

POLICY NOTE

THE FLY-TIPPING (FIXED PENALTY) (SCOTLAND) ORDER 2023

SSI 2023/335

The above instrument was made in exercise of the powers conferred by Section 33A(10) of the Environmental Protection Act 1990. The instrument is subject to negative procedure.

Summary Box

The purpose of this instrument is to amend section 33A(9) of the Environmental Protection Act 1990, to increase the fixed penalty amount payable in relation to a fixed penalty notice for contraventions of section 33(1)(a) of that Act for the unauthorised deposit of controlled waste or section 33(1)(c) of that Act for keeping or managing controlled waste in a manner likely to cause pollution of the environment or harm to human health. These offences are commonly referred to as fly-tipping.

Policy Objectives

The National Litter and Flytipping Strategy (NLFS) and the associated 2023-24 Action Plan, published in June 2023, contain an action to increase the fixed penalty amount payable in relation to a fixed penalty notice for fly-tipping offences under sections 33(1)(a) and (c) of the Environmental Protection Act 1990 within the first year of the strategy being introduced.

The Strategy's vision is for a future where Scotland's environment and communities are not blighted by litter and fly-tipping, and materials remain within a circular economy. Supporting behaviour change and strengthening enforcement are two key themes of the Strategy. One of the Strategy's specific objectives is to develop a more effective enforcement model to deter and robustly tackle fly-tipping. The increase in the fixed penalty notice amount for fly-tipping offences is one of the key actions to achieve this.

This instrument will amend the fixed penalty amount payable in relation to a fixed penalty notice for fly-tipping offences as currently prescribed by section 33A(9) of the Environmental Protection Act 1990, from £200 to £500.

EU Alignment Consideration

This instrument is not directly related to the Scottish Government's policy to maintain alignment with the EU, but is in-keeping with the general principles of Directive 2008/98/EC of the European Parliament and of the Council on waste, including the protection of the environment by preventing or reducing the adverse impacts of waste generation and management.

Consultation

A public consultation on the National Litter and Flytipping Strategy took place from 13 December 2021 until 31 March 2022.

The analysis of the consultation responses showed strong support across almost all respondent types for the fixed penalty amount payable in relation to a fixed penalty notice for fly-tipping to be increased to £500 which is the current level 2 amount on the standard scale, and the maximum level at which the fixed penalty amount can be set by order under section 33A(10) of the Environmental Protection Act 1990. For this reason it was included as a Scottish Government commitment in the year one action plan which accompanied the strategy.

A full list of those consulted and the consultation report is published on the Scottish Government website¹.

Impact Assessments

As an EQIA², ICIA³ and SEA⁴ were carried out for the National Litter and Flytipping Strategy, it was not considered necessary to carry out further impact assessments for this SSI.

Financial Effects

The Minister for Green Skills, Circular Economy and Biodiversity confirms that no BRIA is necessary as there are no additional costs associated with the fixed penalty notice change to the Scottish Government, local government or on business.

Scottish Government
Environment & Forestry Directorate

November 2023

¹ <https://consult.gov.scot/environment-forestry/national-litter-and-flytipping-strategy/#:~:text=On%2013%20December%202021%2C%20the%20Scottish%20Government%2C%20in,key%20strategic%20themes%3A%20behaviour%20change%20services%20and%20infrastructure>

² <https://www.gov.scot/publications/national-litter-flytipping-consultation-equality-impact-assessment/pages/1/>

³ <https://www.gov.scot/publications/national-litter-flytipping-strategy-island-communities-impact-assessment/pages/1/>

⁴ <https://www.gov.scot/publications/national-litter-flytipping-consultation-strategic-environmental-assessment/>