

EXPLANATORY MEMORANDUM TO
THE PLANNING (AMOUNT OF FIXED PENALTY) REGULATIONS (NORTHERN
IRELAND) 2015

2015 No. 280

1.0 Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of the Environment to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly.
- 1.2 This Statutory Rule is made under sections 153(9), 154(9) and 247(1) of the Planning Act (Northern Ireland) 2011 (the 2011 Act) and is subject to the draft affirmative resolution procedure.

2.0 Purpose

- 2.1 The purpose of this Statutory Rule is to set specific monetary amounts for Fixed Penalty Notices (FPNs) which may be used by a district council, in its role as local planning authority, as an additional discretionary planning enforcement power. The FPN will allow a person who fails to comply with an Enforcement Notice (EN) or Breach of Condition Notice (BCN) the opportunity to discharge any liability for the offence of non-compliance without having to go to court, subject to certain conditions being met. This Statutory Rule sets the level of the fixed penalty and proposes a penalty of £2000 for failing to comply with an EN and £300 for failing to comply with a BCN.

3.0 Background

- 3.1 Current legislation allows for the issuing of an Enforcement Notice (EN) or Breach of Condition Notice (BCN) for breaches of planning control. If the offender fails to comply with these notices the alternatives would be court proceedings or the taking of direct action to remedy the breach of planning control. The system of Fixed Penalty Notices (FPNs) introduced by the 2011 Act is an additional enforcement measure and an alternative, at the discretion of a council, to potentially lengthy and costly court cases. Where a council might decide to issue a FPN it would give the offender the opportunity to pay a penalty as an alternative to prosecution, subject to certain conditions being met.
- 3.2 Under the new two-tier planning system councils will be the local planning authorities responsible for drawing up their own development plans and making the vast majority of planning decisions. Councils will also be responsible for enforcing against all breaches of planning control in their areas.

- 3.3 To assist councils and strengthen the enforcement function the Planning (Amount of Fixed Penalty) Regulations (Northern Ireland) 2015 set the level of the fixed penalty and propose a penalty of £2000 for failing to comply with an EN and £300 for failing to comply with a BCN. Sections 153 and 154 of the 2011 Act provide for a 25% reduction of the amount payable where a fixed penalty is paid within 14 days.
- 3.4 These Regulations are intended to speed up and strengthen the approach to enforcement action against those in breach of planning control. Those affected will be a person (either an individual or a company) who has committed a breach of planning control and has failed to rectify it by complying with the requirements of an EN, or a BCN. Where such a person has failed to rectify the breach in accordance with the requirements of an EN or a BCN they may, at the council's discretion, be served a FPN.
- 3.5 The Regulations aim to make the FPN system operative, to strengthen enforcement powers, be a deterrent and provide councils with an additional, discretionary enforcement tool. Through having a wider range of enforcement measures available the council may respond appropriately and proportionally to a breach of planning control.

4.0 Consultation

- 4.1 The policy proposal was subjected to an eight week public consultation in the Department's Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 2 between 31 October 2014 and 31 December 2014. The policy has not changed as a result of the consultation.

5.0 Equality Impact

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals and has concluded that they do not have implications for equality of opportunity.

6.0 Regulatory Impact

- 6.1 A Regulatory Impact Assessment was carried out and is attached at the Annex.

7.0 Financial Implications

- 7.1 The financial implications for local government of the move to the new two-tier planning system, including funding to support the delivery of planning enforcement, have been addressed in the financial package transferred to the new councils.

8.0 Section 24 of the Northern Ireland Act 1998

- 8.1 The Department considers that the legislation complies with the requirements of section 24 of the Northern Ireland Act 1998.

9.0 EU Implications

9.1 There are no EU implications.

10.0 Parity or Replicatory Measure

10.1 These Regulations replicate provisions which apply in Scotland under Regulation 2 of the Town and Country Planning (Amount of Fixed Penalty) (Scotland) Regulations 2009 S.I. 2009 No. 52.

11.0 Additional Information

11.1 Not applicable.

12. Contact

12.1 Please direct any queries to Brian Gorman at the Department of the Environment Tel:028 90823536 or email Brian.Gorman@doeni.gov.uk

REGULATORY IMPACT ASSESSMENT (FINAL)**1. Title of Proposal**

Proposed Planning (Amount of Fixed Penalty) Regulations (Northern Ireland) 2015.

2. Purpose and intended effect of measure**i) The objective:**

The purpose of the proposed Planning (Amount of Fixed Penalty) Regulations (Northern Ireland) 2015 (“2015 Regulations”) is to set specific monetary amounts for Fixed Penalty Notices (FPNs) which may be used by a district council, in its role as the local planning authority, as an additional discretionary planning enforcement power. An FPN will allow a person who fails to comply with an Enforcement Notice (EN) or Breach of Condition Notice (BCN) the opportunity to discharge any liability for the offence of non-compliance without having to go to court, subject to certain conditions being met. The main objective for the proposed regulations is to establish levels of fixed penalties which will act as an appropriate deterrent in support of a council’s wider planning enforcement strategy.

ii) The background:

The Planning Act (Northern Ireland) 2011 (“the 2011 Act”) establishes a two-tier planning system. Councils are now the local planning authorities responsible for drawing up their own development plans and making the vast majority of planning decisions. Councils are also responsible for enforcing against breaches of planning control in their areas.

Current legislation allows for the issuing of an EN or BCN for breaches of planning control, if the offender fails to comply with these notices the alternatives would be court proceedings or the taking of direct action to remedy the breach of planning control. The system of FPNs is being introduced as an additional enforcement measure and as an alternative, at the discretion of a council, to potentially lengthy and costly court cases. The intention therefore would be to issue the FPN giving the offender the opportunity to pay a penalty as an alternative to prosecution.

The proposed 2015 Regulations are required in order to set the level of the fixed penalty and propose a penalty of £2000 for failing to comply with an EN and £300 for failing to comply with a BCN, this reflects the current position in Scotland.

iii) Risk assessment:

The proposed 2015 Regulations will set specific monetary amounts for FPNs which in turn are intended to speed up and strengthen the approach to enforcement action

against those in breach of planning control. Those potentially affected will be a person (either an individual or a company) who has committed a breach of planning control and has failed to rectify it by complying with the requirements of an EN, or a BCN.

Resource consideration in relation to time commitment and the costs associated with taking forward court prosecutions can limit the opportunities to take effective enforcement action in more cases where planning control has been breached.

If the proposed 2015 Regulations were not brought into operation the councils would not be able to use this additional discretionary planning enforcement power.

3. Options Appraisal

Option 1: Do nothing

Do nothing and remain with the current practice is not realistic given the Ministerial commitment to drive forward local government reform and transfer of planning functions, including enforcement, to 11 new councils.

Option 2: Implement the 2015 Regulations and establish the amount of fixed penalties to make the FPN system operative

This is the preferred option given it will provide the necessary legislative provisions to support the new and revised responsibilities between central and local government under the new two-tier planning system, including the enforcement responsibilities of councils.

4. Costs and Benefits

Option 1: Do Nothing

Costs:

This option would not incur any additional costs, however, this option is not considered viable as it does not align fully with the requirements of the 2011 Act to transfer planning powers to councils or introduce a FPN system.

Benefits:

No economic, social or environmental benefits are derived from this option.

Option 2: Implement the 2015 Regulations and establish the amount of fixed penalties to make the FPN system operative

Costs:

The Department is unable to estimate any costs accurately, particularly as use of enforcement powers is discretionary. It is not, however, expected that the proposed

measures will have any significant financial impact on any particular group in the community.

Benefits:

The proposed regulations are necessary to make the FPN system operative, to strengthen enforcement powers, be a deterrent and allow for further alternative enforcement measures to be considered by the planning authority when responding to a breach of planning control. It is anticipated that the operation of the FPN system has the potential to reduce the requirement for possible costly and time-consuming court prosecutions, as a person who has failed to comply with the requirements of an EN or BCN may accept a FPN as an alternative to court prosecution. Through having a wider range of enforcement measures available the planning authority may respond appropriately and proportionally to a breach of planning control.

5. Business sectors affected

The effects of the proposed regulations in setting the amount of a fixed penalty will only impact on a business in breach of planning control and failing to comply with the requirements of an EN or BCN. As such the impact of the regulations will be equal for all businesses in breach of planning control and will have no impact on businesses who comply with planning requirements. Where a person (either an individual or a company) has committed a breach of planning control and has failed to rectify it in accordance with the requirements of an EN, or a BCN, they may, at the planning authority's discretion be served a FPN.

6. Enforcement and Sanctions

It is envisaged the planning authority will robustly seek the remedy of all breaches of planning control, utilising all the enforcement powers currently available to ensure an effective and timely resolution to the issue. Also, if a fixed penalty is not paid in line with the regulations the planning authority may consider taking the individual to court.

7. Consideration of impacts

Equality Impact Assessment

An Equality Impact Assessment screening has been carried out for this proposal and it was concluded that the proposal does not have any additional impact on equality of opportunity on any of the groups specified in section 75. The full screening paper will be posted on the DOE Equality Unit website.

Health Impact

No impact on health has been identified.

Human Rights Assessment

The Department considers that the proposal is fully compliant with the Human Rights Act 1998.

Rural Impact Assessment

There will be no significant differential impact of the proposal between urban and rural areas because of the specific scope of the changes.

8. Monitoring and review

The intention is to review the overall FPN process, including the level of fixed penalties prescribed in the regulations, periodically to assess its impact. This review will take the form of consultation with those implementing the powers.

Monitoring the effectiveness of the legislation may be based on the number of FPNs issued and paid, together with the recording of the threat of issue, against the number of planning control breaches required to be resolved. A review will be completed, after the system is fully embedded, to help identify strengths/weaknesses in the operational process.

9. Consultation

i. Within Government

Consultation at official level has continued throughout the drafting of the policy, consultation papers, partial regulatory impact assessment and regulations. This has included the Department of Environment, Departmental Solicitor's Office and other administrations i.e. Scotland in particular, England and Wales and ROI.

ii. Public Consultation

The 2015 regulations were part of the public consultation on a broader range of subordinate legislation. The consultation was carried out from 31st October 2014 to 31st December 2014.

10. Summary and Recommendation

The new regulations will provide an additional enforcement measure and an alternative to potentially lengthy and costly court cases. They will ensure that there are robust enforcement powers available to the planning authority to enable statutory obligations to be carried out in respect of enforcement of planning control in the respective council area.

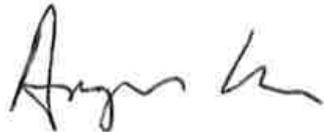
Given this position and the Minister's commitment to drive forward local government reform and the transfer of planning functions to 11 new councils, Option 2 is the recommended option as it also implements the new provisions contained in the 2011 Act through the proposed 2015 Regulations.

It is recommended that Option 2 be implemented and that the regulations be introduced.

11. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by a senior officer of the Department of the Environment.



.....
Date: 23rd June 2015
Angus Kerr
Planning Policy Division
Department of the Environment
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG