

# ENVIRONMENT (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4 – Collection and Disposal of Waste**

243. **Part 4** of the Act is concerned with the collection and disposal of waste, and makes provision for requiring source segregation and separate collection of waste, banning the incineration of waste and banning the disposal of food waste to sewer from non-domestic premises. The purpose of the provisions is to promote increased separation of different types of waste, and prohibit certain forms of disposal of recoverable types of waste.

#### ***Section 65 - Requirements relating to separate collection etc. of waste***

244. Section 45 of the [Environmental Protection Act 1990 \(c 43\)](#) requires local authorities in Wales to arrange to collect household waste and, on request, commercial waste produced in their area. The local authority either fulfils this function using its own resources, or arranges with a private contractor to carry out the function on its behalf. Commercial and industrial waste not falling within the local authority duties in section 45 is collected by private contractors by way of individual contract with the waste producer. Collectively, household, commercial and industrial waste is referred to in that Act, as “controlled waste”<sup>1</sup>.

245. In addition to the requirements of section 45 of the Environmental Protection Act 1990, waste collectors must comply with the requirements of regulations 13 and 14 of the [Waste \(England and Wales\) Regulations 2011 \[S.I. 2011/988\]](#), which transpose in part, EU Directive [2008/98/EC](#) (the Waste Framework Directive). The regulations require that from 1 January 2015, subject to certain provisions, waste collectors must separately collect at least paper, metal, plastic and glass, and keep those materials separate after collection.

246. Against this background, section 65 inserts a new section 45AA (“Wales: separate collection etc. of waste”) into the Environmental Protection Act 1990. The purpose of the provisions in the new section, is to provide the Welsh Ministers with powers to extend the range of types of waste to be separately collected, and to specify the steps that must be taken to achieve increased separation of waste types.

247. In section 45AA, subsections (1) and (2) are concerned with separate collection of different waste materials. Subsection (1) applies to local authorities exercising their functions under section 45, to make arrangements for collection of controlled waste in their area, for example, with a private contractor. It requires the local authority to ensure that the collection of waste under the arrangements is consistent with applicable separation requirements.

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<sup>1</sup> “The terms “household, commercial, industrial and controlled” waste are defined in section 75 of the Environmental Protection Act 1990

*These notes refer to the Environment (Wales) Act 2016  
(c.3) which received Royal Assent on 21 March 2016*

248. Subsection (6) confers a power on the Welsh Ministers to specify separation requirements in regulations, and subsection (7) confers a related power, to specify the circumstances in which such requirements apply. The nature of separation requirements is defined in subsection (6). For example, the Welsh Ministers may specify in regulations which materials should be presented and collected separately and how the wastes should be kept separate from each other once collected. This could include specifying the level of segregation of different waste materials that may be required under different circumstances.
249. Subsection (2) applies an equivalent duty to those who actually collect, keep, treat or transport controlled waste. The duty to act in accordance with applicable separation requirements is intended to apply at all stages in the waste chain, from production of the waste, to final treatment or disposal. It will affect those, including local authorities, who collect, receive or store waste, those carriers who transport waste, and reprocessors, for example, recyclers, who treat waste. The duty does not apply to individuals who are not acting in the course of a business. “Acting in the course of a business” is defined in subsection (3).
250. Subsection (10)(a) confers a power on the Welsh Ministers in regulations, to make the duty in subsections (1) and (2) subject to exceptions. This power, in conjunction with the general power in subsection (11) to make different provision different purposes, cases or areas, will allow the Welsh Ministers to take account of the wide range of circumstances in which these provisions will apply.
251. Subsection (4) complements the requirements in subsections (1) and (2), by imposing a duty to act in accordance with applicable separation requirements on certain categories of waste producers, when presenting waste for collection. This provision requires occupiers of premises, other than householders, to present controlled waste for collection in accordance with applicable separation requirements. Such requirements may for example, include specifying types of recyclable waste materials that must be presented separately for collection.
252. Subsection (5) contains exceptions to the duty in subsection (4). The duty will not apply to occupiers of domestic households or caravans. Subsection (10)(b) provides a power for the Welsh Ministers to make subsection (4) apply subject to exceptions in addition to those in subsection (5). This will permit the Welsh Ministers to adapt the application of the duty in subsection (4) to future changes in waste collection policy.
253. Subsection (8) makes it an offence to fail to comply without a reasonable excuse, with the duty in subsection (2) or (4). By subsection (9), such offences are either-way offences; triable summarily in the Magistrates Court or on indictment in the Crown Court. The penalty on conviction is a fine. There is no limit on the amount of fine that may be imposed.
254. Subsection (11) allows the Welsh Ministers, when exercising their other powers to make regulations under this section, to make different requirements for different circumstances, or to apply requirements differently in different geographical areas. This power by its nature will be exercised in conjunction with the exercise of other powers under this section.
255. Section 45AB (Code of practice), subsections (1) and (2), provide the Welsh Ministers with a power to issue, revise or revoke a code of practice providing guidance on how to comply with the duties in section 45AA. Subsection (3) places the Welsh Ministers under a duty to consult persons that they consider appropriate before issuing a code. This might include, for example, NRW and Welsh local authorities, in addition to other stakeholders. Subsection (4) requires that once issued, the code, or any revision to an existing code, must be published and laid before the National Assembly for Wales.
256. Such a code of practice would not be directly binding on a person subject to the duties in section 45AA. However, subsection (5) makes the code of practice admissible in

evidence in court proceedings, for example where a court is considering whether or not an offence under section 45AA(8) has been committed, and the court must take account of the code on questions to which it is relevant.

### ***Section 66 - Prohibition on disposal of food waste to sewer***

257. Section 34 of the Environmental Protection Act 1990 places a broad duty of care on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a dealer or broker, has control of such waste, to take all reasonable measures to prevent, amongst other things, any unlawful deposit of waste by another person, or any contravention of the Environmental Permitting Regulations 2010.
258. **Section 66** inserts section 34D into the Environmental Protection Act 1990, which in subsection (1) bans the disposal of food waste to public sewer from non-domestic premises in Wales. Under the prohibition, the occupier of any non-domestic premises must not dispose of food waste to a public sewer or to any drain that discharges to a public sewer. Non-domestic premises include business and public sector premises but do not include, for example, private houses. The operation of subsection (1) is subject to a power of the Welsh Ministers, in subsection (6)(a), to specify in regulations the circumstances in which subsection (1) is to apply. This power, in conjunction with the general power to make different provision for different purposes in subsection (7), permits the Welsh Ministers to take account of the wide range of premises and circumstances in which the prohibition on disposal of food waste will apply.
259. Subsection (2) sets out exceptions to the prohibition in subsection (1). Occupiers of domestic property and caravans are excepted. Subsection (2) is subject to a power of the Welsh Ministers in subsection (6)(b), in conjunction with the power in subsection (7), to make regulations providing for subsection (1) to apply subject to exceptions in addition to those in subsection (2). Like the power in subsection (6)(a), this will enable the Welsh Ministers to take account of changing circumstances and government policy.
260. Food waste is defined in subsection (5). Subsection (6)(c) provides a power for the Welsh Ministers by regulations, to amend the definition of food waste.
261. Subsection (3) of section 34D provides that failure to comply with the prohibition in subsection (1) without a reasonable excuse will be an offence, and by virtue of subsection (4) such an offence is triable summarily in the Magistrates Court or on indictment in the Crown Court. On conviction, the person committing the offence will be liable to an unlimited fine.
262. Section 66(2) of the Act makes a consequential amendment which clarifies that a trade effluent consent issued to an occupier by the sewerage undertaker under the Water Industry Act 1991 does not override the prohibition in section 34D against disposing of food waste to sewer. It ensures that anything exempted from the prohibition in section 34D by regulations made by the Welsh Ministers is capable of being regulated by the trade effluent regime.

### ***Section 67 - Power to prohibit or regulate disposal of waste by incineration***

263. Section 9 of the Waste (Wales) Measure 2010 contains provisions which confer powers on the Welsh Ministers to make regulations prohibiting or otherwise regulating the disposal by landfilling of specified types of waste. The purpose is to divert recoverable waste from disposal, and increase recycling in Wales. Section 67 of the Act inserts a new section 9A into the Measure, which contains provisions similar to those for landfill, but which relate to prohibition or regulation of incineration of specified types of waste.
264. Subsection (1) of the new section 9A provides the Welsh Ministers with a power to make regulations which prohibit or otherwise regulate incineration in Wales of specified types of waste. Such a power may, for example, be used to specify certain types of otherwise recyclable waste material which are not to be incinerated.

265. Subsection (2) describes certain particular types of provision which may be included in regulations under subsection (1). This includes a power to create offences, prescribe penalties and provide for enforcement authorities. Subsection (2) also includes a power to amend regulations made under section 2 of the Pollution Prevention and Control Act 1999, which would include the Environmental Permitting (England and Wales) Regulations 2010, which regulate, amongst other things, the permitting and operation of incineration facilities.
266. Subsection (3) defines incineration for the purposes of section 9A, along with “waste incineration plant”, and “waste co-incineration plant”. The power in subsection (1) therefore applies to plants including those whose main purpose is to burn waste (for example waste incinerators) and those who burn waste to provide energy to power a process.

### ***Section 68 - Civil sanctions***

267. Subsection (1) of section 68 provides that the regime of civil sanctions and controls under the Regulatory Enforcement and Sanctions Act 2008 is available in relation to offences committed under sections 34D and 45AA of the Environmental Protection Act 1990 inserted by sections 65 and 66. Those sanctions may be used as an alternative to prosecution for offences, if the regulator is satisfied that an offence has been committed.
268. Subsections (2) to (8) amend section 10 of the Waste (Wales) Measure 2010, to bring offences committed under the provisions of the new section 9A concerning incineration, under the civil sanctions regime that is already in place in the Measure.

### ***Section 69 - Regulations***

269. **Section 69** amends section 161 of the Environmental Protection Act 1990, to make provision for the procedure to be followed in relation to regulations brought forward by the Welsh Ministers under the new sections 45AA and 34D of that Act. In particular, subsection (4) inserts a new subsection (2AA) into section 161, which provides that regulations under the new sections are subject to affirmative procedure in the National Assembly for Wales. The amendments to section 161 also update terminology by replacing references to subordinate legislation made by the old National Assembly for Wales with references to the Welsh Ministers.
270. **Section 69** also amends section 20 of the Waste (Wales) Measure 2010 to provide that regulations under the new section 9A of the Measure are subject to affirmative procedure in the National Assembly.

### ***Section 70 - Minor and consequential amendments and repeals***

271. This section provides for further amendments to be made to existing legislation as a result of the provisions in this Part of the Act. The amendments are detailed within Part 3 of Schedule 2 to the Act.