

SL(5)180 – The Waste Enforcement (England and Wales) Regulations 2018

Background and Purpose

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.

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.

Procedure

Affirmative (composite).

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2(ix) in respect of this instrument, in that it is not to be made in both English and Welsh.

This is a composite instrument, meaning it is laid before both the National Assembly for Wales and the UK Parliament. The Explanatory Memorandum accompanying the regulations says that “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.”

Merits Scrutiny

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

Implications arising from exiting the European Union

These Regulations form part of “EU-derived domestic legislation” under clause 2 of the EU (Withdrawal) Bill (the Bill), therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

With regard to the Waste Directive, that Directive will not automatically form part of domestic law on and after exit day under the Bill. However, where a court or tribunal has recognised, before exit day, that an EU Directive confers a right on an individual that the individual can rely on and enforce in law, then that right will form part of domestic law on and after exit day (see clause 4 of the Bill).

Government Response

No government response is required.



Committee Consideration

The Committee considered the instrument at its meeting on 5 February 2018 and reports to the Assembly in line with the technical point above.

