



Llywodraeth Cymru  
Welsh Government

**From:**

NR

Community Safety Division

I&S

**Cleared by:**

NR

**Date:**

19 May 2020

## MINISTERIAL ADVICE

**For decision by:** First Minister

**Copied to:** Deputy Minister and Chief Whip; Counsel General

|                         |   |
|-------------------------|---|
| <b>Subject</b>          | Proposed increase of FPN amounts for breaches of the Coronavirus Regulations.   |
| <b>100 word summary</b> | The UK Government has increased its fine amounts for breaches of the Coronavirus Regulations (England). Welsh Police and Crime Commissioners and Chief Constables have asked that the Welsh Government consider similar changes for breaches of the Coronavirus Regulations (Wales). PCCs and Chief Constables have submitted evidence in response to your request. |
| <b>Timing</b>           | A decision is required urgently.  |
| <b>Recommendation</b>   | The First Minister is asked to: <ol style="list-style-type: none"> <li>1. Review the evidence provided by police forces in response to the request for additional information.</li> <li>2. Consider the proposals for change included in this document and indicate his preferred way forward.</li> </ol>   |
| <b>Decision report</b>  | This decision does not require a Decision Report.   |

**ADVICE****Background**

1. The UK Government increased the fine amounts for breaches of its Health Protection (Coronavirus, Restrictions) (England) 2020. The increases came into force on Wednesday 13 May. The table below shows the amounts of fines that can now be issued.

|                |                   |
|----------------|-------------------|
| First Offence  | £100 <sup>1</sup> |
| Second offence | £200              |
| Third Offence  | £400              |
| Fourth Offence | £800              |
| Fifth Offence  | £1600             |
| Upper limit    | £3200             |

2. Prior to this change, the fine for a first offence was £60 raising to £120 for a second offence. The UK Government increased its fine amounts in consultation with its police forces.
3. In Wales the fine amounts continue to be £60 for a first offence rising to £120 for a second and subsequent offences.
4. There has been an increasing call from both Police and Crime Commissioners and Chief Constables in Wales for the Welsh Government to increase fine amounts for FPNs in line with England. The rationale for their position is that there has been an increase of non-compliance in the last few weeks, which is likely to continue; increased traffic into Wales from England; and the complexities brought about by the differences between regulations in England and those in Wales which is making enforcement difficult.
5. PCC **NR** (Chair of the Policing in Wales Group) and CC **NR** **NR** (Chair of the Welsh Chief Officers' Group) wrote to you on 15 May setting out the joint position of Police and Crime Commissioners and Chief Constables in Wales. You replied to the letter on 18 May requesting further evidence to support their case. The information was submitted on 18 May. The following information was requested:
  - the number of offences;
  - the number of fines issued to residents outside of Wales, the number issued to residents of Wales;
  - the number of Fixed Penalty Notices issued to repeat offenders; and

<sup>1</sup> The amount for the first offence is reduced to £50 if it is paid within 30 days of issue.

- cases where those fined have said the existing fine is not a deterrent to their behaviour.

### **Evidence presented by Police and Crime Commissioners and Police Forces.**

6. The full evidence provided is attached at annex A. An overview of the information provided for each force is set out below. The level of information provided varies across the four forces.

#### *Dyfed-Powys Police Force*

7. Dyfed-Powys has issued the most FPNs in Wales with 1,193 FPNs issued from the start of lockdown to 7am 18 May. Of those 56.08% were issued to people living outside of the force area<sup>2</sup>. A large majority of these (404 (62.5%) of the 646 issued) came from England. Whilst the split remains relatively constant since the beginning of lockdown, the figures for the last Bank Holiday weekend was around 80% of FPNs issued to those from outside the force area.
8. Some evidence of repeat offending is provided relating to a couple of incidents.
9. Emerging issues suggests that since the easing of lockdown in England people believe they are able to travel into Wales. For example the Force reports there has been an increase in requests to holiday parks and over the weekend there has been an increase in people travelling to beauty spots for exercise and to second homes. This resulted in 648 vehicles being stopped and 26 FPNs issued.

#### *Gwent Police Force*

10. Gwent has issued 176 FPNs to date. There has been a notable increase in traffic within the area since 14 May, which they believe indicates non-compliance in relation to non-essential travel. Over the weekend the force focused on motorcyclists, of 189 stopped 80% were on non-essential journeys and 1 FPN was issued for refusal to comply. The force borders 3 English forces and policing one of the main gateways into Wales continues to be challenging.

#### *North Wales Police Force*

11. Over the past weekend, North Wales reported significant levels of travel to the force areas and notable hotspot locations. Some of those stopped were aware of the different regulations but the Force comments that they were content to take the chance anyway.
12. The main difficulty in North Wales appears to be people travelling significant distances for leisure purposes. In addition North Wales police have reported incidents of officers being challenged by those willing to pay the low fines.

#### *South Wales Police Force*

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<sup>2</sup> This number includes people travelling from outside Wales, and those travelling within Wales

13. South Wales has taken enforcement action in 229 cases. Unlike the other forces most of these have been predominantly within local communities and related to known offenders. Travelling into Wales is less of a problem in the force area but there has been some incidents.
14. Some evidence is provided of repeat offending is provided relating to a couple of incidents.
15. There has been some significant breaches in hotspots but high levels of compliance in urban setting despite increased footfall.

### *Conclusion*

16. The paper provided by the police forces concludes that: The general feeling is that if the fines were increased it would act as a natural deterrent to those intent on breaching the restrictions.
17. Police forces are continuing to use the '4Es' approach, engage, explain, and educate with enforcement as a last resort in relation to breaches of the Covid regulations. There are clearly some real issues for policing as a result of the Covid regulations and possibly the difference between England and Wales, at least in terms of the position on driving long distances and driving to exercise. What is not clear, and the evidence presented does not provide a convincing argument that levelling up the FPN fines between the two countries would create any greater deterrent to those travelling from England or, for that matter, Welsh people travelling within Wales.

## **Other UK Governments**

### *Scottish Government*

18. In a press release last week the Scottish Government said:

*We do not have evidence which suggests that increasing the fixed penalty notice (FPN) amount is required in Scotland.*

*"The total levels of FPNs being passed down in Scotland are proportionately lower than in England. The approach being taken by Police Scotland is that enforcement is the last option and the vast majority of the public have been cooperating with lockdown regulations throughout the COVID-19 pandemic. Only on a minority of occasions has it been necessary to issue a fixed penalty notice.*

*"Regulations and guidance continue to be kept under review."*

19. Fines in Scotland start at £60 for a first offence, doubling to £120 for a second offence and doubling for subsequent offences to £960.
20. Officials from the Scottish Government have advised that they are keeping this under review and if evidence emerges that the fines should be increased, they will look at it again.

*Northern Ireland Executive*

21. The Northern Ireland Executive is not considering raising its fines at the moment.
22. Fines in Northern Ireland start at £60 for a first offence, doubling to £120 for a second offence and doubling for subsequent offences to £960.

**Options for FPNs**

23. There are broadly three options that could be considered for FPNs. These are outlined below:
24. Option 1 - retain fines at current levels. The levels for first and second offences would remain at £60 and £120 respectively with no additional multipliers.
25. Option 2 – additional multipliers. The second option is to maintain the base rates for first and second offences and add further multipliers for offences to a maximum of £1,920 as suggested in the table below.

|                |        |
|----------------|--------|
| First Offence  | £60    |
| Second Offence | £120   |
| Third Offence  | £240   |
| Fourth Offence | £480   |
| Fifth Offence  | £960   |
| Sixth Offence  | £1,920 |

26. Option 3 – parity with levels of fines in England. This would necessitate increasing the base rate for offences from £60 to £100 and multipliers for subsequent offences to a maximum of £3,200.

|                |       |
|----------------|-------|
| First Offence  | £100  |
| Second offence | £200  |
| Third Offence  | £400  |
| Fourth Offence | £800  |
| Fifth Offence  | £1600 |
| Upper limit    | £3200 |

**Legal issues**

27. In order to make changes to the fine structure or base rate, the Health Protection (Coronavirus, Restrictions) (Wales) 2020 will need to be amended. However Legal Services and OLC have advised that this could be done quickly. We would be using the same powers (section 45C of the Public Health (Control of Disease) Act 1984) as we have used for all of the regulations relating to lockdown. Under that Act we are able to bring regulatory changes into force before the regulations are approved by the Senedd if there is an urgent need to make the regulations. Legal Services and OLC advise that it would be reasonable to conclude that there is an urgent need to amend the penalty levels given the evidence from PCCs and Chief Constables. The drafting required to make this change will be minimal.

**Annex 1: ASSURANCE AND COPY RECIPIENTS****CLEARANCE TRACKING**

| Aspect            | Tracking  | Yes                                 | No                                  | N/A                      | Clearance no. |
|-------------------|---|-------------------------------------|-------------------------------------|--------------------------|---------------|
| <b>Finance</b>    | Financial implications over £50,000?                  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |               |
|                   | Cleared by Group Finance?                             | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> |               |
|                   | Cleared by Strategic Budgeting?                       | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> |               |
|                   | Cleared by Local Government Finance?                  | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> |               |
| <b>Legal</b>      | Legal issues?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |               |
|                   | Cleared by relevant lawyers?                          | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |               |
| <b>Governance</b> | Novel and contentious issues?                         | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |               |
|                   | Cleared by Corporate Governance Centre of Excellence? | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |               |

**DEPUTY DIRECTOR, STATEMENT OF ASSURANCE**

In clearing this MA, I confirm that I, **NR** have quality assured this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made

I am satisfied that the recommended decision or action, if agreed, would be lawful, affordable and comply with all relevant statutory obligations. Welsh Government policy priorities and cross portfolio implications have been fully considered in line with delivery of the government objectives.

I have fully considered the statement of assurance contained in the MA guidance to ensure all relevant considerations have been taken into account and that the actions and decisions take account of regularity, propriety and value for money.

**COPY LIST**

All mandatory copy recipients (as indicated in the guidance). Additional copy recipients specifically interested in this advice:

- **NR**
- **NR**
- Terry Kowal
- Neil Surman
- **NR**
- Reg Kilpatrick