

**Explanatory Memorandum to The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2020**

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'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 2020.

Lesley Griffiths

**Minister for Environment, Energy and Rural Affairs**

14 January 2020

## **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 2020 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.

1.5 The amendment does not increase the level of fine that can be imposed for these offences but will affect the Magistrates’ Court’s decision as to whether its sentencing powers are sufficient to pass sentence itself or to send the case to be sentenced in the Crown Court which has the power to pass an unlimited fine (the Crown Court retains its power to impose unlimited fines for these offences). Cases can still be sent to the Crown Court in accordance with the relevant guidelines made by the Sentencing Guidelines Council if appropriate.

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

2.1 This order replaces the draft The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019 which, although approved by the National Assembly for Wales, was not made as it could not be brought into force due to a drafting error.

## **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 the offences set out within article 21 of that Order when being dealt in the Magistrates' Court. This amendment means the Magistrates' Court would be able to pass an unlimited fine so has power to sentence a greater range of cases. The amendment is consistent with the wording inserted into other legislation 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 and does not increase sentencing levels, 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