

SL(5)643 – The Waste (Wales) (Miscellaneous Amendments) Regulations 2020

Background and Purpose

These Regulations are supplementary to the Waste (Circular Economy) (Amendment) Regulations 2020 (“the UK Regulations”) and are required in order to make a number of consequential amendments to certain Welsh primary and secondary legislation to ensure consistency and to transpose changes introduced by the EU Circular Economy Package (“the CEP”).

These Regulations update references in Welsh legislation to two EU Directives that have been amended as part of the CEP in order to refer to the latest versions of those Directives. They also amend the Hazardous Waste (Wales) Regulations 2005 in order to implement other EU obligations arising from the CEP.

The provision made by these Regulations is equivalent in effect to provision made by the UK Regulations in relation to England-only legislation.

Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.

In regulation 4(7)(a), the quotation marks that denote the wording to be substituted are not in the correct place - the opening quotation mark should precede “Council”, not “for”. Although the reader may be able to infer what is to be substituted, the provision as drafted does not express this clearly.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.



We note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"The, [sic] Welsh, Scottish Northern Ireland and UK governments decided that these measures will be transposed as described in the [joint public statement](#), without a formal consultation, given the changes are relatively minor and technical.

However, a light-touch form of engagement was conducted with key representatives of the landfill and incineration sector across England and Wales. The aim of these discussions was to inform industry of the proposed legislative changes and how they would be implemented, and to seek their views on those changes."

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

The footnote to regulation 5(1) refers to the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011, but it appears to cite the wrong SI number. We assume the reference should be "S.I. 2011/725 (W.152)" [*emphasis added*] not "S.I. 2011/725 (W.154)".

It is accepted that the footnote does not form part of the law. However, if the purpose of its inclusion is to assist a reader, it would be helpful if the reference could be updated to reflect the correct regulations.

Implications arising from exiting the European Union

These Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Welsh Government response

Technical Scrutiny point 1:

While the Welsh Government believes the intention is clear, the point reflects a drafting error, which we will correct at the next suitable opportunity.

Merit Scrutiny point 2:

The point identifies a drafting error, although as noted it does not alter the law. Moreover, insofar as the footnote is provided to assist the reader, we believe this is achieved by the SI number, without danger of serious confusion. Nevertheless, to better assist the reader we will correct at the next suitable opportunity.

Legal Advisers

Legislation, Justice and Constitution Committee

5 November 2020

