to reflect its particular policies and procedures.</p> <p>A discount of 50% if a fixed penalty is paid within 10 days would be beneficial.</p> <p>Queries whether councils would be able to retain the proceeds from the use of fixed penalty notices.</p>	<p>Noted. The Department would agree with the proposed approach.</p> <p>Noted. See comments above on response from Ards Borough Council.</p> <p>Noted. See comments above on response from Ards Borough Council.</p> <p>In line with Article 22 of the Waste and Contaminated Land (NI) Order 1997 (as amended by Article 10 of the Waste (Amendment) (NI) Order 2007), district councils may retain the proceeds from fixed penalty notices but may only use them for their functions under Part II of the 1997 Order – including the enforcement of offences. While the Department has the power to make regulations restricting what district councils can do with their fixed penalty receipts, it does not intend to make use of this power at the present time.</p>
<p>Magherafelt District Council (member of NWRWMG)</p>	<p>Would utilise powers if commenced in the near future.</p> <p>Would use the format/content of the Department's draft fixed penalty notice.</p> <p>Would utilise its powers to offer a discount of about 20-30%.</p>	<p>Noted.</p> <p>Noted. See comments above on response from Ards Borough Council.</p> <p>Noted. See comments above on response from Ards Borough Council.</p>

USE OF FIXED PENALTIES FOR WASTE RECEPTACLE OFFENCES: SUMMARY OF CONSULTATION RESPONSES

<p>North Down Borough Council (member of Arc21)</p>	<p>Would utilise powers if commenced in the near future.</p> <p>Would endorse the following measures:</p> <ul style="list-style-type: none"> • A well-publicised lead-in period; • Consideration of a warning letter before a fixed penalty notice is issued; • Production of suitable guidance; • Preparation of a communications strategy to raise awareness; • Only issuing fixed penalty notices where there is adequate evidence to support a prosecution if the amount is not paid; • Only issuing such notices where the council has the financial means to contest any court case that could arise in the event of refusal to pay fixed penalties. <p>The Department's 'model' fixed penalty notice endorsed in principle.</p> <p>A possible 50% discount for early payment, with all income from fixed penalty notices be made payable to the council, would be considered.</p>	<p>Noted.</p> <p>Noted. The Department would agree with the proposed approach.</p> <p>Noted. See comments above on response from Ards Borough Council.</p> <p>Noted. See comments above on responses from Ards Borough Council and Derry City Council.</p>
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<p>Arc21</p>	<p>Suggests that the proposal is too narrowly focused. Favours instead a broader approach to promote full use by householders of council recycling services. Advocates greater emphasis on increasing awareness and education, with rewards for good recycling performance.</p>	<p>The Department agrees that fixed penalties alone are insufficient to promote recycling. Other respondents have advocated the need for a long lead-in period, during which councils should raise public awareness of recycling. The Department would endorse this approach. In addition, the NI Waste Management Strategy commits the Department to explore other options to promote recycling; for example incentive schemes to encourage households to separate their waste. However it will take some time to finalise policy in this area. In the interim, the Department believes councils should have the option of fixed penalties – and discretion to decide whether such a system would suit their own local circumstances.</p>
<p>Southern Waste Management Partnership (SWaMP)</p>	<p>In principle strongly supports early commencement of the powers.</p> <p>Considers a well-publicised lead-in period to be vital prior to the first fixed penalties being issued.</p> <p>Recommends that a first offence be dealt with by a verbal warning with any subsequent offences being dealt with by fixed penalties or prosecution.</p> <p>Participating member councils should maintain consistency with householders and businesses.</p>	<p>Noted.</p> <p>Noted. The Department would agree.</p> <p>Noted. The Department would recommend that councils should only use these powers after ensuring that all other methods to ensure compliance have been pursued and only if an occupier demonstrates continued and intentional non-cooperation with the council's requirements. However, the detailed workings of its enforcement regime will be the responsibility of each district council operating the scheme.</p> <p>Noted. The Department would agree.</p>

USE OF FIXED PENALTIES FOR WASTE RECEPTACLE OFFENCES: SUMMARY OF CONSULTATION RESPONSES

	<p>Recognises and supports the need for detailed guidance to be made available to households and businesses and agrees that it would be appropriate for such guidance to be incorporated into existing individual waste collection literature and via existing media channels at a local level.</p> <p>Such information should be supported and reinforced at a national level during the vital lead in period.</p> <p>Guidance material must include information regarding Article 44 of the 1997 Order: Obtaining of Information.</p> <p>Further clarification of the powers afforded to district councils under Article 21(1) and 21(4) of the 1997 Order is required prior to the commencement of Article 10 and, following this, guidance materials must include information regarding district council powers under those Articles.</p> <p>Fixed penalty notices should be issued only where there is adequate evidence to support prosecution and where district councils have a strong case against an accused.</p>	<p>Noted. The Department would agree.</p> <p>The Department would propose to issue a press release once the enabling legislation has been commenced. Beyond this however, the Department believes that further guidance and publicity should be initiated at local level, as some councils may choose not to introduce fixed penalties.</p> <p>Noted. The content of guidance material will be the responsibility of each district council operating the scheme.</p> <p>Noted. The Department will prepare brief guidance material for councils, based partly on responses to the consultation, and it is hoped that this guidance, together with the Department's comments elsewhere in this consultation summary, will address any remaining uncertainty on district councils' powers.</p> <p>Noted. The Department would agree.</p>
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	<p>Clarity regarding the person responsible for an individual waste receptacle should be sought and incorporated into the legislation prior to the commencement of Article 10.</p> <p>The adoption of Article 10 would potentially require considerable investment by individual councils in terms of PACE training for staff. Lack of financial means to undertake this may result in reticence to utilise Article 10.</p> <p>The sample fixed penalty form appears comprehensive and Article 10 gives adequate details of the mandatory requirements. Concur that district councils should be allowed to tailor the form to meet their own needs.</p> <p>Introduction of an early payment discount scheme potentially administratively burdensome and less effective than prior guidance in reducing contravention of the legislation.</p>	<p>The Department does not feel that changes to the legislation are required. The Waste and Contaminated Land (Northern Ireland) Order 1997 makes it clear that the occupier of a property is the person responsible for waste receptacles associated with that property. Therefore the Department's view is that the occupier should be the recipient of a fixed penalty notice to be issued in respect of any misuse of these receptacles. It is recommended that district councils make this clear in their guidance if they decide to introduce this new enforcement regime.</p> <p>Noted. Receipts from fixed penalties could help to offset some enforcement costs, however the Department recognises that there will be financial implications for councils choosing to exercise these new powers.</p> <p>Noted. See comments above on response from Ards Borough Council.</p> <p>Noted. The legislation introduces a power for district councils to offer a discount for early payment of a fixed penalty however district councils are free to utilise this power to suit local circumstances including <u>not</u> offering such a discount. The Department agrees</p>
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		that clear and comprehensive guidance covering all aspects of the new enforcement regime will be crucial.
Technical Advisers Group	<p>Broadly supportive of the proposals including those to offer a reduced penalty for prompt payment.</p> <p>Concerned at somewhat piecemeal approach which appears to be being deployed by DOE. A more comprehensive programme of education, engagement and penalty is needed to change the public's behaviour/attitudes.</p> <p>Potential for issue to become politically charged.</p> <p>Prospect of inconsistent approach to new arrangements between councils. Recommends that DOE should consider entering into dialogue through NILGA to prepare a framework or strategy under which the different tools to encourage public behaviour change could be framed, which could also include (or make provision to include) other concepts such as rewards.</p>	<p>Noted.</p> <p>Noted. See comments above on response from Arc21.</p> <p>Noted.</p> <p>Noted. See comments above in relation to SWaMP's suggestion of a DOE-led media campaign. The Department sees merit in consistency of approach and will issue brief guidance material to councils, based partly on responses to the consultation. However, since this is an optional 'tool' for councils, the Department is reluctant to impose a uniform framework. Councils may however decide to work together – perhaps through NILGA – to ensure uniformity.</p>

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NOTES:

1. The North West Region Waste Management Group did not submit a response to the consultation.
2. The following councils did not submit individual responses:
 - Antrim Borough Council (member of Arc21)
 - Armagh City and District Council (member of SWaMP)
 - Ballymena Borough Council (member of Arc21)
 - Banbridge District Council (member of SWaMP)
 - Carrickfergus Borough Council (member of Arc21)
 - Castlereagh Borough Council (member of Arc21)
 - Cookstown District Council (member of SWaMP)
 - Down District Council (member of Arc21)
 - Dungannon and South Tyrone Borough Council (member of SWaMP)
 - Fermanagh District Council (member of SWaMP)
 - Larne Borough Council (member of Arc21)
 - Limavady Borough Council (member of NWRWMG)
 - Lisburn City Council (member of Arc21)
 - Moyle District Council (member of NWRWMG)
 - Newry and Mourne District Council (member of SWaMP)
 - Newtownabbey Borough Council (member of Arc21)
 - Omagh District Council (member of SWaMP)
 - Strabane District Council (member of NWRWMG)
3. The Clerk of the Environment Committee of the Northern Ireland Assembly responded to state that the Committee had no comment on the proposals.