

REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment relates to the new Sea Fishing (Penalty Notices (Wales) Order 2019. The new 2019 Order will repeal the existing Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 (S.I. 2008/984) which provides for a Financial Administration Penalty (FAP) scheme for EU Common Fishery Policy (CFP) offences only. The new 2019 Order proposes to extend the FAP scheme for breaches of CFP offences to include breaches of domestic fisheries offences in Wales through application of powers available in section 294 of the Marine and Coastal Access Act 2009.

Currently, the range of sanctions available for domestic fisheries offences in Wales are not as extensive as those available for offences under the CFP. Adding FAPs to the range of available sanctions will provide another mechanism for addressing domestic fisheries offences that warrant something greater than a verbal or written warning but are often not serious enough to justify, in terms of the public interest, a court prosecution.

The introduction of the Welsh Government's extended FAP scheme would enable all fisheries offences in Wales to be addressed in a flexible, proportionate and consistent manner, providing an effective deterrent to those who consider breaching either domestic and/or CFP fisheries regulations. The introduction of the extended FAP scheme would also bring the regulation of domestic fisheries offences in Wales into line with other UK Fisheries Administrations.

Option 1 – Do Nothing

Currently, when an offence is detected, Marine Enforcement Officers (MEOs) have three options available to them, which are dependant on the severity of the offence:

- (i) **Issue a verbal warning** - A verbal warning is issued for a minor first offence.
- (ii) **Issue a written warning** – A written warning is the second stage in the process for a repeat minor offender or for someone committing a slightly more serious offence.
- (iii) **Proceed to prosecution** – The option of prosecution is for the most serious offences or considered for those who are repeat offenders. A case file is produced and a decision made to take the offender to court. This process can take up to one year before the case is brought before a Magistrate's Court. This is a costly and time consuming process.

Doing nothing is the baseline option and as such there are no **additional** costs and benefits associated with this option. Those fishermen taken to court incur costs in terms of legal fees, and loss of earnings due to interruption of fishing activities caused by having to attend court. The extent of preparation required for court cases is dependant upon the nature of the offence.

The current system offers no incentive for sustainability. During the time it currently takes for a case to proceed through the courts, there is a chance of transgressors continuing to reoffend during this period.

In addition, some illegal fishing activities adversely and directly affect the livelihoods of fishing communities by undermining the stocks on which they depend. This can result in reduced economic security in communities heavily dependent on fishing as a source of employment.

Table 1 shows the number of infringements detected by Welsh Government since 2008 that have resulted in either a written warning or prosecution.

Table 1: Number of written warnings issued and prosecutions in Wales, 2008-2017

Number of prosecutions and written warnings to fishermen by Welsh Government		
Year	Official Written Warnings	Prosecutions
2017	1	11
2016	7	0
2015	3	3
2014	5	6
2013	5	3
2012	1	6
2011	5	7
2010	2	11
2009	6	0
2008	2	3

This option would provide no benefit in terms of improving enforcement and control measures in the conservation of fish stocks and the environment. It will have no effect on increasing compliance with fisheries regulations or reduce re-offending.

Option 2 – Introduce a system of FAPS for minor domestic fisheries offences

This option involves the introduction of a system of FAPs for domestic fisheries offences, using powers available under Section 294 of the Marine and Coastal Access Act 2009. This would mirror and complement the existing FAP scheme for CFP offences leading to a consistent and transparent system of sanctions for all fisheries offences and would bring enforcement of Welsh fisheries inline with other UK Fisheries Administrations.

This option would allow Welsh Government’s Chief Fisheries Officer (CFO) to issue FAPs to address some fisheries offences quickly and effectively without resorting to criminal prosecution. However, it would not remove the option of a court hearing either at the fisherman’s or fisheries department’s request. Similarly, MEOs would still have the option to issue verbal and written warnings for minor offences.

Cost to businesses

All fishermen who commit relevant fisheries offences will be affected by these proposals. There will be no impact on those businesses/fishermen who continue to abide by the law.

Those fishermen who choose to ignore the applicable regulatory controls may experience an increase, decrease or no change in costs depending upon the circumstances and severity of their case. At this stage, it is difficult to predict how many FAPs will be issued or the number of court cases heard each year, however, based on the current number of written warnings and prosecutions (Table 1), the numbers are not expected to be large.

There may be an increase in costs for fishermen guilty of minor domestic infringements who would normally expect to receive an Official Written Warning for offences not deemed serious enough to warrant a criminal prosecution through the courts. However, under the new regime they may be eligible for a FAP ranging from £250 to £4,000, with a maximum £10,000 penalty depending upon the offence and circumstances. If accepted the offender would be given 28 days in which to pay the FAP in full. If not paid during this period, the case will automatically be referred to the courts.

There are potential cost-savings for those fishermen who commit an offence and are currently prosecuted through the courts but who may, in the future, be issued with a FAP instead. Court costs are varied and depend on the type of offence which has occurred. However, in most cases, the offender would experience a loss of earnings as a result of having to attend court and would also incur legal fees. If found guilty, the offender could receive a fine, incur costs and a victim surcharge. The offender would also have a criminal record. An offender may also lose their permit to fish in a particular area or for a particular species, which again will affect their ability to earn a living.

In more serious cases, offenders will continue to be prosecuted through the courts. In this scenario, there is not expected to be any change in the costs incurred by the business or enforcement body.

Cost to Government

The Marine & Fisheries Division of the Welsh Government will administer the schemes and will continue to carry out their enforcement activities as they currently do. MEOs will investigate and gather evidence on suspected offences, and present that evidence to the CFO with a recommendation to issue a penalty notice where appropriate and if they have evidence that a person has committed a relevant fisheries offence.

MEOs are not expected to require any additional training because they are already able to issue FAPs for EU CFP offences.

An additional cost will be incurred with the production of Guidance Notes for both officers and the public. This cost is expected to be minimal as existing guidance

notes for a similar system in England will be adapted to incorporate the Welsh legislation. Printing of the Guidance would also be undertaken in-house, therefore reducing the actual cost of production.

Benefit to fishing industry

Compared to prosecution through the courts, FAPs would speed up procedures for dealing with domestic infringements and reduce the administrative burdens and costs of legal representation for non compliant fishermen.

This includes:

- Reduction in time lost during court appearance
- Reduction in solicitor fees through avoiding court appearance
- Reduction in costs of fines payable to the courts if found guilty
- Faster conclusion of cases that would have previously been referred to the courts

The system would provide greater uniformity in penalties for similar offences across all fisheries offences, thereby removing the uncertainty caused by wider variations of penalties imposed by different Magistrates' Courts.

Table 2 below shows examples of prosecution costs currently incurred by fishermen for breaches of national fisheries regulations. These estimates are for illustrative purposes only. It has not been possible at this stage to include accurate savings estimates to fishermen due to this policy option.

Table 2: Examples of prosecution costs

Year of Court Hearing	Prosecution Fines (£)	Costs of Prosecution (£)
2017	12,621	9,269
2016	101,907	23,105
2015	4,000	2,000
2014	76,355	17,411
2013	4,250	2,495
2012	97,750	23,700
2011	63,000	5,414
2010	48,000	5,887
2009	2,440	1,100
2008	26,000	2,473

In addition to potential savings to the industry there is a potential non-monetary benefit that offenders can avoid the stigma of a criminal record by accepting a FAP as an alternative to court proceedings

The introduction of FAPs for domestic offences is expected to act as a deterrent against illegal fishing activity, helping to maintain a level playing field for compliant businesses/fishermen.

Benefits to Government

The ability to control fishing practices effectively has a significant impact on the marine environment. The FAP system is expected to increase compliance with fisheries regulations.

It will become apparent to potential offenders that in place of warnings (verbal and written) and criminal prosecutions, fisheries infringements will be dealt with swiftly by the imposition of immediate penalties for infringements. This should increase compliance with all fisheries and conservation regulations, and subsequently protect fishery stocks, particularly those which may be subject to stock recovery measures.

FAPs are also expected to offer MEOs a more cost-effective means of addressing certain infringements. With the introduction of FAPs, MEOs would still be required to complete a full case file, therefore there would be no direct saving in officer time (see table 3). However, if a decision is taken to offer a FAP as an alternative to court, this would reduce the need for further MEO time to be expended on court proceedings.

If a case proceeds to court, Welsh Government have to pay the fees of external prosecuting solicitors. If a defendant is convicted, Magistrates often award prosecution costs, however it is not guaranteed, due to the severity and nature of some offences for Magistrates to award full costs. If a FAP were issued instead of proceeding to court it could potentially avoid this cost to Welsh Government.

Table 3: Estimated cost of current enforcement:

Infringement Type	Hours	Estimated total cost
Low level	2-5	+£200
Medium level	10-20	+ £3,000
High level	30 +	+ £8,000

Finally, the introduction of FAPS would bring the enforcement of fisheries offences into line with other UK Fisheries Administrations.

Summary of the preferred option

The preferred option is to introduce a system of FAPs for domestic fisheries offences, including inshore fisheries byelaw offences, using powers available under Section 294 of the Marine and Coastal Access Act 2009. This will provide MEOs with an additional tool to address fisheries offences in a timely and proportionate way.

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The Regulations are not expected to have an impact on competition in Wales or the competitiveness of Welsh businesses.