

SL(5)467 – The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019

Background and Purpose

This Order (the '2019 Order') amends article 21 of The Sustainable Drainage (Enforcement) (Wales) Order 2018 (S.I. 2018/1182) (W. 241) (the '2018 Order') to provide for an unlimited fine where an offence of failure to comply with a notice, (as set out in article 21) is committed.

Procedure

Affirmative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

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

Article 21 of the 2018 Regulations provides for an offence of failure to comply with a notice. This may relate to a temporary stop notice, an enforcement notice, or a stop notice. This is, currently, subject to a fine not exceeding £20,000. The 2019 Order seeks to amend this to provide for an unlimited fine in relation to this offence.

Article 22 of the 2018 Regulations provides for an offence of obstruction. This is subject to a fine not exceeding level 3 on the standard scale. The 2019 Order does not seek to amend the amount of the fine in article 22.

The Explanatory Memorandum is not as clear as it might be. In paragraph 4.1 it states that article 21 limits the fines that can be passed in a case "for the offence of failing to comply with a temporary stop notice, enforcement notice or stop notice to a maximum of £20,000". This is correct and a clear explanation. However, it states at paragraph 4.3 that the 2019 Order will amend the 2018 Order to "...provide for an unlimited fine for each offence set out within that Order...". However, no changes have been made to the fine in respect of the article 22 offence, and so the changes will only provide an unlimited fine for each offence set out within article 21 of the 2018 Order. As such, this explanation could mislead the reader into thinking that an article 22 offence will now be subject to an unlimited fine.

The Explanatory Note to the 2019 Order also states that it will amend the 2018 Order "...to provide for an unlimited fine for each offence set out within that Order..." without noting that the amendments relate to an offence under article 21 only.



Implications arising from exiting the European Union

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

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

13 November 2019

