

**Explanatory Memorandum to The Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015.**

This Explanatory Memorandum has been prepared by the Department for Natural Resources 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 Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM

Minister for Natural Resources  
3 March 2015

## **1. Description**

These Regulations strengthen existing powers for local authorities and Natural Resources Wales (and the Environment Agency in England) to seize vehicles suspected of involvement in fly-tipping and waste crime. They set out what an authority must do to ensure the safe custody and determine the rightful owner of any seized vehicle or other property, the circumstances in which an authority must return any vehicle or seized property to its rightful owner and the circumstances, in which it can sell, destroy or otherwise dispose of seized property. They also revoke the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (S.I. 1991/1624).

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

The Clean Neighbourhoods and Environment Act 2005 (Commencement No. 6 and Saving) (England and Wales) Order 2015 Order commenced, in so far as they are not already in force in relation to Wales, sections 37 (enforcement powers: which inserts a new section 5 and 5A into the Control of Pollution (Amendment) Act 1989) and 46 (power to search and seize vehicles: which inserts a new section 34B and (C) into the Environmental Protection Act 1990) of the Clean Neighbourhoods and Environment Act 2005 (“the 2005 Act”), which will enable enforcement authorities to seize vehicles for a wider range of suspected offences, if they have reasonable grounds to believe or suspect that an offence has been committed.

The Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015 set out how seized property must be dealt with in England and Wales, where property is seized under section 5 of the Control of Pollution (Amendment) Act 1989 (c. 14) (“the 1989 Act”) (power to require production of authority, stop and search etc.) or section 34B of the Environmental Protection Act 1990 (c. 43) (“the 1990 Act”) (power to search and seize vehicles etc.). The Environment Agency, the Natural Resources Body for Wales, a waste collection authority or local authority in Wales (“a seizure authority”) can seize property under these powers.

On the basis that the issues facing local authorities and Natural Resources Wales (NRW) in dealing with waste crime are the same and some operators work cross-border the proposals will be implemented through composite Regulations with Defra so that local authorities in Wales and NRW have the same enforcement powers as local authorities and Environment Agency in England. This composite SI will apply to Wales and England. Subordinate legislation made by the Welsh Ministers concurrently with Ministers of the UK Government and which is subject to UK Parliamentary will be made in English only.

By virtue of section 8 Control of Pollution Act 1989, and section 161 Environmental Protection Act 1990, regulations made under these Acts are in this instance, subject to negative Assembly procedure.

### **3. Legislative background**

The Welsh Ministers can make the Control of Waste (Dealing with Seized Property) (England and Wales) Regulations, using the powers conferred by sections 5A(2) to (4), 6(1)(c) and (5) to (7) and 8(2) of the Control of Pollution (Amendment) Act 1989 (“the 1989 Act”) and section 34C(2) to (4) of the Environmental Protection Act 1990 (“the 1990 Act”). In relation to Wales, the functions of the Secretary of State conferred by the 1989 and 1990 Acts were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 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. Paragraph 34 of Schedule 11 transfers equivalent to parliamentary procedure to the Assembly, in relation to regulations made under the Environmental Protection Act 1990.

Relevant functions of the Environment Agency under section 5 of the 1989 Act and section 34B of the 1990 Act have been transferred to Natural Resources Wales under the Natural Resources Body for Wales (Functions) Order 2013 so that the NRBW will be designated as the “seizure authority” for the purposes of these regulations.

This Statutory Instrument is subject to annulment by the National Assembly for Wales and follows the negative procedure.

### **4. Purpose & intended effect of the legislation**

Waste crime blights the areas where it occurs, can pose a risk to the environment and human health, and affects the livelihoods of those involved in the legitimate waste management industry. There are the obvious illegal fly-tips that blight our streets and countryside. But often fly-tipping is a result of other crimes involving, for example, breaches of waste controls that are meant to ensure waste is dealt with responsibly and waste being described or treated incorrectly. Many people and businesses are also duped into paying illegal operators who they believe will deal with their waste responsibly but who then dump the waste illegally. More widely, waste crime has been estimated by the Environmental Services Association Education Trust to cost the UK economy £568m per year.

The impacts of waste crime and illegal dumping include:

- a reduction in the quality of local environments;
- cost and aggravation for landowners, and the enforcement authorities who are

left to deal with waste that is dumped illegally;  
pollution of the environment and, sometimes, risks to human health; and  
the legitimate majority of the waste management industry being undermined.

The overall purpose of these additional powers is to simplify the regulatory regime, thereby reducing the number of fly-tipping incidents, breaches of the duty of care, illegal waste sites and unregistered waste carriers. This will reduce costs for enforcement authorities to tackle non-compliant operators, simplify the enforcement process and will be welcomed by the legitimate industry which makes up the vast majority of operators.

The Welsh Government works with Natural Resources Wales (NRW), Keep Wales Tidy, local authorities and landowners on fly-tipping prevention measures, including education campaigns, training and best practice guidance. However, enforcement is an important arm of the overall approach, focussed on those who blatantly and persistently break the law. Local authorities and NRW have a range of powers at their disposal, including statutory notices, fixed penalty notices, prosecution and the power to seize vehicles with a warrant (for limited offences and reasons). While at present some local authorities make occasional use of the existing seizure powers, most are put off by their limited application as well as the cost and bureaucracy surrounding the process. As such, the powers are not as effective as they might be and local authorities and NRW are deprived of a tool which could significantly enhance their enforcement against waste crime.

Local authorities, NRW and the Environment Agency currently have the power to seize a vehicle where they have reasonable grounds to believe that an offence under section 33 of the Environmental Protection Act 1990 (the deposit, treatment or disposal of waste without a permit) has been committed. However, they can only seize a vehicle to ascertain who was using it at the time the offence was committed and must return it once the registered keeper is identified. The seizure process can be slow, expensive and burdensome given that they must obtain a warrant from a magistrate prior to seizing the vehicle and then publish details of the seizure in a local newspaper.

The Clean Neighbourhoods and Environment Act 2005 amended the Control of Pollution (Amendment) Act 1989 and the Environmental Protection Act to broaden the range of offences for which a vehicle can be seized and to remove the need for a warrant to be obtained before seizure.

These new Regulations will allow enforcement authorities to carry out more effective enforcement of waste controls and continue to contribute to a reduction in illegal waste activity. The powers will reduce unnecessary bureaucracy for frontline enforcement authority staff. There will be benefits for enforcement authorities but also for the waste management industry as more effective action to tackle illegal

waste activity will help create a level-playing field for legitimate businesses, especially waste carriers. Benefits will also be passed on to the public sector as a result of a reduction of illegal waste dumping. Magistrates will no longer have to issue a warrant for seizure.

The policy objective is to reduce criminal waste activity. Improving and strengthening existing powers for enforcement authorities to seize vehicles suspected of involvement in waste crime would facilitate investigations, disrupt illegal activity and penalise those involved. We would expect the number of vehicle seizures to increase as a result of the introduction of these revised powers, contributing to a fall in the number of fly-tipping incidents.

The enhanced powers would be seen as part of the tougher approach in tackling waste crime so we can also expect support from business organisations. There are no burdens on waste carriers or other businesses other than those suspected of committing an offence.

## **5. Consultation**

Defra and the Welsh Government held a formal consultation between 13 June and 17 September 2008 on commencing the powers in the Clean Neighbourhoods Act with a view to making regulations that would:-

- broaden the range of waste offences for which a vehicle can be seized by enforcement authorities to include flytipping, operation of an illegal waste site and carrying controlled waste while unauthorised to do so;

- remove the need for a warrant before seizure to reduce the cost and complexity of the system and enable an authority to react more quickly to a suspected offence;

- further reduce costs by allowing an authority to publish a notice of seizure in a local newspaper or on its website, rather than the mandatory newspaper advert at present;

- allow local authorities to retain a seized vehicle for up to 15 days and the Environment Agency up to 30 days; and

- introduce strict controls on how and when a vehicle must be returned to its rightful keeper.

The consultation revealed widespread support for these measures from both the business community and enforcement bodies. The vast majority of respondents supported the introduction of measures to support what they felt would be more effective powers to tackle waste crime.

Following the consultation in 2008, there was a change in UK Government at Ministerial level leading to a review of the proposed changes in Defra which resulted

in the October 2009 commencement order date being missed and the proposals being mothballed.

This work was later picked up and these proposals were then subject to a joint 7 week consultation with Welsh Government and Defra from 15 December 2014 to 3 February 2015. The consultation sought views on proposals to commence powers to help enforcement authorities to disrupt and prevent illegal waste activities more effectively than at present, reducing the impact of waste crime on the environment, while helping to bring about a level playing field for the legitimate waste industry and encouraging growth through investment.

There were 15 responses to the consultation in Wales broken down as follows: 5 (33%) from local authorities, 5 (33%) from professional bodies, 2 (13%) from private businesses), 2 (13%) from Individuals and 1 (7%) from a charity. Organisations who responded included Keep Wales Tidy, Institution of Civil Engineers Wales Cymru, National Farmers Union Cymru, Chartered Institute of Waste management (CIWM), Country Land and Business Association (CLA) and UK Environmental Law Association (Wales). The consultation was primarily aimed at enforcement authorities. As a result many of those who responded felt it inappropriate to comment on many of the questions and restricted themselves to general comments and or answering some of the questions.

Overall there was near unanimous support for the proposed changes although business and some professional bodies had some concerns about the potential negative impacts on business (legitimate or otherwise) and the balance of enforcement in favour of government agencies/LA's (i.e. a level playing field) and large businesses (i.e. LA owned large employer or not for profit utility company). The rest, although supportive of the changes provided some caveats and additional advice. These included:

- raising awareness (i.e. a communications campaign) of responsibilities to existing duties particularly to householders and to raise awareness of these changes.

- guidance on these regulations to explain in more detail rights and responsibilities when using these powers.

- additional finance (for local authorities) for implementing these powers due to perceived extra running costs/administrative burdens.

There were a number of issues raised in the responses which we have considered further with Defra and some additional changes to the Regulations which address these concerns have been proposed. These are:-

amend Regulation 8 so that the publication period in a newspaper and on a website ends 15 working days after the date of the seizure notice. This is to take into account the difference between the publication period of the seizure notice in a newspaper and on a website.

ensure that an extended retention period (of 30 days) for seized vehicles be available to NRW (and 15 days for local authorities);

amend the definition of “net proceeds of sale” in Regulation 25 to ensure that, where the owner of the property makes a valid claim after its sale, the enforcement authority is only required to return the sale proceeds after the deduction of any costs incurred as a result of the sale.

produce a guidance document for enforcement authorities explaining in more detail their rights and responsibilities when exercising these powers and raise awareness of the enhanced powers to ensure that they act as a deterrent for possible offenders.

## **6. Regulatory Impact Assessment (RIA)**

Use of the powers provided by the Regulations will be undertaken by Natural Resources Wales (NRW) in relation to Wales (acting as a regulation authority under section 5 of the 1989 Act) and by waste collection authorities (where acting as an enforcement authority under section 34 B of the 1990 Act). The proposal will not result in any costs to legitimate businesses and will result in long term cost savings in relation to reduced fly-tipping incidents and other waste crime. It is presumed that NRW and local authorities acting as the seizure authority will seek to recover their full costs in successful prosecutions made against environmental offenders. The full costs would include the seizure authority’s investigation and enforcement costs and any costs associated with the seizure of the vehicles. Following the consultation, Regulation 25 amends the definition of “net proceeds of sale” to ensure that, where the owner of the property makes a valid claim after its sale, the enforcement authority is only required to return the sale proceeds after the deduction of any costs incurred (as well as after the deduction of any costs of the seizure and retention of the property).

Because there were no costs to legitimate business and the costs resulting from this policy on business would be less than £1m per annum Defra were not required to prepare a full Impact Assessment. An impact of the costs to Wales has been attached at Annex A. An impact of the costs to the Justice system has been prepared by Defra in a Regulatory Triage Assessment (available on request). Whilst there are additional costs to Local authorities if they choose to use these new powers, there will be a reduction in the costs to them of dealing with the clear up of fly-tipping. For example in Wales during 2013/14 there were 32,934 incidents of fly-tipping reported by local authorities costing Welsh taxpayers an estimated £1.8m to clear up.

## **ANNEX A**

### **Costs and benefits to enforcement authorities**

If, as expected, the reduced burden of seizing a vehicle leads enforcement authorities to seize more vehicles, they may incur an additional cost. Enforcement authorities will only do this where necessary to aid investigation of suspected offences and if they believe it represents good value for money (for instance, by reducing the clean-up costs associated with fly-tipping, which is discussed below), so an assessment of the scale of this additional cost has not been included

The overall purpose of these additional powers is to simplify the regulatory regime, thereby reducing the number of fly-tipping incidents, breaches of the duty of care, illegal waste sites and unregistered waste carriers. This will reduce costs for enforcement authorities to tackle non-compliant operators, simplify the enforcement process and will be welcomed by the legitimate industry which makes up the vast majority of operators.

After discussions with a number of local authorities, it is assumed that there will be a reduction in the number of fly-tipping incidents of 2% - 5%, which will mean a reduction in clean-up and enforcement costs to enforcement authorities. In the financial year 2013/14 local authorities in Wales spent £1.8 million on removing fly-tipped waste. These figures do not take account of fly-tipping on private land which has been estimated to cost £50 – 150 million (£2.5 - £7.5 million in Wales) to clear up each year across the UK (the Wales figures are approximations and improving data collection to understand the true scale of the problem will be a major part of implementing the Welsh Government's strategy for tackling fly-tipping). If as a direct result of these measures fly-tipping was to reduce by as little as 2% per year, this would result in a saving to local authorities in Wales of around £180,000 present value over 5 years. If there were a similar reduction of fly-tipping incidents on private land, we expect there would also be a comparable saving in that regard.

The most notable benefit for enforcement authorities would be the reduction in clearance costs of fly-tipping, although this would have to be balanced against any additional enforcement costs.

The Regulations will enhance the current regime by simplifying the process in a bid to reduce costs and make it a more feasible enforcement option for enforcement authorities. The Regulations will also remove a small burden on HM Courts and Tribunals Service by abolishing the need for a warrant for seizure, resulting in cost savings as regards magistrate and clerk time. It is estimated that this proposal would give a cost saving for local authorities, the Environment Agency and Natural Resources Wales of £496.70 for each vehicle seizure and a time saving of 4 hours (a reduction of 31% in costs and 31% in time from current administrative levels).



A comparison of the current and proposed regimes is set out in the table below. Enforcement will not always require the completion of all the processes detailed below when conducting a seizure but the table is a good representation of the average saving in costs and time per seized vehicle as a result of the new processes.

**TABLE 1: PROCESS OF VEHICLE SEIZURE AND STORAGE WITH ASSOCIATED TIME AND COST<sup>1</sup>**

(Changes between current and new processes are highlighted in the shaded cells)

Vehicle Seizure Process	Current Time	Current Costs	New Time	New Cost
Decision on whether vehicle should be seized	2 hrs	£71.32	2 hrs	£71.32
Taking of witness / suspect statements	2 hrs	£71.32	2 hrs	£71.32
Driver vehicle licensing agency (DVLA) check	0.5 hrs	£17.83	0.5 hrs	£17.83
Preparations for requesting a warrant	2 hrs	£71.32	Not required	Not required
Court appearance to obtain warrant	3 hrs	£106.98	Not required	Not required
Searching for vehicle on police national computer	0.5 hrs	£17.83	0.5 hrs	£17.83
Police attendance at scene of seizure	2 hrs	£71.32	2 hrs	£71.32
Seized vehicle pick up and transport to storage		£230.62		£230.62
Possible disposal of waste if vehicle is loaded		£118.33		£118.33
Vehicles storage	Up to 28 days	£153.80	Up to 38 days <sup>2</sup>	£208.73
Vehicle storage for driver identification / investigation	3 days	£16.50	3 days	£16.50
Publication of notice in local paper		£373.33	Not required	Not required
Notification of seizure/destruction	1 hr	£35.66	1 hr	£35.66
Vehicle transport to final destination		£246.66		£246.66
<b>Total</b>	13 hrs	£1,602.82	9 hrs	£1,106.12
<b>Cost and time saving</b>			<b>4 HRS</b>	<b>£496.70</b>

<sup>1</sup> These are based on consultation with the enforcement authorities. The assumption is that the time and costs will be the same for a local authority, the Environment Agency and Natural Resources Wales (£35.66 / hour). These costs will differ according to the size of vehicle seized i.e. a tipper lorry will cost more to seize than a car. However, for the purposes of this table, estimates are for a vehicle the size of a transit van, a good representative proxy for the average costs incurred by a local authority.

<sup>2</sup> Includes retention period - 15 working days; determination period – 3 working days; and collection period 10 working days.