

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 5 February 2018

Meeting time: 14.30

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1 Introduction, apologies, substitutions and declarations of interest

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(Pages 1 – 3)

CLA(5)–05–18 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

2.1 SL(5)178 – The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018

Affirmative Resolution Instruments

2.2 SL(5)177 – The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018

2.3 SL(5)179 – Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2018

3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Composite Affirmative Resolution Instruments



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

3.1 SL(5)180 – The Waste Enforcement (England and Wales) Regulations 2018

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CLA(5)–05–18 – Paper 2 – Regulations

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4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

5 Forward Work Programme

(Pages 37 – 39)

CLA(5)–05–18 – Paper 5 – Forward Work Programme

6 The Powers in the EU (Withdrawal) Bill to make subordinate legislation

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CLA(5)–05–18 – Paper 6 – Key issues

Date of the next meeting

12 February 2018

Statutory Instruments with Clear Reports

Agenda Item 2

5 February 2018

SL(5)178– The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018

Procedure: Negative

These Regulations are made under section 186 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”).

The Act introduces a new system of regulation for care and support services in Wales, replacing that established by the Care Standards Act 2000 (“the 2000 Act”).

Part 1 of the Act replaces the system of registration for the providers of social care services, set out in Parts 1 and 2 of the 2000 Act, where establishments and agencies were registered. This required a separate registration for each location where a service was provided.

The Act takes a different approach which is service based. A provider must register with the Welsh Ministers in order to provide any care and support service which is regulated under the Act and that registration will contain the details of all the locations at which the provider provides the regulated service.

Part 1 of the Act is commenced on 2 April 2018 in relation to the following regulated services:

- (a) a care home service;
- (b) a secure accommodation service;
- (c) a residential family centre service; and
- (d) a domiciliary support service.

Establishments and agencies that provide adoption, fostering and adult placements will remain subject to registration and inspection under the 2000 Act until the commencement in full of Part 1 of the Act.



Regulation 2 and Schedule 1 make amendments to secondary legislation as a consequence of this partial commencement.

Regulation 3 and Schedule 2 specify the secondary legislation revoked by these Regulations.

Parent Act: Regulation and Inspection of Social Care (Wales) Act 2016;

Date Made: 17 January 2018

Date Laid: 19 January 2018

Coming into force date: 2 April 2018

SL(5)177 – The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018

Procedure: Affirmative

These Regulations are made under section 186 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) which enables Welsh Ministers to make consequential amendments to primary legislation where it is appropriate for the purposes of the Act.

The Regulations deal with consequential amendments to primary legislation arising from the commencement of the provisions in Part 1 of the Act which relate to the regulation of care homes, secure accommodation services, residential family centre services and domiciliary support services in Wales. These are examples of what the Act refers to as “regulated services”.

All these are services which have been regulated under Part 2 of the Care Standards Act 2000 (“the 2000 Act”). Many of the amendments therefore replace references to one of the sorts of establishment or agency which were regulated under the 2000 Act and replace them with references to the appropriate sort of “regulated service” under the Act.

The Regulations also contain one amendment which is made under section 198 of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”). Regulation 52 amends section 86 of the 2014 Act to remove wording which implies that



accommodation provided, equipped or maintained by the Welsh Ministers for looked after children need necessarily be a children's home.

Parent Acts: Regulation and Inspection of Social Care (Wales) Act 2016 and

Social Services and Well-being (Wales) Act 2014

Date Made: Not stated

Date Laid: Not stated

Coming into force date: 2 April 2018 2017

SL(5)179 – The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2018

Procedure: Affirmative

These Regulations amend the Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016.

Section 80(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) requires Social Care Wales to keep a register of social care workers of such description as may be specified by the Welsh Ministers.

These Regulations specify an additional description of social care workers in respect of which Social Care Wales must keep a register, namely those who are employed or engaged by a regulated domiciliary support service to provide care and support to persons referred to in paragraph 8 of Schedule 1 to the Act.

Parent Act: Regulation and Inspection of Social Care (Wales) Act 2016

Date Made: Not stated

Date Laid: Not stated

Coming into force date: 2 April 2018



Agenda Item 3.1

Draft Regulations laid before Parliament and the National Assembly for Wales under section 2(8) and (9)(d) and (e) of the Pollution Prevention and Control Act 1999, for approval by resolution of each House of Parliament and of the Assembly.

DRAFT STATUTORY INSTRUMENTS

2018 No. 000

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

WASTE, ENGLAND AND WALES

The Waste Enforcement (England and Wales) Regulations 2018

Made - - - -

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(1), (2) and (3) of, and paragraph 20 of Schedule 1 to, the Pollution Prevention and Control Act 1999 (“the Act”)(a).

The Secretary of State and the Welsh Ministers have, in accordance with section 2(4) of the Act, consulted—

- (a) the Environment Agency,
- (b) the Natural Resources Body for Wales,
- (c) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses as they consider appropriate, and
- (d) such other bodies or persons as they consider appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) and (e) of the Act(b).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste Enforcement (England and Wales) Regulations 2018.

(a) 1999 c. 24; section 2 was amended by the Water Act 2014 (c. 21), section 62(13) and S.I. 2013/755 (W. 90). Functions of the Secretary of State under or in relation to section 2, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, by the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958), article 3(1). Functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 (c. 32), Schedule 11, paragraph 30. Paragraph 20 of Schedule 1 was amended by S.I. 2011/1043.

(b) By virtue of paragraph 33(2) and (6)(a) of Schedule 11 to the Government of Wales Act 2006, section 2(8) has effect in relation to the exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999 by the Welsh Ministers as if the reference to each House of Parliament included a reference to the Assembly.

(2) Subject to paragraph (3), these Regulations come into force 21 days after the day on which they are made.

(3) Regulations 2 and 4(2) and (3) come into force 2 months after the day on which these Regulations are made.

(4) These Regulations extend to England and Wales only.

Amendment of the Environmental Protection Act 1990

2. The Environmental Protection Act 1990(a) is amended as set out in Schedule 1.

Amendment of the Environment Act 1995

3. The Environment Act 1995(b) is amended as set out in Schedule 2.

Transitional provision

4.—(1) Until regulation 2 comes into force, section 109D of the Environment Act 1995, as inserted by Schedule 2 to these Regulations, has effect as if the references in that section to sections 59ZB and 59ZC of the Environmental Protection Act 1990 were omitted.

(2) The amendments made by regulation 2 do not apply where the deposit in or on any land of controlled waste or extractive waste, which is subsequently kept or disposed of in contravention of section 33(1) of the Environmental Protection Act 1990(c) or regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(d), occurs before the coming into force of regulation 2.

(3) In paragraph (2), “controlled waste” and “extractive waste” have the same meaning as in the Environmental Protection Act 1990(e).

	<i>Name</i>
	Parliamentary Under Secretary of State
Date	Department for Environment, Food and Rural Affairs

	<i>Name</i>
	Minister for Environment
	Under authority of the Cabinet Secretary for Energy, Planning and Rural Affairs,
Date	one of the Welsh Ministers

SCHEDULE 1

Regulation 2

Amendment of the Environmental Protection Act 1990

1. The Environmental Protection Act 1990 is amended as follows.

2. After section 59ZA(f) insert—

(a) 1990 c. 43.

(b) 1995 c. 25.

(c) Section 33(1) was amended by S.I. 2007/3538 and 2009/1799.

(d) S.I. 2016/1154.

(e) The definition of “controlled waste” is given in section 75(4). Section 29(13) gives “extractive waste” the same meaning as in S.I. 2016/1154 (see regulation 2).

(f) Section 59ZA was inserted by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 50(2).

“Powers to require removal of waste unlawfully kept or disposed of: England and Wales

59ZB.—(1) Subsection (2) applies if any controlled waste or extractive waste is kept or disposed of in or on any land in the area of an authority in contravention of section 33(1) or regulation 12 of the Environmental Permitting Regulations.

(2) The authority may, by notice served on the occupier, require the occupier to do one or both of the following—

- (a) remove the waste from the land within a specified period of not less than 21 days beginning with the service of the notice;
- (b) take within such a period specified steps with a view to eliminating or reducing the consequences of the keeping or disposal of the waste.

(3) A person on whom a requirement is imposed under subsection (2) may, within 21 days beginning with the service of the notice, appeal against the requirement to a magistrates’ court.

(4) On any appeal under subsection (3), the court must quash the requirement if it is satisfied that—

- (a) the appellant did not keep or dispose of, or knowingly cause or knowingly permit the keeping or disposal of, the waste, or
- (b) there is a material defect in the notice,

and in any other case may modify the requirement or dismiss the appeal.

(5) Where a person appeals against a requirement imposed under subsection (2), the requirement has no effect pending the determination of the appeal; and where the court modifies the requirement or dismisses the appeal it may extend the period specified in the notice.

(6) If a person on whom a requirement imposed under subsection (2) fails, without reasonable excuse, to comply with the requirement, that person is liable, on summary conviction, to a fine.

(7) Where a person on whom a requirement has been imposed under subsection (2) by an authority fails to comply with the requirement, the authority may do what that person was required to do and may recover from that person any expenses reasonably incurred by the authority in doing it.

(8) If it appears to an authority that controlled waste or extractive waste has been kept or disposed of in or on any land in the authority’s area in contravention of section 33(1) or regulation 12 of the Environmental Permitting Regulations, and that—

- (a) in order to remove or prevent pollution of land, water or air or harm to human health, it is necessary that the waste be forthwith removed, or that steps are taken to eliminate or reduce the consequences of the keeping or disposal, or both,
- (b) there is no occupier of the land or the occupier cannot be found without the authority incurring unreasonable expense, or
- (c) the occupier did not keep or dispose of, or knowingly cause or knowingly permit the keeping or disposal of, the waste,

the authority may remove the waste from the land, or take steps to eliminate or reduce the consequences of the keeping or disposal of the waste, or both.

(9) Where an authority exercises any of the powers conferred on it by subsection (8), it is entitled to recover the cost incurred by it in removing the waste or taking the steps or both, and in disposing of the waste—

- (a) in a case falling within subsection (8)(a), from the occupier of the land, unless the occupier proves that the occupier did not keep or dispose of, or knowingly cause or knowingly permit the keeping or disposal of, the waste,

(b) in any case, from any person who kept or disposed of, or knowingly caused or knowingly permitted the keeping or disposal of, the waste,
except such of the cost as the occupier or that person shows was incurred unnecessarily.

(10) An authority may not recover costs under subsection (9) if a compensation order has been made under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000(a) in favour of the authority in respect of any part of those costs.

(11) Subsection (10) does not apply if the compensation order is set aside on appeal.

(12) Any waste removed by an authority under subsection (8) belongs to that authority and may be dealt with accordingly.

(13) Subsections (2) and (8) do not apply in relation to household waste from a domestic property which is kept or disposed of within the curtilage of that property by a person other than an establishment or undertaking.

(14) In this section and section 59ZC, “authority” means—

- (a) a waste regulation authority in England or Wales, or
- (b) a waste collection authority in England or Wales.

Section 59ZB: supplementary power in relation to owner of land

59ZC.—(1) Where the grounds in subsection (2) or (3) are met, an authority may, by notice served on the owner of any land in its area, require the owner to comply with one or both of the requirements mentioned in section 59ZB(2)(a) or (b).

(2) The grounds in this subsection are that it appears to the authority that controlled waste or extractive waste has been kept or disposed of in or on the land in contravention of section 33(1) or regulation 12 of the Environmental Permitting Regulations, and—

- (a) there is no occupier of the land, or
- (b) the occupier cannot be found without the authority incurring unreasonable expense.

(3) The grounds in this subsection are that—

- (a) the authority has served a notice under section 59ZB(2) imposing a requirement on the occupier of the land,
- (b) the occupier of the land is not the same person as the owner of the land, and
- (c) either—
 - (i) the occupier has failed to comply with the requirement mentioned in paragraph (a) within the period specified in the notice, or
 - (ii) the requirement mentioned in paragraph (a) has been quashed on the ground specified in section 59ZB(4)(a).

(4) Section 59ZB(3) to (7) apply in relation to a requirement imposed under this section on the owner of the land as they apply in relation to a requirement imposed under that section on the occupier of land but as if in section 59ZB(4) there were inserted after paragraph (a)—

“(aa) in order to comply with the requirement the appellant would be required to enter the land unlawfully, or”.

(6) Subsection (1) does not apply in relation to household waste from a domestic property which is kept or disposed of within the curtilage of that property by a person other than an establishment or undertaking.

(a) 2000 c. 6; section 130 was amended by the Fraud Act 2006 (c. 35), Schedule 1, paragraph 29, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), section 63(1), and the Criminal Justice and Courts Act 2015 (c. 2), Schedule 5, paragraph 6.

- (7) In this section, “owner” has the meaning given by section 78A(9)(a).”.
3. In section 59A (directions in relation to exercise of powers under section 59)(b)—
- (a) in the heading, after “section 59” insert “, 59ZA, 59ZB or 59ZC”;
 - (b) in subsections (1) and (3), after “section 59” insert “, 59ZA, 59ZB or 59ZC”.
4. In section 71 (obtaining of information from persons and authorities)(c), in subsection (4)(a), after “section 59” insert “, 59ZA, 59ZB or 59ZC”.
5. In section 78YB (interaction of Part 2A with other enactments)(d), in subsection (3)—
- (a) after “section 59” insert “, section 59ZA(1), 59ZB(1) or (8) or 59ZC(1)”;
 - (b) after “deposit” in each place it occurs insert “, keeping or disposal”;
 - (c) for “that section” substitute “section 59, 59ZA, 59ZB or 59ZC (as the case may be)”.

SCHEDULE 2

Regulation 3

Amendment of the Environment Act 1995

1. The Environment Act 1995 is amended as follows.
2. For the italic heading before section 108 substitute “*Enforcement*”.
3. After section 109 insert—

“Power to issue restriction notices: England and Wales

109A.—(1) An authorised person may issue a restriction notice in relation to premises where there is, or was, a regulated facility or an exempt facility if the person is satisfied that the conditions in subsection (2) are met.

(2) The conditions are that—

- (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
- (b) the notice is necessary to prevent that risk from continuing.

(3) A restriction notice is a notice prohibiting access to, and the importation of waste into, the premises or a specified part of the premises.

(4) But a restriction notice does not prohibit access to the premises, or the specified part of the premises, by the occupier or the owner.

(5) A restriction notice has effect for a period specified in the notice, which may not exceed 72 hours.

(6) Where a restriction notice is issued, the appropriate agency may do anything necessary to secure the premises against access in contravention of the notice.

(7) A restriction notice may include provision for—

- (a) persons, or a description of persons, to whom the prohibition in subsection (3) does not apply;
- (b) times at which the prohibition in subsection (3) does not apply;
- (c) circumstances in which the prohibition in subsection (3) does not apply.

(a) Section 78A was inserted by the Environment Act 1995, section 57.
 (b) Section 59A was inserted by the Anti-social Behaviour Act 2003 (c. 38), section 55(4).
 (c) Section 71(4) was inserted by the Anti-social Behaviour Act 2003, section 55(5).
 (d) Section 78YB was inserted by the Environment Act 1995, section 57.

(8) Provision included in accordance with subsection (7) may be unconditional or subject to specified conditions.

(9) A restriction notice must—

- (a) identify the premises, or part of the premises, to which the notice applies;
- (b) explain the effect of the notice;
- (c) state that failure to comply with the notice is an offence;
- (d) state the penalties applicable to a person guilty of an offence;
- (e) state that a restriction order will be applied for under section 109D;
- (f) state that notice will be given of when and where the application for a restriction order will be heard;
- (g) explain the effect of a restriction order.

(10) Before issuing a restriction notice, the appropriate agency must make reasonable efforts—

- (a) to inform the occupier and the owner of the premises that the notice is going to be issued;
- (b) to consult the occupier and the owner of the premises on the arrangements for access to the premises, or to the particular part of the premises, by persons acting on behalf of the occupier or the owner for any purpose, including—
 - (i) the purpose of maintaining machinery and apparatus;
 - (ii) the purpose of securing the premises.

Cancellation or variation of restriction notices

109B. Where a restriction notice is in force and the authorised person is no longer satisfied that the conditions in section 109A(2) are met—

- (a) as regards the premises as a whole, the authorised person must issue a notice cancelling the restriction notice (a “cancellation notice”);
- (b) as regards a particular part of the premises, the authorised person must issue a notice varying the restriction notice so that it does not apply to that part of the premises (a “variation notice”).

Service of restriction notices etc.

109C.—(1) A restriction notice, a cancellation notice or a variation notice must be served by an authorised person.

(2) The authorised person must make reasonable efforts to—

- (a) fix a copy of the notice to each normal means of access to the premises;
- (b) give a copy of the notice to the occupier and the owner of the premises;
- (c) give a copy of the notice to the occupier and the owner of any other premises to which the authorised person believes access will be impeded by the restriction notice.

(3) In subsection (1), “cancellation notice” and “variation notice” have the meanings given by section 109B.

Power of court to make restriction orders: England and Wales

109D.—(1) An application to a magistrates’ court for a restriction order—

- (a) must be made by the appropriate agency when it has issued a restriction notice (unless the notice has been cancelled);
- (b) may otherwise be made by the appropriate agency at any time.

- (2) The application must be heard by the magistrates' court—
- (a) where subsection (1)(a) applies, not later than 72 hours after service of the restriction notice;
 - (b) where subsection (1)(b) applies, not later than 7 days after the application is made.
- (3) Where an application is made under subsection (1), the appropriate agency must serve a notice stating the date, time and place of the hearing of the application on—
- (a) the occupier and the owner of the premises;
 - (b) the occupier and the owner of any other premises to which the appropriate agency believes access will be impeded if a restriction order is made.
- (4) The court may make a restriction order in relation to premises where there is, or was, a regulated facility or an exempt facility if the court is satisfied that the conditions in subsection (5) or (6) are met.
- (5) The conditions are that—
- (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
 - (b) the order is necessary to prevent that risk from continuing.
- (6) The conditions are that—
- (a) in relation to the treatment, keeping, deposit or disposal of waste in or on the premises, a person has—
 - (i) contravened section 33(1) of the Environmental Protection Act 1990,
 - (ii) contravened regulation 12(1) of the Environmental Permitting Regulations or knowingly caused or knowingly permitted the contravention of regulation 12(1)(a) of those Regulations,
 - (iii) contravened or failed to comply with an environmental permit condition, or
 - (iv) failed to comply with the requirements of an enforcement notice, a landfill closure notice, a mining waste facility closure notice, a suspension notice, or a notice served under section 59, 59ZA, 59ZB or 59ZC of the Environmental Protection Act 1990,
 - (b) the conduct referred to in paragraph (a) has caused, is causing or has failed to prevent from continuing—
 - (i) pollution to the environment, or
 - (ii) harm to human health, and
 - (c) the order is necessary to prevent that pollution or harm from continuing.
- (7) A restriction order is an order prohibiting access to, and the importation of waste into, the premises or a specified part of the premises.
- (8) A restriction order has effect for a period specified in the order, which may not exceed 6 months.
- (9) A restriction order may include provision for—
- (a) persons, or a description of persons, to whom the prohibition in subsection (7) does not apply;
 - (b) times at which the prohibition in subsection (7) does not apply;
 - (c) circumstances in which the prohibition in subsection (7) does not apply.
- (10) Provision included in accordance with subsection (9) may be unconditional or subject to specified conditions.
- (11) A restriction order may include provision about access to other premises where that access could otherwise be impeded by the order.
- (12) A restriction order must—

- (a) identify the premises, or part of the premises, to which the order applies;
- (b) explain the effect of the order;
- (c) state that failure to comply with the order is an offence;
- (d) state that the removal of a copy of a restriction order fixed to a normal means of access to the premises is an offence;
- (e) state the penalties applicable to a person guilty of an offence.

(13) The restriction notice referred to in subsection (1)(a) ceases to have effect—

- (a) on the making of a restriction order, or
- (b) where the court decides not to make a restriction order, on the making of that decision, unless the court makes an order in accordance with section 109E(4).

(14) In subsection (6)(a)(iii) and (iv), “enforcement notice”, “environmental permit condition”, “landfill closure notice”, “mining waste facility closure notice” and “suspension notice” have the meanings given in regulation 2(1) of the Environmental Permitting Regulations.

Temporary orders

109E.—(1) This section applies where an application has been made to a magistrates’ court under section 109D(1)(a) for a restriction order.

(2) The court may adjourn the hearing of the application for a period of not more than 14 days to enable—

- (a) the appropriate agency to show why a restriction order should be made;
- (b) the occupier or the owner of the premises to show why a restriction order should not be made.

(3) If the court adjourns the hearing, the restriction notice continues in force until the court has determined the application.

(4) If the court does not make a restriction order it may nevertheless order that the restriction notice continues in force for a specified further period of not more than 72 hours if it is satisfied that—

- (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
- (b) the notice is necessary to prevent that risk from continuing.

Extension of restriction orders

109F.—(1) At any time before the expiry of a restriction order, the appropriate agency may apply to a justice of the peace, by complaint, for an extension (or further extension) of the period for which the order is in force.

(2) Where an application is made under this section, the justice of the peace may issue a summons directed to one or both of the occupier and the owner of the premises, requiring the person to appear before the magistrates’ court to respond to the application.

(3) If a summons is issued under subsection (2), a notice stating the date, time and place of the hearing of the application must be served on the persons to whom the summons is directed.

(4) The court may make an order extending (or further extending) the period of the restriction order by a period not exceeding 6 months where satisfied that the conditions in section 109D(5) or (6) are met.

Variation or discharge of restriction orders

109G.—(1) At any time before the expiry of a restriction order, an application may be made to a justice of the peace, by complaint, for the order to be varied or discharged.

(2) Those entitled to make an application under this section are—

- (a) the appropriate agency that applied for the restriction order;
- (b) the occupier of the premises subject to the order;
- (c) the owner of the premises subject to the order.

(3) Where the appropriate agency makes an application under this section, the justice of the peace may issue a summons directed to one or both of the occupier and the owner of the premises, requiring the person to appear before the magistrates' court to respond to the application.

(4) Where the occupier or the owner of the premises makes an application under this section, the justice of the peace must—

- (a) issue a summons directed to the appropriate agency that applied for the restriction order requiring it to appear before the magistrates' court to respond to the application, or
- (b) dismiss the application.

(5) If a summons is issued under subsection (3) or (4), a notice stating the date, time and place of the hearing of the application must be served on—

- (a) the appropriate agency that applied for the restriction order (other than where the agency is the complainant);
- (b) the occupier or the owner of the premises (other than the complainant).

(6) The magistrates' court may make an order varying or discharging the restriction order if it is no longer satisfied that the conditions in section 109D(5) or (6) are met in respect of all or part of the premises (or the part of the premises) to which the restriction order applies.

Enforcement of restriction orders

109H.—(1) The appropriate agency must make reasonable efforts to fix a copy of the restriction order to each normal means of access to the premises.

(2) Where a restriction order has been made, an authorised person may do anything necessary to secure the premises against access in contravention of the order.

Appeals against decisions on restriction orders

109I.—(1) The occupier or the owner of the premises may appeal against—

- (a) a decision to make or extend a restriction order;
- (b) a decision made under section 109G in relation to an application to vary or discharge a restriction order.

(2) The appropriate agency may appeal against—

- (a) a decision not to order the continuation in force of a restriction notice (under section 109E);
- (b) a decision not to make a restriction order;
- (c) a decision not to extend a restriction order;
- (d) a decision made in relation to an application to vary or discharge a restriction order (under section 109G).

(3) An appeal under this section is to the Crown Court.

(4) An appeal under this section must be made within 21 days beginning with the date of the decision to which it relates.

(5) On an appeal under this section the Crown Court may make whatever order it thinks appropriate.

(6) Pending the determination of an appeal under this section, the decision being appealed remains in force.

Access to other premises

109J.—(1) Where—

(a) access to premises is prohibited or restricted by an order under section 109D, 109E, 109F, 109G or 109I, and

(b) there are other premises to which access is impeded by that order,

an occupier or owner of those other premises may apply to the appropriate court for an order under this section.

(2) The appropriate court is—

(a) the magistrates' court, in the case of an order under section 109D, 109E, 109F or 109G;

(b) the Crown Court, in the case of an order under section 109I.

(3) Notice of an application under this section must be given to—

(a) the appropriate agency that applied for the restriction order;

(b) the occupier and the owner of the premises subject to the order.

(4) On an application under this section the court may make whatever order it thinks appropriate in relation to access to the other premises, whether or not provision has been made under section 109D(11).

Recovery of costs

109K.—(1) An appropriate agency that incurs expenditure for the purpose of securing premises in respect of which a restriction notice was issued is entitled to recover that expenditure from the occupier or the owner of the premises, except such of that expenditure as the occupier or the owner shows was incurred unnecessarily.

(2) An appropriate agency that incurs expenditure for the purpose of securing premises in respect of which a restriction order is in force may apply to the court that made the restriction order for an order under subsection (3).

(3) On an application under this section, the court may make whatever order it thinks appropriate for the reimbursement (in full or in part) by the occupier or the owner of the premises of—

(a) the expenditure mentioned in subsection (2);

(b) any expenditure incurred by the appropriate agency for the purpose of securing the premises in respect of which a restriction notice (including a notice continued in force under section 109E) was issued, except such of that expenditure as has been recovered in accordance with subsection (1).

(4) An application for an order under this section may not be heard unless it is made within 3 months beginning with the day on which the restriction order ceases to have effect.

(5) An order under this section may be made only against a person who has been served with the application for the order.

Exemption from liability

109L.—(1) The appropriate agency is not liable for damages arising out of anything done or omitted to be done by the appropriate agency in the exercise or purported exercise of a power under sections 109A to 109D, 109F to 109I and 109K in proceedings for—

- (a) judicial review, or
 - (b) the tort of negligence or misfeasance in public office.
- (2) Subsection (1) does not apply to an act or omission shown to have been in bad faith.
- (3) Subsection (1) does not apply so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998^(a).
- (4) This section does not affect any other exemption from liability (whether at common law or otherwise).

Compensation

109M.—(1) Where the occupier or the owner of any premises to which access was impeded by a restriction notice or order (other than the premises which is subject to a restriction notice or order) claims to have incurred financial loss in consequence of that notice or order, that person may apply to the appropriate court for compensation.

- (2) The appropriate court is—
- (a) the magistrates’ court (except where paragraph (b) applies);
 - (b) the Crown Court, in the case of a restriction order that was made or extended by an order of that Court on an appeal under section 109I.
- (3) An application under this section may not be heard unless it is made within 3 months beginning with whichever of the following is applicable—
- (a) the day on which the restriction notice was cancelled under section 109B;
 - (b) the day on which a restriction order was refused;
 - (c) the day on which the restriction order ceased to have effect.
- (4) For the purposes of subsection (3)(b) the day on which a restriction order was refused is—
- (a) the day on which the magistrates’ court decided not to make a restriction order (except where paragraph (b) applies);
 - (b) the day on which the Crown Court dismissed an appeal against a decision not to make a restriction order.
- (5) On an application under this section the court may order the payment of compensation by the appropriate agency if it is satisfied—
- (a) that the applicant has incurred financial loss in consequence of the notice or order, and
 - (b) that having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.

Interpretation

109N.—(1) In sections 109A to 109M and this section—

- “appropriate agency” means the Agency or the Natural Resources Body for Wales;
- “authorised person” means a person who is authorised by the appropriate agency under section 108;
- “the Environmental Permitting Regulations” means the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154);
- “exempt facility” has the meaning given in regulation 5 of the Environmental Permitting Regulations;

(a) 1998 c. 42.

“occupier”, in relation to premises, includes a person who habitually lives on the premises;

“owner”, in relation to premises consisting of land, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

“premises” means premises in England or Wales, and includes any land, vehicle, vessel or mobile plant;

“regulated facility” has the meaning given in regulation 8 of the Environmental Permitting Regulations;

“restriction notice” has the meaning given by section 109A(3);

“restriction order” has the meaning given by section 109D(7);

“waste” has the same meaning as in section 75 of the Environmental Protection Act 1990(a).

(2) In calculating for the purposes of sections 109A(5), 109D(2) and 109E(4) when a period of 72 hours or 7 days ends, the following days are to be disregarded—

(a) Good Friday;

(b) Christmas Day;

(c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(b).”.

4. In section 110 (offences)—

(a) after subsection (3) insert—

“(3A) It is an offence for a person to contravene, without reasonable excuse, a restriction notice issued under section 109A (including a notice continued in force under section 109E).

(3B) It is an offence for a person to contravene, without reasonable excuse, a restriction order made under section 109D, 109F, 109G or 109I.

(3C) It is an offence for a person to remove, without reasonable excuse, a copy of a restriction order fixed to a normal means of access to premises under section 109H(1).”;

(b) after subsection (5) insert—

“(5D) A person guilty of an offence under subsection (3A) is liable on summary conviction to a fine or to imprisonment for a period not exceeding 51 weeks, or to both.

(5E) A person guilty of an offence under subsection (3B) is liable—

(a) on summary conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

(5F) A person guilty of an offence under subsection (3C) is liable on summary conviction to a fine.

(5G) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003(c), the reference in subsection (5D) to 51 weeks is to be read as a reference to 6 months.

(5H) In relation to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (5E)(a) to 12 months is to be read as a reference to 6 months.”.

(a) Section 75(2) was substituted by S.I. 2011/988.

(b) 1971 c. 80.

(c) 2003 c. 44.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Protection Act 1990 (c. 43) and the Environment Act 1995 (c. 25) for England and Wales in connection with Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ L 312 22.11.2008, p. 3).

Regulation 2 amends the Environmental Protection Act 1990 by inserting sections 59ZB and 59ZC. These sections give a waste regulation authority or waste collection authority (defined respectively in section 30(1) and (3) of the Environmental Protection Act 1990) the power to issue a notice in respect of waste which is unlawfully kept or disposed of in or on land within the authority's area. A notice may be issued on the occupier of the land or (in the circumstances in section 59ZC(2) to (4)) on the owner of the land, and may include requirements to remove waste and take steps (to be specified in the notice) to eliminate or reduce the consequences of the unlawful keeping or disposal.

A person who fails without reasonable excuse to comply with a requirement is guilty of an offence (sections 59ZB(6) and 59ZC(5)). A requirement may be appealed. A waste regulation authority or waste collection authority may also take the required action and recover the costs of doing so from the occupier or owner of the land or from any other person who knowingly caused or permitted the keeping or disposal of the waste (section 59ZB(7) to (9)).

Regulation 3 amends the Environment Act 1995 by inserting sections 109A to 109N. These sections give the Environment Agency and the Natural Resources Body for Wales ("the regulators") the power to issue a "restriction notice" and to apply to the courts for a "restriction order". A restriction notice (section 109A) is a notice prohibiting access and the importation of waste to premises for a period specified in the notice of no more than 72 hours. This can only be issued where a person authorised by the regulator is satisfied in accordance with section 109A(2).

A restriction order (section 109D) is an order made by the courts which prohibits access and the importation of waste to the premises for a period specified in the order, which may not exceed 6 months. It can be extended, varied or discharged (sections 109F and 109G). A decision of the courts may be appealed (section 109L).

A regulator may apply to the courts for reimbursement of expenditure for the purpose of securing premises in respect of which a restriction order is in force (section 109K). On application from an occupier or the owner of other premises to which access was impeded by a restriction notice or restriction order, a court may order the regulator to pay compensation to that person in respect of financial loss incurred in consequence of the notice or order. The court may order such compensation to be paid where it considers that it is appropriate to do so (section 109M).

Regulation 4 contains transitional provision in respect of the amendments made by regulation 2.

An impact assessment has not been produced for this instrument in relation to England as no, or no significant, impact on the private, voluntary or public sector is foreseen.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As result a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations in relation to Wales. A copy can be obtained from the Waste Regulation Policy Team, Department for Environment and Rural Affairs, Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.

Explanatory Memorandum to The Waste Enforcement (England and Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Waste Enforcement (England and Wales) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Hannah Blythyn AM
Minister for Environment
25 January 2018

1. Description

This instrument amends two Acts of Parliaments to provide powers for regulators to tackle illegal activity in the waste sector which include sites permitted under the Environmental Permitting (England and Wales) Regulations 2016 (“EPR”) or which are exempt from the requirement to have a permit.

The Environment Act 1995 (“EA 1995”) is amended to insert new sections 109A to 109N to give Natural Resources Wales (NRW) the ability to prohibit/restrict access to permitted and illegal waste sites by physical means and to secure premises against access. These powers may be exercised either to prevent a risk of serious pollution to the environment or serious harm to human health or where an offence has been committed in relation to the treatment, keeping, deposit or disposal of waste and pollution has been caused as a result. NRW will be able to restrict access to premises and importation of waste for up to 72 hours by issuing a restriction notice. Further access to premises and the importation of waste can be restricted for up to 6 months on application by NRW to the Court for a restriction order. The Order can be extended, varied or discharged by the Court. A decision of the court may be appealed. The new provisions supplement existing powers in section 108 of the Act.

The Environmental Protection Act 1990 (“EPA 1990”) is amended to expand powers of NRW (as the Welsh waste regulation authority) and local authorities (as the Welsh waste collection authorities) to issue a notice on occupiers or owners of land, requiring them to undertake specified action on their land in relation to waste unlawfully kept or unlawfully disposed of, including its removal. The instrument inserts new sections 59ZB and 59ZC into the EA 1990 which supplement the existing powers in sections 59 and 59ZA of that Act. The new powers will come into force two months after the regulations are made to give occupiers and owners time to become aware and understand the changes. A transitional provision has been inserted for the new powers to apply only to waste unlawfully kept or disposed of, where the deposit occurred after the coming into force date.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument makes amendments to two existing UK Acts of Parliament and is being made on a composite basis by the Welsh Ministers (in relation to Wales) and by the Secretary of State (in relation to England). As this composite instrument is subject to approval by the National Assembly for Wales and by the UK Parliament, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

There is no difference in policy on these proposals between England and Wales. Both the EPA 1990 and the EA 1995 are used by industry operating across the border.

3. Legislative background

The Waste Enforcement (England and Wales) Regulations 2018 make changes in connection with Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ L 312 22.11.2008, p. 3) (the “Waste Framework Directive”). The Welsh Ministers powers to make these Regulations are conferred by section 2(1), (2) and (3) of, and paragraph 20(1)(b) of Schedule 1 to, the Pollution Prevention and Control Act 1999 (“the 1999 Act”).

The relevant functions of the Secretary of State under or in relation to section 2 of the 1999 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I.2005/1958), article 3(1). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 (c. 32), Schedule 11, paragraph 30.

Section 2(1) of the 1999 Act provides that regulations may be made for any of the purposes listed in Part 1 of Schedule 1 of that Act. Paragraph 20(1)(b) of Schedule provides for provision that corresponds or is similar to any provision made or capable of being made under section 2(2) of the European Communities Act 1972 in connection with one of the relevant directives. The Waste Framework Directive has been designated as a relevant directive pursuant to paragraph 20(2)(c) of Schedule 1 to the 1999 Act (see The Pollution Prevention and Control (Designation of Waste Directive) (England and Wales) Order 2016 (SI No 2016/398)).

This instrument follows the affirmative resolution procedure.

4. Purpose & intended effect of the legislation

The introduction of the Waste Framework Directive (2008/98/EC) and the Landfill Directive (1999/31/EC) has radically changed the way we manage our waste. Managing waste in accordance with the waste hierarchy and diverting waste from landfill has brought environmental and economic benefits but it means we need more sites to sort, store and treat waste for recycling and recovery. Waste sites who operate responsibly under a permit or exemption play a critical role in managing waste safely under controlled conditions.

Most of the waste industry operates responsibly but there is a small part of the industry that fails to meet the required standards or operates outside the law. These operators either fail to meet the required standards of their permit/exemptions or operate illegally with no permit/exemption in place. These sites can cause pollution to the environment and endanger human health. They pose a risk of fire, water pollution and cause other issues such as odour, litter and fly infestations which affect surrounding communities. Those responsible often leave public bodies and owners of land to clear up the mess and deal with the consequences.

The reputable waste management industry provides a key service to the Welsh economy. Making the economy more resource efficient and low carbon is crucial in developing a circular economy in Wales where increased

recycling helps reduce the environmental impacts of production and consumption. The Welsh Government recognises the importance of developing a circular economy underpinned by a high performing waste industry. A well operated and regulated industry is crucial to prevent leakage of resources from the economy and in doing so, provide a level playing field to give legitimate businesses the confidence to invest in resource efficiency infrastructure and new technologies.

It has been estimated that the costs of illegal waste sites, waste fires, breaches of permits/exemptions and the misclassification of waste cost the Welsh economy between £15 and £32 million¹ in 2015-16.

The proposed changes to our laws will help NRW tackle waste crime. Currently, there are no powers to enable the regulators to physically restrict access to waste sites to prevent further waste entering the sites. The new power to secure premises and prohibit access will help prevent a risk of serious pollution or stop pollution from continuing by prohibiting access to prevent further waste being brought onto a site.

The second power gives NRW and the local authorities (LAs) the ability to require an occupier or land owner to undertake specified action on their land in relation to waste unlawfully kept or unlawfully disposed of. An occupier or land owner may be required to remove the waste from land within 21 days and/or take action to eliminate or reduce the consequences of the keeping or disposal of the waste. This supplements the current provisions under sections 59 and 59ZA of the Environmental Protection Act 1990 (EPA 1990) to serve a notice on an occupier or landowner requiring them to remove waste from land which has been deposited unlawfully and/or to take steps to eliminate or reduce the consequences of the deposit.

The current powers are being extended to include wastes which are unlawfully present on a site regardless of whether they were originally deposited lawfully. The new powers will cover sites where waste was initially deposited lawfully under an environmental permit or registered exemption but subsequently became unlawful once the operator breached the conditions of the permit /exemption or the regulators have revoked a permit or de-registered an exemption. In some cases, the occupiers of the site keep the waste on land and in others, the occupier's business has been liquidated and occupiers abandon the site. As a result, waste is left at sites with no funding to clear up the waste and any costs to clear up usually falls to the public purse.

The Welsh Government has consulted the industry on two occasions and they support these proposals. It is important the regulators have these powers to enable them to take effective action against poor performing or illegal waste sites who undermine and undercut the law-abiding majority. As well as helping to create a level playing field, these powers will help strengthen the measures available under the EU Waste Framework Directive to ensure

¹ Natural Resources Wales – Waste Crime Review (2017). Available on request from NRW.

waste management is carried out without endangering human health and harming the environment.

Implementing these powers will also help reduce the number of abandoned waste sites by expanding regulators' powers to serve a notice on occupiers and owners requiring them to take action to remove waste unlawfully kept or disposed of on their land. More needs to be done by landowners when they lease their land to others for a waste activity to ensure their tenants comply with the conditions of their lease and act in accordance with any planning or environmental permit conditions. We expect landowners to be vigilant and do more on their part to check their land to ensure it is not being used for any illegal activities.

Following feedback from the industry, a transitional period of two months has been introduced for the power to remove waste from land to come into force two months after the regulations are made. This will give occupiers and owners ("landowners") time to become aware and understand the changes and for NRW to engage with landowners to raise awareness of their potential liabilities. These powers will minimise the costs to the public purse in dealing with fires or waste clearance at permitted, exempt or illegal sites.

These Regulations are part of a suite of measures aimed at tackling waste crime in Wales.

5. Consultation

A Regulatory Impact Assessment (RIA) has been completed alongside this Explanatory Memorandum. Details of consultations undertaken are included in the RIA in Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT (RIA)

Options

Two options have been considered for implementing these proposals: do nothing or legislate to bring these powers into force.

Do nothing: this would see none of the provisions in this instrument enacted. The problems caused by poor performing, illegal and abandoned waste sites as well as other criminal actions involving the treatment, keeping, deposit or disposal of waste would continue to affect the environment and surrounding communities.

Non-legislative options are not viable to fulfil policy objectives. Enforcement of the waste site sector needs to be underpinned by legislation and powers to enable the regulators to enforce against illegal activity.

Option 1: Bring into force the following powers:

Power 1: Restrict access to waste sites – to give NRW powers to tackle poor performing and illegal waste sites by restricting access to premises through physical means. Two provisions are provided: a Restriction Notice and a Restriction Order. NRW will have the power to serve a restriction notice for a maximum period of 72 hours or apply to the Magistrates Court for a Restriction Order for up to 6 months (although that period could be extended by application to the Court).

Scope of power

This power will apply to waste sites permitted under the EPR and those operating under exemptions. The power will also apply to sites operating illegally and do not have a permit in place. This will ensure a consistent and balanced approach to regulation and help tackle illegal sites who fail to comply with the law despite regulators' efforts to enforce and close the sites. There is a provision for compensation which is limited to owners/occupiers of other sites affected by the order. The occupier of the site to which the order relates cannot apply for compensation under the new power.

Rights of occupiers and owners of land

A restriction notice is aimed at prohibiting persons delivering waste to a site. It cannot prevent access to a site's occupier or owner. The regulator can relax the prohibition by specifying the persons, the times and circumstances where it does not apply (with or without conditions). The restriction order prohibits access to all persons (including occupiers and owners). When granting an order, it is for the Court to relax the provision by specifying the persons, the times and circumstances where the prohibition does not apply (with or without conditions). Occupiers and owners may appeal against decisions to make, extend, vary or discharge a restriction order.

Power 2: Require all waste at sites to be removed - expand the existing powers under section 59 (occupier) and section 59ZA (landowner) of the EPA

1990 to also allow regulators to require the removal of waste that is being unlawfully kept or unlawfully disposed of by occupiers (including where the deposit was made lawfully). If an occupier fails to comply with a notice requiring the removal of waste or cannot be found, then landowners can be held liable.

Forward looking power

It is proposed this power will be forward looking. It will only apply to the unlawful keeping or disposal of waste which is deposited after the power comes into force (whether it is a new or an existing site). NRW already has the power to remove waste unlawfully deposited which is around 75% of the total volume of waste at abandoned sites.

Transitional arrangements

To address comments made by the industry at the second consultation, a transitional period of two months is provided to give additional time for occupiers and owners to become aware and understand the changes. NRW have advised they will use a combination of evidence to show the deposit was made after the power comes into force. Evidence include waste transfer notes ('written information' requirements under the Waste (England and Wales) Regulations 2011), quarterly waste returns submitted by operators to NRW and Value Added Tax receipts to determine when the waste was deposited.

Costs and Benefits

Costs

Do nothing:

This option provides the baseline against which to assess the costs and benefits of the proposed intervention. As such, there are no additional costs or benefits associated with this option.

There are currently 39 permitted sites which NRW categorise as poor performers (Band D, E and F compliance bands under their Compliance Classification system) in 2015². Around 11 of these sites have been in poor performance bands for more than two years. In 2017, NRW identified there were 11 significant illegal sites operating³. The 'do nothing' option would see problems from these poor performing and illegal waste sites continue causing significant environmental issues and impact to the local communities.

NRW estimate on average 3 sites a year in Wales become abandoned.

Regulation of the waste sector needs to be underpinned by legislation and enforcement powers which enable the regulators to successfully prosecute illegal activity. NRW have identified these powers will help boost their available enforcement tools under the Environmental Permitting Regime and other powers such as the Environmental Protection Act.

² Natural Resources Wales - Annual Regulation report 2016. Available on request from NRW.

³ Natural Resources Wales – Waste Crime Review (2017). Available on request from NRW.

Option 1

Power 1: Restrict access to waste sites

NRW have estimated they would serve an average of 1 restriction notice followed by an application to the Magistrates Court for 1 restriction order a year, usually both for the same site.

Costs to business

The power to restrict access to a site would be used by NRW if there is a risk of serious pollution as a result of the treatment, keeping, deposit or disposal of waste or where there is ongoing pollution as a result of failure of compliance. NRW would act to serve the notice if it is necessary to prevent that risk or to prevent actual pollution from continuing.

NRW is required to comply with relevant guidelines including the Regulator's Code of Practice and the general principles in their Enforcement and Prosecution Policy. Any enforcement action taken by NRW will be proportionate and will take into account the background of the site including its history of permit breaches, operator performance and failure to act on previous NRW advice. The powers will be used to take action against non-compliant and poorly operating businesses who by operating in such a way may be avoiding costs of managing the waste correctly.

Occupiers and owners may appeal against decisions to make, extend, vary or discharge a restriction order. The proposal includes a provision for compensation which is limited to owners/occupiers of other sites affected by the order, the occupier of the site to which the order relates cannot apply for compensation under the new power.

Businesses operating within the law are not expected to incur any direct costs as a result of these regulations. However, legitimate occupiers (usually waste operators) could face some indirect costs as a result of this power such as paying increased rent to landlords who could seek to cover potential liabilities, or where there is a need to vary leases. This will depend upon the individual agreements in place between landowners and occupiers.

Landowners could face some indirect costs caused by the activities of a non-compliant business on their land. For example, a landowner may lose rental income if the operator's gates are locked. However, the financial impact is likely to be limited by the small number of times this power is expected to be used each year and will depend on individual agreements between the landowner and / or occupier.

Power 2: Require all waste at sites to be removed

NRW estimate they would apply the new power to three sites per year. Of those three cases, NRW estimate the power will be applied to 2 occupiers (usually waste operators). In the third case, if the occupier fails to comply with a notice or cannot be found, the notice would be applied to the landowner to require them to clear the site.

Costs to business

a) Costs to occupiers

Whilst the new powers will increase the regulators' ability to require landowners to remove waste which is unlawfully kept, or disposed of, from their land, NRW will focus their efforts on those who carry out illegal waste activities.

Based on the power being used for 3 sites each year and NRW/Environment Agency (EA) data for an average illegal waste site, non-compliant occupiers would face estimated annual costs to clear the waste ranging from £53,700 to £169,200. Cost depends on whether the waste is classified as non-hazardous or inert⁴ and includes administrative or legal consultation costs which are estimated to be one day (around 7 hours) at £300 per hour per affected site. These costs could increase if the occupier decides to appeal or if the waste is hazardous. Further information on the calculation of these costs is at Annex A.

b) Costs to landowners

Landowners who lease land for waste activities could be counted as compliant businesses. The estimated cost to the landowner to clear waste from their land, based on the power being used once per year, would range between £26,850 and £84,600. This depends on whether the waste is classified as non-hazardous or inert and includes administration or legal consultation costs estimated to be one day (around 7 hours) at £300 per hour per affected site. These costs could increase if the landowner decides to appeal or if the waste is hazardous. The above estimate is based on data held by NRW/EA on typical illegal waste sites. The actual cost to a landowner will depend upon the volume and type of illegal waste deposited on their land and could be significantly larger.

Landowners should already check their properties from time to time to ensure it is not being used for any illegal activities and that an occupier is acting in accordance with their environmental permit. To reduce the numbers of abandoned waste sites, landowners where they lease their land to others for a waste operation should be vigilant to ensure their tenants comply with the conditions of their lease and act in accordance with any planning or environmental permit conditions.

Costs to Natural Resources Wales

NRW have identified a number of administrative changes will be needed to their internal guidance, staff warranting, training and notice templates. These would be one off costs and are likely to be negligible. NRW further expect the use of these powers would lead to an overall reduction in costs over time as it will allow NRW to intervene more effectively, reducing the need for other enforcement action or clean-up of sites by NRW.

⁴ Costs to clear the waste have been estimated at £150 per tonne for non-hazardous waste including all costs associated with loading, transport and landfill disposal. Inert waste for landfill disposal has been calculated at £45 per tonne.

When taking enforcement action on permitted sites, costs to NRW is covered by Grant in Aid from Welsh Government and may be reclaimable from costs awarded by the Courts. The instrument also includes provisions for NRW to apply to the court to reimburse costs (from the occupier or owner of the premises) incurred from any action taken to secure the premises during a restriction order. Under the widened section 59 power, whilst the cost of clearing the site would fall on two occupiers and one landowner, the administrative cost to NRW of applying the power would be three occupiers and one landowner. If NRW considers it necessary to take action to remove the waste from land or eliminate or reduce the consequences of the unlawful keeping or disposal of the waste, NRW is entitled to recover the costs incurred from the occupier of the land or from any person who kept or disposed, or knowingly caused or knowingly permitted the keeping or disposal of the waste.

Impact to Judicial System

A Justice Impact Test was carried out on the impact of the policy / legislative proposals on the justice system in England and Wales. The impact to the judicial system is expected to be minimal as NRW estimate they would serve an average of 1 restriction notice followed by an application to the Magistrates Court for 1 restriction order a year (usually both for the same site). In certain cases, the Magistrates Court may extend a restriction order longer than six months to restrict access to stop the risk of pollution or actual pollution. If the occupier or owner of the premises appeals the Restriction Order, the Crown Court will handle the appeals. There may be cases where non-compliance of the restriction order occurs resulting in the occupier or owner or any other person breaching the restriction notice/order being committed to custody.

It is possible for the occupier or owner to seek legal aid for their defence in Magistrates or Crown Court provided the conditions of receiving Legal Aid are satisfied. The proposals could therefore increase Legal Aid costs, however, given an average use of the powers being one case per year, the effect is likely to be minimal.

Benefits of introducing the new powers

The two new powers will help tackle illegal and poor performance in the waste industry. They will help to reduce the risk of harm to the environment and human health from pollution incidents and to reduce problems with odour, litter, fly infestations and the potential for waste fires. Compliant businesses will benefit from increased competitiveness and costs to the public purse in dealing with fires or clearance at waste sites will be reduced.

While the cost of dealing with a fire at a waste site will vary on a case by case basis, the Chief Fire Officers Association estimates that the cost of dealing with waste site fires across the UK is approximately £16 million per year. Introducing these powers will help reduce fire risks associated with waste disposal at abandoned sites. In 2017, NRW identified burning waste at both

permitted and unpermitted sites costs up to £1.1 million⁵. The cost has been estimated on data held by NRW on illegal waste sites. The actual cost of a fire will depend upon the volume and type of waste and could be significantly larger. For example, the cost of dealing with an illegal waste fire at a former tyre factory in Swansea in 2011 was in excess of £1.5 million⁵. This provides an indication of the cost involved in dealing with illegal waste fires and the potential savings that could be made.

In terms of quantifiable benefits, it is possible to produce an estimate of certain environmental and social benefits based on data held by the NRW and EA. Based on a 'typical' illegal waste site, the new powers are expected to result in the following environment and local community benefits:

1. Environment (avoided damage) = £7,200
2. Local communities (avoided disamenity) = £23,600 – £23,800

The total benefit of introducing the new powers is approximately £31,000. Further information on the calculation of the benefits is at Annex A.

There are further non-monetised benefits of introducing these powers which include:

- avoided greenhouse gas emissions and reduced serious pollution and mistreated/abandoned waste;
- protect the environment and local communities affected by waste crime;
- powers act as a deterrent on future non-compliance.

Summary of Costs and Benefits

Option 1 provides NRW with enhanced powers to tackle waste crime in Wales and is expected to result in environmental, economic and social benefits. For this reason, Option 1 is the preferred option. The impact on business, charities or voluntary bodies is between £26,850 and £84,600 which is the cost on landowners from the introduction of these powers. As explained above, these figures are based on NRW/EA data for a 'typical' illegal waste site and the actual cost to landowner could be significantly more depending upon the volume and type of waste found. Other costs incurred by businesses or individuals who do not comply with the law are not included in the summary figures.

Consultation

First consultation

In 2015, the Welsh Government and Defra carried out a joint consultation for 10 weeks on six proposals to give NRW and the Environment Agency powers to tackle waste crime. Over 2,100 organisations in England and Wales including local authorities and representatives of the waste industry and landowners were contacted. Around 112 responses were received by local authorities, individual companies, trade associations, other public bodies (this

⁵ Natural Resources Wales – Waste Crime Review (2017). Available on request from NRW.

includes various fire and rescue services and local authority representative organisations), private individuals, professional bodies, consultancies and non-governmental organisations (NGOs). A majority of respondents (80%) supported all of the six proposals.

Four of the proposals have been enacted in The Environmental Permitting (England and Wales) (Amendment) (No. 3) Regulations 2015 which came into force in October 2015. This instrument implements the remaining two proposals.

(i) Power to restrict access to premises

An overwhelming majority (90%) of those who responded were in favour of allowing the regulators to restrict access to premises (including those operating illegally without a permit). The Government Response to the consultation outlined our approach to engage further with the regulators and other government departments to develop legislation to restrict access and consider the case as to whether the powers being developed should be applied more widely than just waste sites. The proposed power has been widened to a risk of serious pollution created by the deposit, treatment, keeping or disposal of waste. The proposed power will therefore apply at any premises involved in these activities and not just sites engaged in waste management activities.

(ii) Power to give regulators ability to serve notice to remove waste from land

Another overwhelming majority (93%) of those who responded supported the proposal to widen the regulators' ability to require the removal of waste from land. Organisations and individuals based in Wales who responded were unanimously in favour of this proposal. The only caveats came from two trade associations who wanted the enforcement response to be proportionate to the scale of the non-compliance and associated environmental impact particularly when in relation to spreading permitted waste to land. Another trade association wanted the regulator to involve landowners at all stages of the permitting process and that NRW should not be absolved of responsibility when it come to clearing or remediating sites.

The summary of responses to the consultation and the Government response is available at: [Waste crime: improving enforcement powers to reduce persistent non-compliance at waste handling sites](#)

Second consultation

The Welsh Government and Defra undertook a further targeted 4 week engagement between 12 April and 10 May 2017 to those who responded to the first consultation. Views were also sought on getting the balance right between the regulator's ability to restrict access and occupier or owners' rights, the obligations on occupiers and owners and the transition period for the power to remove waste from land.

Eight responses were received comprising three waste management companies, two legal bodies, two professional bodies and one local authority. Around 88% supported the proposals on the two powers. The majority of

those who responded provided useful information and sought further clarity on the use of the powers by the regulators. Other comments were made on:-

- the need for more funding and resources to be directed to tackle waste crime generally;
- the transition period of two months for the power to remove waste being sufficient to allow occupiers and owners time to become aware and understand the proposed changes;
- seeking assurance regulators will act in a proportionate and reasonable manner and clarity on how the two powers would work;
- reinforcing the focus of the regulator on illegal or poorly managed sites only and to have stronger powers to resolve problem sites;
- seeking clarity on costs of clearing sites and on the cleared waste being dealt with properly;
- assurance the regulators will adopt a pragmatic approach and use reasonable efforts to find and pursue occupiers before requiring landowners to clear the waste.

The response to this consultation is available on request from Welsh Government. Feedback was received on costs of implementing these powers, in particular, the estimates of the average administrative and legal consultation costs (which an occupier or owner of the land would incur after being served a notice to remove waste) were considered to be on the low side. The estimates of the average costs in this Impact Assessment have been increased to reflect the input from the responses received.

Competition Assessment

There are no expected detrimental effects on competition as the legislation is aimed specifically to tackle waste crime and poor performing sites in the waste industry. Only those businesses whose activities focus on the treatment, keeping, deposit or disposal of waste will be affected. The numbers for these are expected to be a small fraction of the waste industry.

The competition filter test	
Question	Answer
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 than existing suppliers	No

The competition filter test	
Question	Answer
do not have to meet?	
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

Specific Impacts

Officials have carried out a number of mandatory impact assessments which are available on request:-

- Welsh Language Impact Assessment (WLIA) concluded the powers would not directly impact on the Welsh Language. The regulations, being composite, will be issued in English only.
- Rights of the Child Assessment concluded no identifiable conflict with United Nations Convention on the Rights of the Child and these proposals have no negative impacts on children and young people. These proposals will bring positive action, intended to tackle illegal waste activity which harms the environment and threatens human health;
- Equalities Impact Assessment concluded no impact on Equality Act 2010 and Welsh Government engaged with the relevant stakeholders who provided no response to the consultation;
- Rural Proofing Assessment – the rural proofing screening tool concluded the powers would bring positive benefits in rural areas by reducing the numbers of poor performing and illegal waste sites with associated issues of fly infestations, odour and risk of fires;
- Privacy Impact Assessment concluded there would be no additional data protection issues arising from this regulation.
- Justice Impact Test – signed off by Ministry of Justice and available on request.
- Powers of Entry Gateway form – to enforce a restriction notice or order, NRW will need to enter the premises to secure access, for example entering a waste site to shut and padlock the gates. To do so, they will be

able to rely on the existing power of entry under section 108 of the EA 1995. A Home Office led gateway process has been set up to consider proposals for new/amended/re-enacted powers of entry which has been signed off by Home Office.

Post Implementation Review

The regulators will provide information to Welsh Government on the usage of the powers, in particular, the number of times the powers have been used. We will ask the regulators to assess the use and effectiveness of these powers and inform Welsh Government of their findings.

Annex A - Further information on calculation of costs and benefits

Impact on waste operators

Volume of waste

Using the abandoned sites as a proxy for the volume of waste that will be cleared, NRW/EA estimate the average amount of waste present on abandoned sites is 2,200 tonnes per site and the average split of lawfully or unlawfully deposited waste is 25% (lawful) / 75% (unlawful). This equates to an estimate of 550 tonnes of waste per site that would have been initially lawfully deposited.

Costs of clearing waste

The regulators have estimated the costs to clear waste based on quotes they received in 2015. This is £150 per tonne for non-hazardous wastes, including all costs associated with loading, transport and ultimate disposal at landfill. For inert wastes, the figure used is £45 per tonne if sent to landfill.

The regulators have advised that costs for clearing hazardous waste should not be factored into the calculations. There are a relatively small percentage of sites containing hazardous waste and the quantities of any hazardous waste at these sites are relatively small e.g. only 3% of the 989 illegal waste sites stopped in England and Wales in 2015/16 had hazardous waste recorded as the primary waste type. NRW have also reported that there are currently no known poor performers in the hazardous waste sub-sector in Wales. As the majority of any disposal costs come from landfill tax, the difference between non-hazardous and hazardous is relatively small.

The estimated costs of removing 550 tonnes of initially lawfully deposited waste per site would therefore be:

1. Inert waste: 550 tonnes x £45 = £24,750
2. Non-hazardous waste: 550 tonnes x £150 = £82,500

Costs to business

This power would apply to occupiers (usually waste operator) acting illegally beyond their permitted conditions. Based on the power being applied to occupiers of 2 sites per year, the cost to these non-compliant occupiers from this power would range from £53,700 to £169,200 for waste treatment, including £300 administration and legal costs for an estimated one day (around 7 hours).

1. (2 sites x £24,750) + (2 sites x £2,100) = £53,700
2. (2 sites x £82,500) + (2 sites x £2,100) = £169,200

This power would not be applied to compliant operating businesses. Compliant business will benefit from increased competitiveness in the waste

industry and reduced criminal activity, leading to increased revenue and profits to compliant businesses.

Impact on landowners

NRW estimate that they would use the new power once a year on landowners.

Volume of waste

The volume of waste at abandoned sites, 550 tonnes per site, will also be used as a proxy for the volume of waste that will be cleared.

Costs to clear waste

The costs to clear waste will be as above. Inert waste = £24,750 and non-hazardous waste = £82,500. Based on 1 waste site a year, the cost to the landowners would range between £24,850 and £82,600 including £300 per hour for an estimated one day (around 7 hours) in administration and legal costs.

$$1. (1 \text{ site} \times £24,750) + (1 \text{ site} \times £2,100) = £26,850$$

$$2. (1 \text{ site} \times £82,500) + (1 \text{ site} \times £2,100) = £84,600$$

Costs to business

In this case, waste site landowners could be counted as compliant businesses and cost to the landowners would range between £26,850 and £84,600 (figures rounded up). Landowners should already check that the occupier of the site is acting in accordance with their permit so there would be no further costs on landowners from the new power.

Benefits of introducing the two new powers to the environment and local communities

An Environment Agency report produced by Ricardo on Waste Crime Intervention and Evaluation Project⁶ provided evidence to help calculate the benefits per tonnes of waste which the regulators can require occupiers/owners to clear. Please note that figures have been rounded up.

Power 1: Restrict access to non-compliant site to stop further waste entering the site. NRW estimate one site will be subject to a restriction order and notice. We estimate this power will help prevent the build-up of 2,200 tonnes of waste at a site, which is based on the average amount of waste present on an abandoned site.

$$1. 1 \text{ site} \times 2,200 \text{ tonnes per site} = 2,200 \text{ tonnes}$$

⁶ Environment Agency Technical Report (2016) on the Waste Crime Intervention and Evaluation Project, produced by Ricardo for the Environment Agency. Link:- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/662841/Waste_crime_interventions_and_evaluation_report.pdf

Power 2: Require all waste at sites to be removed. NRW estimate the new powers will be used on three sites and this power will help clear an estimated total of 1,650 tonnes of waste that was initially lawfully deposited:

1. 2 occupier sites + 1 landowner site = 3 sites
2. 3 sites x 550 tonnes per site = 1,650

Environment Benefits

The latest data from Ricardo's report estimates the environmental costs of waste on illegal waste sites is £1.86-£1.88 per tonne⁷. It has been assumed the benefits of avoided environment damage of illegal waste sites are on average £1.87 per tonne.

	Power 1		Power 2	
1. £1.87 x	(2,200	+	1,650)	= £7,200

The total benefit to the environment resulting from removal and restriction tonnages is £7,200 per year.

Local communities

The latest data from the EA and Ricardo's report estimates that the benefits of avoided disamenity per tonne are £6.12 - £6.18⁸. The total benefit to the environment is £23,600 - £23,800.

1. £6.12 x (2,200 + 1,650) = £23,600
2. £6.18 x (2,200 + 1,650) = £23,800

⁷ Study to Estimate the Disamenity Costs of Landfill in Great Britain, Report for DEFRA, February 2003. Available at:- http://webarchive.nationalarchives.gov.uk/20130402151656/http://archive.defra.gov.uk/environment/waste/strategy/legislation/landfill/documents/landfill_disamenity.pdf

⁸ Range is from a study by Enviro Consulting Ltd, and EFTEC (2004). Valuation of the External Costs and Benefits to Health and Environment of Waste Management Options, Report for the Department for Environment, Food and Rural Affairs, December 2004. Available at:- <http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/environment/waste/research/health/pdf/costbenefit-valuation.pdf>

SL(5)180 – The Waste Enforcement (England and Wales) Regulations 2018

Background and Purpose

This instrument amends two Acts of Parliaments to provide powers for regulators to tackle illegal activity in the waste sector which include sites permitted under the Environmental Permitting (England and Wales) Regulations 2016 (“EPR”) or which are exempt from the requirement to have a permit.

The Environment Act 1995 (“EA 1995”) is amended to insert new sections 109A to 109N to give Natural Resources Wales (NRW) the ability to prohibit/restrict access to permitted and illegal waste sites by physical means and to secure premises against access.

The Environmental Protection Act 1990 (“EPA 1990”) is amended to expand powers of NRW (as the Welsh waste regulation authority) and local authorities (as the Welsh waste collection authorities) to issue a notice on occupiers or owners of land, requiring them to undertake specified action on their land in relation to waste unlawfully kept or unlawfully disposed of, including its removal.

Procedure

Affirmative (composite).

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2(ix) in respect of this instrument, in that it is not to be made in both English and Welsh.

This is a composite instrument, meaning it is laid before both the National Assembly for Wales and the UK Parliament. The Explanatory Memorandum accompanying the regulations says that “As this composite instrument is subject to approval by the National Assembly for Wales and by the UK Parliament, it is not considered reasonably practicable for this instrument to be made or laid bilingually.”

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations form part of “EU-derived domestic legislation” under clause 2 of the EU (Withdrawal) Bill (the Bill), therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

With regard to the Waste Directive, that Directive will not automatically form part of domestic law on and after exit day under the Bill. However, where a court or tribunal has recognised, before exit day, that an EU Directive confers a right on an individual that the individual can rely on and enforce in law, then that right will form part of domestic law on and after exit day (see clause 4 of the Bill).

Government Response

No government response is required.





Document is Restricted

Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

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