

*Draft Regulations laid before the National Assembly for Wales on 7 March 2011 under section 20(3) of the Waste (Wales) Measure 2010, for approval by resolution of the National Assembly for Wales.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2011 No. (W.)**

**ENVIRONMENTAL  
PROTECTION, WALES**

**The Recycling, Preparation for Re-  
use and Composting Targets  
(Monitoring and Penalties) (Wales)  
Regulations 2011**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

Section 3 of The Waste (Wales) Measure 2010 (“the Measure”) establishes statutory targets for the percentage of a local authority’s municipal waste which must be recycled, prepared for re-use and composted (“the targets”). The Measure imposes liability on a local authority to a financial penalty if it fails to meet a target.

These Regulations supplement the Measure, by making detailed provision for the monitoring and enforcement of the targets.

Part 2 of these Regulations concerns monitoring.

Regulation 3 appoints the Environment Agency as the monitoring authority for the targets.

Regulation 4 requires a local authority to collect information and to maintain records about municipal waste.

Regulation 5 requires a local authority to submit returns using the WasteDataFlow system, containing all the information it is required to collect and record under regulation 4.

Regulation 6 provides a power to the Welsh Ministers and the monitoring authority to, by notice, require further information from a local authority.

Regulation 7 requires the monitoring authority to validate the information supplied to it by local authorities.

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Regulation 8 requires the monitoring authority to provide the information it has obtained in the course of exercising its functions under regulation 3 to the Welsh Ministers to allow them to assess compliance with the targets. It also requires the monitoring authority to prepare a report for the Welsh Ministers.

Part 3 of these Regulations concerns penalties.

Regulation 9 allows the Welsh Ministers to waive a penalty.

Regulation 10 sets the amount of financial penalty that a local authority is liable to if it does not comply with the obligation set out in section 3(2) of the Measure.

Regulation 11 sets the amount of financial penalty that a local authority is liable to if it fails to comply with requirements under these Regulations.

Regulation 12 makes general provision about penalties.

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**The Recycling, Preparation for Re-  
use and Composting Targets  
(Monitoring and Penalties) (Wales)  
Regulations 2011**

*Laid in draft before the National Assembly for  
Wales* *7 March 2011*

*Made*

*Coming into force* *30 March 2011*

The Welsh Ministers make the following regulations in exercise of the powers conferred upon them by sections 5(1), 6(2), and 19(1) and (2) of the Waste (Wales) Measure 2010<sup>(1)</sup>.

The Welsh Ministers have consulted those persons which they are required, by section 8(1) of that Measure, to consult.

*A draft of these Regulations has been laid before, and approved by a resolution of the National Assembly for Wales in accordance with section 20(3) of the Waste (Wales) Measure 2010.*

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(1) 2010 nawm 8

## PART 1

### General

#### **Title, application and commencement**

1. The title of these Regulations is The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011; they apply in relation to Wales and come into force on 30 March 2011.

#### **Interpretation**

2.—(1) In these Regulations—

“the Measure” (*“y Mesur”*) means the Waste (Wales) Measure 2010;

“the targets” (*“y targedau”*) means the recycling, preparation for re-use and composting targets specified in section 3(3) of the Measure;

“the Waste Framework Directive” (*“y Gyfarwydddeb Fframwaith Gwastraff”*) means Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives<sup>(1)</sup>;

“the WasteDataFlow system” (*“y system WasteDataFlow”*) means the web-based system for the reporting of municipal waste maintained and operated in Wales by the Environment Agency; and

“waste facility” (*“cyfleuster gwastraff”*) means a facility for the disposal or recovery of waste. For the purposes of this definition, “disposal” and “recovery” have the same meaning as in Article 3(15) and (19) of the Waste Framework Directive.

(2) In these Regulations—

- (a) references to an amount of a local authority’s municipal waste are references to an amount of waste by tonnage; and
- (b) references to waste being sent by a local authority to a waste facility are to include references to waste being sent to such a facility in pursuance of arrangements made by the local authority.

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(1) OJ No L 312, 22.11.2008, p.3.

## PART 2

### Monitoring

#### **Monitoring authority**

**3.**—(1) The Environment Agency is the monitoring authority for the purposes of the targets.

(2) The monitoring authority must—

- (a) monitor the performance of local authorities with respect to the targets;
- (b) monitor the performance of local authorities in complying with their obligations under these Regulations;
- (c) in accordance with regulation 7, validate the information that is entered by local authorities on the WasteDataFlow system; and
- (d) without delay notify the Welsh Ministers, in writing, of any case where it appears to the monitoring authority that a local authority<sup>(1)</sup> is or may be liable to a penalty under section 3(7) of the Measure or under these Regulations.

#### **Obligation for local authorities to collect information and maintain records**

**4.**—(1) A local authority must make arrangements for the collection of information that will allow the authority to comply with its requirements to maintain records under this regulation.

(2) A local authority must maintain records containing the following information for each target financial year and each subsequent financial year until the next target financial year<sup>(2)</sup>—

- (a) the total amount of its municipal waste<sup>(3)</sup>;
- (b) the total amount of municipal waste sent to each and every waste facility by the local authority;

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(1) A local authority is defined in section 17(1) of the Waste (Wales) Measure 2010 as a county or county borough council in Wales.

(2) The target financial years are set out in section 3(3) of the Measure. Financial year is defined in section 3(9) of the Measure as meaning a period of 12 months ending on 31 March.

(3) A local authority's municipal waste is defined in section 3(8) of the Measure as the total amount by weight of each of the following: all the waste collected in that year by a local authority under section 45 of the Environmental Protection Act 1990 (c.43); all waste deposited in that year at places provided by a local authority under subsections (1)(b) and (3) of section 51 of that Act; and such other waste as may be specified by order of the Welsh Ministers.

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- (c) the amount of material rejected at each successive stage of sorting of the municipal waste, at any and all waste facilities; and
- (d) the amount of material rejected under paragraph (c) that is disposed of by the local authority, or by a waste facility.

(3) The record must contain details of—

- (a) the description of the waste in terms of its material type;
- (b) how each material type was collected; and
- (c) if an agent of the local authority collected the waste, the name of that agent.

(4) The records must be kept for a period of three years beginning on the day they are first submitted using the WasteDataFlow system in accordance with regulation 5(2).

(5) A local authority may maintain the records required by paragraph (2) in electronic form if the text is capable of being produced by the local authority in a visible and legible documentary form.

(6) A local authority that fails to maintain the records required by paragraph (2) is liable to a penalty.

(7) In this regulation, “sorting” means the act of separating individual recyclable materials from an amount of mixed waste or mixed materials.

(8) In this regulation, municipal waste is “disposed of” when it undergoes a disposal operation of a type that is identified in Annex I of the Waste Framework Directive.

### **Obligation for local authorities to provide information**

5.—(1) During each target financial year and each subsequent financial year until the next target financial year, a local authority must submit to the monitoring authority returns containing all the information listed in regulations 4(2) and (3) (“the information”).

(2) Each return must—

- (a) contain the information for the relevant 3 month period;
- (b) be made within one calendar month of the end of the relevant 3 month period; and
- (c) be submitted using the WasteDataFlow system.

(3) The relevant 3 months periods are—

- (a) 1 April to 30 June;
- (b) 1 July to 30 September;
- (c) 1 October to 31 December;

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(d) 1 January to 31 March.

(4) A local authority that fails to submit a return in accordance with this regulation is liable to a penalty.

### **Power to require information**

**6.**—(1) The Welsh Ministers, or the monitoring authority, may by notice served on a local authority, require that authority to—

- (a) produce for inspection, or for the removal for inspection elsewhere, any of the records that are required to be maintained under regulation 4;
- (b) supply information about or evidence as to matters connected with the local authority's obligation to meet the targets and its obligations under these Regulations;

(2) A local authority must comply with a notice served under paragraph (1) in the form and within such reasonable time as is specified in the notice.

(3) Any notice served under this regulation must be in writing.

(4) A local authority that fails to comply with the requirements of a notice is liable to a penalty.

### **Validation by the monitoring authority**

**7.**—(1) Within three months of the date required of a local authority to have submitted a return under regulation 5(2)(b), the monitoring authority must complete a validation of the information submitted by the local authority on the WasteDataFlow system.

(2) If a local authority fails to submit a return in accordance with the timescale specified in regulation 5(2)(b), the monitoring authority must complete a validation of the information submitted by the local authority on the WasteDataFlow system within three months of the date on which the return is submitted.

(3) In this regulation “validation” means—

- (a) a check that all local authorities have submitted data in accordance with their obligation to provide information under regulation 5; and
- (b) a reconciliation of any inaccurate or inconsistent data that has been submitted.

### **Assessment of compliance with the targets**

**8.**—(1) Within five calendar months of the end of each target financial year, and each subsequent financial year until the next target financial year, the

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monitoring authority must provide to the Welsh Ministers—

- (a) its monitoring information; and
- (b) a report containing the information set out in paragraph (3).

(2) The monitoring information and the report must contain information covering the last financial year.

(3) The report must contain the following information—

- (a) the total amount of municipal waste arising for each local authority;
- (b) the total amount of municipal waste validated by the monitoring authority that has been recycled, prepared for re-use, and composted;
- (c) the recycling, preparation for re-use and composting rates for each local authority;
- (d) the difference between the target amount for recycling, preparation for re-use and composting rates and the actual rate achieved by each local authority; and
- (e) the difference between the target amount for recycling, preparation for re-use and composting rates and the actual rate achieved by all the local authorities, taken as a whole.

(4) In this regulation “monitoring information” means the information or evidence acquired by the monitoring authority in carrying out its functions under regulation 3(2).

## PART 3

### Penalties

#### **Penalties: waiver**

**9.** Where a local authority is liable to a penalty under section 3(7) of the Measure or under these Regulations, the Welsh Ministers may either waive the penalty, or assess the amount due by way of penalty and notify the local authority accordingly.

#### **Penalties: failure to meet a target**

**10.** The amount of financial penalty to which a local authority is liable under section 3(7) of the Measure is £200 per tonne by which a local authority falls short of the target amount.



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**Penalties: failure to comply with requirements of Part 2**

**11.** A local authority is liable to a penalty of £1000 when it—

- (a) fails to maintain records in accordance with regulation 4;
- (b) fails to submit a return in accordance with regulation 5;
- (c) fails to comply with the requirements of a notice served under regulation 6.

**Penalties: general**

**12.—(1)** Any penalty imposed by the Welsh Ministers is due one month after the date on which the local authority is notified by the Welsh Ministers of the amount of the penalty.

(2) Where a local authority is liable to a penalty and does not pay the penalty by the date upon which it is due under paragraph (1), the local authority is liable to pay interest on the penalty for the period which—

- (a) begins on the date under paragraph (1); and
- (b) ends on the day before the date on which a penalty assessed is paid.

(3) Interest under this regulation is payable at a rate of one percentage point above the LIBOR on a day to day basis.

(4) For the purposes of paragraph (3), “LIBOR” means the sterling three month London interbank offered rate in force during the period between the date on which the penalty becomes due and the day before the date on which the penalty is paid to the Welsh Ministers.

(5) Where a penalty has been assessed and notified to a local authority, the penalty and any interest incurred is recoverable as a civil debt.

(6) For the purposes of this regulation, references to penalties include references to interest when payable.

Minister for Environment, Sustainability and Housing,  
one of the Welsh Ministers  
Date