

Explanatory Memorandum to The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

5 November 2019

1. Description

1.1 Schedule 3 of the Flood and Water Management Act 2010 (the 2010 Act) relates to provisions for sustainable drainage (SuDS). These include the establishment of a SuDS Approving Body (SAB) to be set up within the local authority alongside their lead local flood authority (LLFA) duty. SAB approval will be required before construction of drainage systems can commence on new and redeveloped sites.

1.2 The Sustainable Drainage (Enforcement) (Wales) Order 2018 (“the 2018 Order”) provides for the enforcement of breach of the approval required (“the requirement for approval”) under paragraph 7(1) of Schedule 3 to the 2010 Act in relation to drainage systems for construction work.

1.3 Article 21 of the 2018 Order provides for an offence of failure to comply with a temporary stop notice, enforcement notice or stop notice.

1.4 The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019 amends the financial limit of the fine on summary conviction in order to bring the offences into line with the availability of unlimited fines to Magistrates’ Courts brought about by Legal Aid Sentencing and Punishment of Offenders Act 2012

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

2.1 None.

3. Legislative background

3.1 This order is made exercising the powers conferred by sections 32 and 48(2) of, and paragraphs 4(a) and 14 of Schedule 3 to, the Flood and Water Management Act 2010.

3.2 In accordance with paragraph 14(5)(b) of Schedule 3 to that Act this instrument follows the Assembly’s affirmative procedure.

4. Purpose and intended effect of the legislation

4.1 Article 21 of the 2018 Order limits the fines that can be passed in a summary case for the offence of failing to comply with a temporary stop notice, enforcement notice or stop notice to a maximum of £20,000.

4.2 The 2018 Order was drafted before s.85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) commenced but was not put into force until after the commencement and so was not caught by that provision. LASPO removed the upper limit on fines that Magistrates’ Courts could pass for almost all offences.

4.3 In order to provide consistency with other offences of a similar nature, this Order amends The Sustainable Drainage (Enforcement) (Wales) Order 2018 in order to

provide for an unlimited fine for each offence set out within that Order. This amendment means the Magistrates' Court would be able to pass an unlimited fine and is consistent with the wording which led from the amendments to other legislation made by LASPO.

5. Consultation

5.1 As the Order provides a technical amendment which does not reflect a change in the Welsh Government's policy, a formal public consultation did not take place.

6. Regulatory Impact Assessment (RIA)

6.1 As a result of the negligible impact of the amendment to the 2018 Order on services in Wales, a regulatory impact assessment has not been undertaken.

7. Competition Assessment

7.1 Not applicable

8. Post implementation review

8.1 Not applicable