

DECISION NOTICE OF AN INDIVIDUAL MEMBER OF GWYNEDD COUNCIL CABINET

DATE OF DECISION 18 July 2018

DATE DECISION PUBLISHED 19 July 2018

DATE DECISION WILL COME INTO FORCE and implemented,
unless the decision is called in, in accordance with section 7.25 of
the Gwynedd Council Constitution 26 July 2018

Cabinet Member: Councillor Gareth Wyn Griffith

Cabinet Member for Highways and Municipal

SUBJECT

Street Enforcement - Fixed Penalty Notices for fly-tipping

DECISION

To approve a £400 fixed penalty for fly-tipping, discounted to £300 if paid within 10 days.
To commence on 1 August 2018.

REASON WHY THE DECISION IS NEEDED

Please see attached officer report

DECLARATIONS OF PERSONAL INTEREST AND ANY RELEVANT DISPENSATIONS APPROVED BY THE COUNCIL'S STANDARDS COMMITTEE

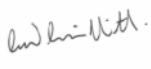
None

ANY CONSULTATIONS UNDERTAKEN PRIOR TO MAKING THE DECISION

Consultation with
Gwynedd Council Statutory Officers

The results of the consultations are reported upon in the attached report

**DECISION NOTICE OF AN INDIVIDUAL MEMBER OF GWYNEDD COUNCIL
CABINET – OFFICER REPORT**

Name and title of Cabinet Member/s:	Coun. Gareth Wyn Griffith Cabinet Member for Highways and Municipal
Name and title of Report Author :	Gwyn Morris Jones Head of Highways and Municipal
Date of Decision :	18 July, 2018
Signature of Cabinet Member/s :	

Subject : Street Enforcement - Fixed Penalty Notices for fly-tipping

Recommendation for the Decision :

To approve a £400 fixed penalty for fly-tipping, discounted to £300 if paid within 10 days. To commence on 1 August 2018.

Reason why Decision is needed :

The Environmental Protection Act 1990 Section 33 ZB gives local authorities powers to issue fixed penalties for fly-tipping offences. These powers provide the Council with an additional enforcement tool for small-scale fly-tipping offences where a prosecution may be considered disproportionate.

The penalty can range between £150 and £400, with a default level of £200 if no amount is specified. The Act also allows for an optional discount for early payment of a fixed penalty. The fixed penalties are applicable on both public and privately owned land.

These powers were implemented within existing powers in Gwynedd on 1 January 2018, with the fixed penalty being set temporarily at the Welsh Government's default level of £200. The reason for this was to allow time for consultation on the levels of penalties set by other authorities in Wales.

Reason and justification behind the Decision :

Following research it became apparent that the majority of councils favoured a higher penalty of £400 to deter offenders. Some councils offer a discount for early payment whereas others do not.

An increased, more consistent penalty will greatly assist in deterring environmental crimes on our streets and public spaces. It is therefore proposed to increase the penalty to £400 in Gwynedd. A £100 discount for early payment will serve as a firm incentive to pay the penalty promptly and avoid further Court action.

The level set for the penalty accords with that specified in the Environmental Protection Act 1990.

Declarations of personal interest by any Cabinet Member consulted with and any relevant dispensations approved by the Standards Committee

None.

Any consultations undertaken prior to making the decision :

Chief Executive

Nothing to add.

Head of Finance

I am convinced that there has been appropriate consideration in reviewing the levels of fines, and there is a clear justification for the sum recommended here.

Monitoring Officer

The report recommends level of fines that are compatible with the provisions of the Environmental Protection Act 1990.

Local Member/s

Not Relevant.



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WELSH STATUTORY
INSTRUMENTS

2017 Rhif 1024 (Cy. 262)

2017 No. 1024 (W. 262)

**DIOGELU'R AMGYLCHEDD,
CYMRU**

**ENVIRONMENTAL
PROTECTION, WALES**

**Rheoliadau Dyddodi Gwastraff Heb
Awdurdod (Cosbau Penodedig)
(Cymru) 2017**

**The Unauthorised Deposit of Waste
(Fixed Penalties) (Wales)
Regulations 2017**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn mewnosod adran newydd 33ZB yn Rhan II (Gwastraff ar Dir) o Ddeddf Diogelu'r Amgylchedd 1990 (p. 43) ("y Ddeddf") er mwyn galluogi swyddog awdurdodedig o awdurdod casglu gwastraff yng Nghymru i ddyroddi hysbysiad cosb benodedig am fynd yn groes i adran 33(1)(a) o'r Ddeddf yn ardal yr awdurdod.

Mae adran 33(1)(a), yn ddarostyngedig i esemptiadau penodol, yn gwahardd dyddodi gwastraff a reolir neu wastraff echdynnol yn neu ar unrhyw dir ac eithrio yn unol â thrwydded amgylcheddol. Mae mynd yn groes i'r adran honno yn drosedd.

Mae adran 33ZB yn caniatáu i awdurdod casglu gwastraff yng Nghymru bennu cosb benodedig heb fod yn llai na £150 a heb fod yn fwy na £400. Os na fydd yr awdurdod casglu gwastraff yn pennu swm, swm y gosb benodedig fydd £200. Caiff awdurdod casglu gwastraff yng Nghymru hefyd wneud darpariaeth ar gyfer gostyngiad am dalu cosb benodedig yn gynnar.

Lluniwyd asesiad effaith rheoleiddiol, o ran Cymru, o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn. Gellir cael copi oddi wrth Lywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ ac mae wedi ei gyhoeddi ar www.llyw.cymru.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations insert a new section 33ZB into Part II (Waste on Land) of the Environmental Protection Act 1990 (c.43) ("the Act") to enable an authorised officer of a Welsh waste collection authority to issue a fixed penalty notice for contravention of section 33(1)(a) of the Act in the area of the authority.

Section 33(1)(a), subject to certain exemptions, prohibits the deposit of controlled waste or extractive waste in or on any land other than in accordance with an environmental permit. Contravention of that section is an offence.

Section 33ZB allows a Welsh waste collection authority to specify a fixed penalty of not less than £150 and not more than £400. If no amount is specified by the waste collection authority, the amount of the fixed penalty is to be £200. A Welsh waste collection authority may also make provision for a discount for early payment of a fixed penalty.

A regulatory impact assessment in relation to Wales has been prepared on the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.

2017 Rhif 1024 (Cy. 262)

2017 No. 1024 (W. 262)

**DIOGELU'R AMGYLCHEDD,
CYMRU**

**ENVIRONMENTAL
PROTECTION, WALES**

Rheoliadau Dyddodi Gwastraff Heb
Awdurdod (Cosbau Penodedig)
(Cymru) 2017

The Unauthorised Deposit of Waste
(Fixed Penalties) (Wales)
Regulations 2017

Gwnaed 24 Hydref 2017

Made 24 October 2017

Yn dod i rym yn unol â rheoliad 1(2)

*Coming into force in accordance with
regulation 1(2)*

Mae Gweinidogion Cymru wedi eu dynodi at ddibenion adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972 mewn perthynas ag atal, lleihau a rheoli gwastraff(1) ac yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddir gan yr adran honno(2).

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the prevention, reduction and management of waste(1) and make these Regulations in exercise of the powers conferred by that section(2).

Yn unol ag adran 59(3) o Ddeddf Llywodraeth Cymru 2006(3), gosodwyd drafft o'r Rheoliadau hyn gerbron Cynulliad Cenedlaethol Cymru ac fe'i cymeradwywyd ganddo drwy benderfyniad.

In accordance with section 59(3) of the Government of Wales Act 2006(3) a draft of these Regulations was laid before and approved by a resolution of the National Assembly for Wales.

Enwi, cychwyn a rhychwantu

Title, commencement and extent

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Dyddodi Gwastraff Heb Awdurdod (Cosbau Penodedig) (Cymru) 2017.

1.—(1) The title of these Regulations is the Unauthorised Deposit of Waste (Fixed Penalties) (Wales) Regulations 2017.

(2) Daw'r Rheoliadau hyn i rym drannoeth y diwrnod y'u gwneir.

(2) These Regulations come into force on the day after the day on which they are made.

(3) Mae'r Rheoliadau hyn yn rhychwantu Cymru a Lloegr.

(3) These Regulations extend to England and Wales.

(1) O.S. 2010/1552. Yn rhinwedd adran 59(2) o Ddeddf Llywodraeth Cymru 2006 (p. 32) caiff Gweinidogion Cymru arfer y pŵer a roddir gan adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972 (p. 68) mewn perthynas ag unrhyw fater, neu at unrhyw ddiben, os ydynt wedi eu dynodi mewn perthynas â'r mater hwnnw, neu at y diben hwnnw.

(2) 1972 p. 68. Diwygiwyd adran 2(2) gan Ran 1 o'r Atodlen i Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (p. 7).

(3) 2006 p. 32.

(1) S.I. 2010/1552. By virtue of section 59(2) of the Government of Wales Act 2006 (c. 32) the Welsh Ministers may exercise the power conferred by section 2(2) of the European Communities Act 1972 (c. 68) in relation to any matter, or for any purpose, if they have been designated in relation to that matter or for that purpose.

(2) 1972 c. 68. Section 2(2) was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(3) 2006 c. 32.

Diwygio Deddf Diogelu'r Amgylchedd 1990

2.—(1) Mae Rhan II o Ddeddf Diogelu'r Amgylchedd 1990 (Gwastraff ar Dir)(1) wedi ei diwygio fel a ganlyn.

(2) Ar ôl adran 33ZA (hysbysiadau cosb benodedig am fynd yn groes i adran 33(1)(a): Lloegr) mewnosoder—

“33ZB Fixed penalty notices for contravention of section 33(1)(a): Wales

(1) Where an authorised officer of a Welsh waste collection authority has reason to believe that a person has committed a waste deposit offence in the area of the authority, the officer may give the person a notice under this section in respect of the offence.

(2) In subsection (1), “waste deposit offence” means an offence under section 33 in respect of a contravention of subsection (1)(a) of that section.

(3) A notice under this section is a notice offering the opportunity of discharging any liability to conviction for the offence to which it relates by payment of a fixed penalty.

(4) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings may be instituted for the offence before the end of the period of 14 days following the date of the notice, and

(b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(5) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence and must state—

(a) the period during which, by virtue of subsection (4)(a), proceedings will not be taken for the offence,

(b) the amount of the fixed penalty, and

(c) the person to whom and the address at which the fixed penalty may be paid.

Amendment of the Environmental Protection Act 1990

2.—(1) Part II of the Environmental Protection Act 1990 (Waste on Land)(1) is amended as follows.

(2) After section 33ZA (fixed penalty notices for contravention of section 33(1)(a): England) insert—

“33ZB Fixed penalty notices for contravention of section 33(1)(a): Wales

(1) Where an authorised officer of a Welsh waste collection authority has reason to believe that a person has committed a waste deposit offence in the area of the authority, the officer may give the person a notice under this section in respect of the offence.

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(b) the amount of the fixed penalty, and

(c) the person to whom and the address at which the fixed penalty may be paid.

(1) 1990 p. 43. Diwygiwyd adran 33(1)(a) gan O.S. 2007/3538 ac O.S. 2009/1799.

(1) 1990 c. 43. Section 33(1)(a) was amended by S.I. 2007/3538 and S.I. 2009/1799.

(6) If an authorised officer proposes to give a person a notice under this section, the officer may require the person to give the person's name and address.

(7) It is an offence to—

(a) fail to give a name or address when required to do so under subsection (6), or

(b) give a false or inaccurate name or address in response to a requirement under that subsection.

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) The fixed penalty payable in pursuance of a notice under this section—

(a) is an amount not less than £150 and not more than £400, as specified by the Welsh waste collection authority whose authorised officer gave the notice, or

(b) if no amount is specified by that authority, is £200.

(10) A Welsh waste collection authority to whom a fixed penalty is payable pursuant to a notice under this section may make provision for treating the fixed penalty as having been paid if a lesser amount of not less than £120 is paid before the end of the period of 10 days following the date of the notice.

(11) In any proceedings, a certificate which—

(a) purports to be signed by or on behalf of the chief finance officer of a Welsh waste collection authority to whom a fixed penalty is payable pursuant to a notice under this section, and

(b) states that the payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(12) In this section—

“authorised officer” in relation to a Welsh waste collection authority, means—

(a) an employee of the authority who is authorised in writing by the authority for the purposes of giving notices under this section;

(6) If an authorised officer proposes to give a person a notice under this section, the officer may require the person to give the person's name and address.

(7) It is an offence to—

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(b) states that the payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(12) In this section—

“authorised officer” in relation to a Welsh waste collection authority, means—

(a) an employee of the authority who is authorised in writing by the authority for the purposes of giving notices under this section;

(b) a person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function;

(c) an employee of such a person who is authorised in writing by the authority for the purpose of giving such notices;

“chief finance officer”, in relation to a Welsh waste collection authority, means the person having responsibility for the financial affairs of the authority;

“Welsh waste collection authority” means a waste collection authority whose area is in Wales.”

(3) Yn adran 73A (defnyddio derbyniadau cosb benoddedig)(1), yn is-adran (2) ar ôl “33ZA,” mewnosoder “33ZB,”.

(b) a person who, in pursuance of arrangements made with the authority, has the function of giving such notices and is authorised in writing by the authority to perform that function;

(c) an employee of such a person who is authorised in writing by the authority for the purpose of giving such notices;

“chief finance officer”, in relation to a Welsh waste collection authority, means the person having responsibility for the financial affairs of the authority;

“Welsh waste collection authority” means a waste collection authority whose area is in Wales.”

(3) In section 73A (use of fixed penalty receipts)(1), in subsection (2) after “33ZA,” insert “33ZB,”.

Lesley Griffiths

Ysgrifennydd y Cabinet dros yr Amgylchedd a Materion Gwledig, un o Weinidogion Cymru
24 Hydref 2017

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Cabinet Secretary for Environment and Rural Affairs,
one of the Welsh Ministers
24 October 2017

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(1) Mewnosodwyd adran 73A gan adran 52 o Ddeddf Cymdogaethau Glân a'r Amgylchedd 2005 (p. 16).

(1) Section 73A was inserted by section 52 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

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Rheoliadau Dyddodi Gwastraff Heb
Awdurdod (Cosbau Penodedig)
(Cymru) 2017

The Unauthorised Deposit of Waste
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Tipio anghyfreithlon

Ddeddf Gwarchod yr Amgylchedd 1990 Adran 33ZB

Cymhariaeth o bwriad Gwynedd gyda'r lefelau'r gosb a ddatganwyd gan y cymghorau eraill yng Nghymru sydd wedi ymateb i ymgynghoriad Taclo Tipio Cymru

Cyngor	Swm y gosb llawn	Swm y ddirwy os y'i telir o fewn 10 diwrnod
Blaenau Gwent	£400	£300
Caerdydd	£400	£400
Caerffili	£400	£400
Casnewydd	£400	?
Ceredigion (Arfaethedig)	£250	?
Conwy	£400	£400
Sir Fynwy	£400	£300
Sir Gâr	£350	£180
Gwynedd (Arfaethedig)	£400	£300
Powys	£400	£200
Torfaen	£400	£300
Wrecsam	£400	£400

Fly-tipping

Environmental Protection Act 1990 Section 33ZB

Gwynedd's proposal compared to penalty levels declared by the other councils in Wales who responded to Fly-tipping Action Wales' consultation

Council	Full amount of penalty	Amount of penalty if paid within 10 days
Blaenau Gwent	£400	£300
Cardiff	£400	£400
Caerphilly	£400	£400
Newport	£400	?
Ceredigion (Proposal)	£250	?
Conwy	£400	£400
Monmouthshire	£400	£300
Carmarthenshire	£350	£180
Gwynedd (Proposal)	£400	£300
Powys	£400	£200
Torfaen	£400	£300
Wrexham	£400	£400