

Explanatory Memorandum to the Waste (Prescribed Enactments) (Wales) Regulations 2020.

This Explanatory Memorandum has been prepared by the Department of Housing and Local Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Waste (Prescribed Enactments) (Wales) Regulations 2020

Hannah Blythyn
Deputy Minister for Housing and Local Government
17 June 2020

PART 1

1. Description

These Regulations would prevent the holder of an environmental permit, or a person keeping waste on land who is served with a direction by a Welsh Minister to take waste to a specific site or to accept specific wastes, from being liable to prosecution for breaching other enactments.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

The powers of the Secretary of State under section 57 of the Environmental Protection Act 1990 were transferred to the Senedd Cymru and have subsequently been transferred to the Welsh Ministers.

Under section 57(1) of the 1990 Act, the Welsh Ministers may direct the holder of any environmental permit authorising a waste operation to accept and keep, or accept and treat or dispose of, waste at specified places on specified terms.

Under section 57(2) of the 1990 Act, the Welsh Ministers may direct any person who is keeping waste on land to deliver the waste to a specified person on specified terms, with a view to it being treated or disposed of by that person.

Section 57(6) of the 1990 Act allows enactments to be prescribed by Regulations to ensure that a person shall not be guilty of an offence under such enactments by reason of anything done in order to comply with a Direction under section 57.

These Regulations prescribe the following enactments for the purposes of Section 57(6) of the Environmental Protection Act 1990 (defences in the case of complying with a direction);

- Sections 33, 34 and 47 of the Environmental Protection Act 1990,
- Sections 171G, 179, 187, 187A, 216 and 331 of the Town and Country Planning Act 1990,
- Section 23 of the Planning (Hazardous Substances) Act 1990,
- Regulation 65 of the Hazardous Waste (Wales) Regulations 2005,
- Regulation 56 of the Waste Batteries and Accumulators Regulations 2009,
- Parts 5, 8, and 9 of the Waste (England and Wales) Regulations 2011, and
- Regulation 38 of the Environmental Permitting (England and Wales) Regulations 2016.

Section 161 of the Act states that Regulations are subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

The spread of COVID-19 could increase pressures on the management of waste in Wales. Intervention by Welsh Ministers may be required to prevent harm to the environment or public health caused by waste disposal difficulties in the waste sector. Ministers may need to use powers of Direction to require persons to take waste to specific sites and to require those sites to accept those wastes.

The purpose of these Regulations is to prevent those directed from being liable to prosecution for breaching other enactments, by prescribing the relevant enactments in Regulations.

The ability for Ministers to be able direct waste operators will be an important mitigating action in the event of serious issues arising with stockpiling of waste or unauthorised waste disposal. Directions may need to be served on operators that are not responsible for any of the issues caused by the waste, but, who have the facilities/ability to manage wastes in the most appropriate way. It would be unfair for a business that is being directed to help manage wider community problems to be made responsible for any associated breach of legislation. Without the Regulations the possibility of enforcement and prosecution against a company could have a financial and reputational impact on that company. Introducing the Regulations reduces the risk of challenge or non-compliance with a Direction, which will reduce the potential for delays at a time when there may be an urgent need to deal with any waste problems.

The use of a Direction, would be considered in cases of potential risk to human health or the environment or impacts on business and communities. The precise risks would be considered carefully at the time, before a decision to serve a Direction is made.

5. Consultation

The proposed Waste (Prescribed Enactments) (Wales) Regulations 2020 were not consulted on as they do not introduce sufficient changes in policy or impact on businesses or the public that would make consultation necessary. The purpose of the Regulations is to facilitate the use of existing powers and reduce the risk of challenge or failure to comply with a direction. There is no legal consultation requirement.

6. Regulatory Impact Assessment (RIA)

The need for the regulations has been identified as part of the contingency planning for issues that may arise from the spread of Covid-19. Due to the limited time available to prepare the proposed Waste (Prescribed Enactment) (Wales) Regulations 2020 an Impact Assessment has not been produced. No significant, impact on the private, voluntarily or public sector is foreseen. No

substantive policy changes will be created by the legislation. The purpose of the Regulations is to facilitate the use of existing powers and reduce the risk of challenge or failure to comply with any directions.

7. Post implementation review

The Regulations are drafted in such a way that the enactments prescribed only have effect when waste operators are operating under a Direction. A post implementation review period is therefore not required.