

SL(5)560 – The Waste (Prescribed Enactments) (Wales) Regulations 2020

Background and Purpose

Intervention by Welsh Ministers may be required to prevent harm to the environment or public health caused by waste disposal difficulties in the waste sector due to the spread of COVID-19. To deal with this, Welsh Ministers may need to use powers of Direction to require persons to take waste to specific sites and to require those sites to accept those wastes.

Under section 57(1) of the Environmental Protection Act 1990, the Welsh Ministers may direct the holder of any environmental permit authorising a waste operation to accept and keep, or accept and treat or dispose of, waste at specified places on specified terms.

Under section 57(2) of the 1990 Act, the Welsh Ministers may direct any person who is keeping waste on land to deliver the waste to a specified person on specified terms, with a view to it being treated or disposed of by that person.

Section 57(6) of the 1990 Act allows enactments to be prescribed by Regulations to ensure that a person shall not be guilty of an offence under such enactments by reason of anything done in order to comply with a Direction under section 57.

These Regulations prescribe the following enactments for the purposes of Section 57(6) of the Environmental Protection Act 1990 (defences in the case of complying with a direction):

- Sections 33, 34 and 47 of the Environmental Protection Act 1990,
- Sections 171G, 179, 187, 187A, 216 and 331 of the Town and Country Planning Act 1990,
- Section 23 of the Planning (Hazardous Substances) Act 1990,
- Regulation 65 of the Hazardous Waste (Wales) Regulations 2005,
- Regulation 56 of the Waste Batteries and Accumulators Regulations 2009,
- Parts 5, 8, and 9 of the Waste (England and Wales) Regulations 2011, and
- Regulation 38 of the Environmental Permitting (England and Wales) Regulations 2016.

Procedure

Negative.

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.

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



The Committee notes that no consultation or regulatory impact assessment was carried out in respect of these Regulations, and notes also the explanations set out in the Explanatory Memorandum:

“The proposed Waste (Prescribed Enactments) (Wales) Regulations 2020 were not consulted on as they do not introduce sufficient changes in policy or impact on businesses or the public that would make consultation necessary. The purpose of the Regulations is to facilitate the use of existing powers and reduce the risk of challenge or failure to comply with a direction. There is no legal consultation requirement.” And:

“The need for the regulations has been identified as part of the contingency planning for issues that may arise from the spread of Covid-19. Due to the limited time available to prepare the proposed Waste (Prescribed Enactment) (Wales) Regulations 2020 an Impact Assessment has not been produced. No significant, impact on the private, voluntarily or public sector is foreseen. No substantive policy changes will be created by the legislation. The purpose of the Regulations is to facilitate the use of existing powers and reduce the risk of challenge or failure to comply with any directions.”

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 Welsh Government response is not required.

Committee Consideration

The Committee considered the instrument at its meeting on 6 July 2020 and reports to the Senedd in line with the reporting point above.

