

## **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 million<sup>1</sup> 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

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<sup>1</sup> 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 2015<sup>2</sup>. 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 operating<sup>3</sup>. 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.

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<sup>2</sup> Natural Resources Wales - Annual Regulation report 2016. Available on request from NRW.

<sup>3</sup> 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 inert<sup>4</sup> 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.

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<sup>4</sup> 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 million<sup>5</sup>. 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 million<sup>5</sup>. 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

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<sup>5</sup> 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
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> 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?	
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> 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 Project<sup>6</sup> 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.

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

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<sup>6</sup> 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](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 tonne<sup>7</sup>. It has been assumed the benefits of avoided environment damage of illegal waste sites are on average £1.87 per tonne.

$$1. \quad \text{£1.87} \times \begin{array}{c} \text{Power 1} \\ (2,200) \end{array} + \begin{array}{c} \text{Power 2} \\ 1,650) \end{array} = \text{£7,200}$$

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 - £6.18<sup>8</sup>. 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

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<sup>7</sup> 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](http://webarchive.nationalarchives.gov.uk/20130402151656/http://archive.defra.gov.uk/environment/waste/strategy/legislation/landfill/documents/landfill_disamenity.pdf)

<sup>8</sup> 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>