



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

Marine Conservation (Fixed Monetary  
Penalties) Order (Northern Ireland) 2015:  
DOE Officials

23 April 2015



FMPs are low-level fines intended to be used in respect of minor instances of non-compliance. The proposed penalty amount of £100 for an individual or £200 for others — for example, a company — reflects the minor nature of the offences. The amount is in line with similar penalties: for example, littering or a breach of a marine licence condition, for which there can be a fixed monetary penalty. These are civil sanctions, and the imposition of such a fine will not result in a criminal record. Civil sanctions enable regulators to take a more flexible and proportionate approach in managing offending behaviour.

The use of the FMP is one of a series of actions available to the Department. These range from guidance and information, through the use of FMP for minor misdemeanours, to criminal proceedings for more serious offences. The Department always prefers to achieve compliance through information and guidance. However, where that fails and the requirements of an environmental by-law have been breached, the Department may apply an FMP or take criminal proceedings. In instances where the person who has breached the by-law is under 18 years of age, the Department intends to follow the guidance developed for the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011. Section 4 of that guidance recommends that FMPs be applied to those under 18 only in very exceptional circumstances. Should an activity involve more serious environmental damage or is a repeated offence, the Department may decide to take criminal proceedings against an individual or a business.

The process for applying FMP is set out in the order, in articles 4 to 9. Once an enforcement officer is satisfied that an offence breaching a by-law has been committed, and having gathered appropriate evidence, the Department may decide to issue a notice of intent to the person involved. Upon issue of the notice, the person has 28 days in which to accept the fixed monetary penalty or make representations or objections to the Department. If the penalty is accepted, the liability is discharged on paying 50% of the fixed penalty within the 28 days. Where a person has not accepted the penalty within 28 days, the Department will consider any representations or objections and decide whether to issue a final notice. The Department also has the option of not issuing the penalty — for example, if it receives new information that defends the person for the action taken — or to initiate criminal proceedings instead, if the case is more serious than was previously thought. If the Department issues a final notice, the person has 28 days to pay the penalty — less the 50% discount if they have previously made representations — or appeal to the Water Appeals Commission. In cases where no appeal is made, the person must pay the penalty within 28 days or face a late payment penalty of 50%. Likewise, following an unsuccessful appeal, the person has 28 days to make the payment. Otherwise, they may incur the 50% penalty. Any unpaid penalties can be recovered by the Department as a civil debt.

Where those sanctioned make an appeal to the Water Appeals Commission within 28 days of the final notice, they must identify the grounds on which they are making the appeal. The draft order provides these grounds and also that the appeal must be made in writing; certain documentation must be provided by the appellant; and any appeal will be determined in accordance with the Water and Sewerage Services (Northern Ireland) Order 2006.

The Marine Act requires the Department to consult on and publish guidance on the use of fixed monetary penalties, and that is carried through into the draft order, before they can be used. It requires the Department to:

*"have regard to the guidance ... in exercising its functions."*

We intend to carry out consultation on the draft guidance, once the order has been affirmed in the Assembly. The Marine Act also requires us to publish a report from time to time on the enforcement action completed by the Department, and the intention is to publish an annual report on the Department's website.

Members will be aware that the Department consulted on the draft order last year. Of the 13 responses received, nine were substantive and broadly in favour of an FMP system. Some consultees wanted higher penalties. However, we are content that these will be a deterrent for low-level offences. This was considered during the development of the Marine Act itself, which sets an upper limit of £200 for an FMP.

**The Chairperson (Ms Lo):** Thank you, Brenda. I just want to say to the students of Thornhill College in Derry that they are very welcome. We are looking at secondary legislation in relation to the Marine Act and marine conservation zones. The legislation is about penalties. I believe that you are politics students. That is very good, and I am sure that you are interested in this legislation.

Brenda, thank you very much for your presentation. You say that the FMP will apply to "minor offences" for the FMP, but you cite the example of litter. However, litter is covered by different legislation, the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011. Will offenders get a double whammy?

**Ms Cunning:** No, sorry. I was trying to say that the level of fine is in line with that provided by the Clean Neighbourhoods and Environment Act. The penalty for littering is £85, and our penalty is £100, with a 50% discount for paying early. It was just to show that it is the same level of fine for the same kind of offence.

**The Chairperson (Ms Lo):** OK. They would not be done by both Acts.

**Ms Cunning:** No.

**The Chairperson (Ms Lo):** The real difficulty is spotting an offence and enforcing the legislation. I think that the way to do it is through raising public awareness and education. Will you do that?

**Ms Cunning:** It is very much the case that we would rather have information for the public so that they know what the by-laws and the conservation objectives are and can let us know if they think that there are any breaches of those by-laws. We will do that through education: for example, our ranger programme — we have a Strangford ranger and a north coast ranger. That is, primarily, how we go out and about and talk to schools, businesses and yacht clubs so that people are aware of what is going on. Also, all the development of the by-laws for the MCZ goes through a consultation process so that people have buy-in to them: they know what they are about and what we are trying to achieve.

**The Chairperson (Ms Lo):** Will you work with the councils as well?

**Ms Cunning:** Absolutely, yes.

**Lord Morrow:** You talked about the penalties, and I think that you said that some people were concerned about the level of the penalty. Is that because it is highly unlikely that they are enforceable or will not be enforced?

**Ms Cunning:** No, people were worried in case the penalty was too lenient and would not be a deterrent. I think that people were worried in case it was a very serious breach of a by-law, but, in such a case, we would probably go for prosecution instead, which carries a fine of up to £5,000, or we could go even further. If someone had really damaged an MCZ, we could pursue prosecution for damaging an MCZ, with a fine of up to £50,000. The FMP is really to slot in a lower-level deterrent for certain types of activities, like anchoring somewhere where you should not do so. It is for when someone does not cause an awful lot of environmental damage but still breaches a by-law, and we would like people not to do that.

**Lord Morrow:** You talked about a fine of up to £50,000. It is difficult to see circumstances in which that sort of a fine would be imposed. You can correct me, but I suspect that it has never happened.

**Ms Cunning:** I am not aware of that. Obviously, it would be for the courts to decide the level of fine in such a case. We have no control over that. All we can do is set out in legislation that a fine of that amount can be applied, but it is up to the courts to decide what fines they apply.

**Lord Morrow:** You do not think that the smaller fine would be used as a convenient tool to tick another box to say that a certain number of fines had been levied when, in real terms, there was no impact.

**Ms Cunning:** We like to think that this will have an impact. I used the example of littering, which is a scourge across Northern Ireland. Fines are being used more and more, but, at the same time, you cannot use them by themselves. You have to use education and awareness. It is the same with by-laws. They are just one component that we will use. They will not necessarily wipe out everything that people are doing wrong, but, at the same time, they are one component of what we want to achieve.

**The Chairperson (Ms Lo):** I suppose that a huge fine could result from fishing issues. If people wandered into certain exclusion zones to fish, could they be fined for that?

**Ms Cunning:** That activity is regulated by fishing licences or the common fisheries policy, so a by-law would not necessarily be applied to that. As we said, a by-law is more for recreational activities, or it could be for some types of angling or whatever. Activities regulated through another regime will not necessarily have a by-law applied to them. They are taken forward through their own enforcement process.

**The Chairperson (Ms Lo):** Thank you very much for coming. Members, are you content for the Department to proceed with making the rule?

*Members indicated assent.*