Waste (Wales) Measure 2010

2010 nawm 8

A Measure of the National Assembly for Wales to make provision about the destination of proceeds from charges for single use carrier bags; to make provision about targets to be met by local authorities in relation to waste; to make provision about prohibiting or otherwise regulating the deposit of waste in a landfill; to provide for site waste management plans for works involving construction or demolition; and for connected purposes.

This Measure, passed by the National Assembly for Wales on 2 November 2010 and approved by Her Majesty in Council on 15 December 2010, enacts the following provisions:–

Single use carrier bags

1 Charges for single use carrier bags: destination of proceeds

(1) Schedule 6 to the Climate Change Act 2008 is amended in accordance with this section.

(2) After paragraph 4 insert–

4A "**Destination of proceeds – Wales**

(1) This paragraph applies to regulations made by the Welsh Ministers in relation to Wales.

(2) The regulations may provide for the application of the net proceeds of the charge to specified purposes.

(3) Regulations under sub-paragraph (2) may (among other things)–

(a) require sellers to apply the net proceeds of the charge to any one or more specified purposes;

(b) provide for any duty imposed under paragraph (a) to be discharged (subject to any provision made under paragraph (c)) by the net

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proceeds of the charge being accepted by any one or more of the following persons–

(i) specified persons;

(ii) persons who fall within a specified category of person;

(c) make provision about the arrangements under which the net proceeds of the charge are to be given by sellers to the persons mentioned in paragraph (b) or any other person;

(d) require persons who accept any net proceeds of the charge under paragraph (b) to apply the proceeds to any one or more specified purposes;

(e) provide for recovery by the Welsh Ministers of sums equal to the proceeds of the charge that have been accepted or applied otherwise than in accordance with provision made under sub-paragraph (2);

(f) provide for the application of sums recovered under paragraph (e) to specified purposes (this includes making provision to the effect that such sums are not to be paid into the Welsh Consolidated Fund);

(g) require the Welsh Ministers to give guidance about compliance with the regulations.

(4) The purposes that may be specified under sub-paragraph (2) are limited to purposes relating to any of the following–

(a) preventing or reducing waste;

(b) the collection, management, treatment or disposal of waste;

(c) protecting or improving the environment in relation to pollution or nuisances;

(d) educational or recreational activities for children or young people which relate to any of the matters specified in paragraphs (a) to (c).

(5) But purposes concerning the production of renewable energy for consumption in transport or the use of that energy in transport may not be specified under sub-paragraph (2).

(6) The regulations may make provision for regulations under this Schedule to apply to persons other than sellers, if the Welsh Ministers consider that such provision is appropriate for the enforcement of provision made under sub-paragraph (2) or for otherwise making such provision effective.

(7) The specified factors under paragraph 3(2)(c) may also include–

(a) a seller's arrangements for applying the net proceeds of the charge, or

(b) any other factor that the Welsh Ministers consider appropriate, whether or not that factor is of the same kind as the factors listed in that paragraph.

(8) The regulations may provide for exceptions and exemptions.

4B Interpretation of paragraph 4A

(1) This paragraph applies for the purposes of paragraph 4A.

(2) “Children” means persons who have not attained the age of 18.

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(3) "Pollution" means pollution of the air, water or land which may give rise to any environmental harm, including (but not limited to) pollution caused by light, noise, heat or vibrations or any other kind of release of energy.

(4) For the purposes of the definition in sub-paragraph (3), "environmental harm" means any of the following–

(a) harm to the health of humans and other living organisms;

(b) harm to the quality of the environment, including–

(i) harm to the quality of the environment taken as a whole,

(ii) harm to the quality of the air, water or land, and

(iii) other impairment of, or interference with, the ecological systems of which any living organisms form part;

(c) offence to the senses of human beings;

(d) damage to property;

(e) impairment of, or interference with, the amenity of the environment or any legitimate use of the environment.

(5) For the purposes of sub-paragraphs (3) and (4), "air" includes (but is not limited to) air within buildings and air within other natural or man-made structures above or below ground.

(6) "Nuisance" means an act or omission affecting any place, or a state of affairs in any place, which may impair, or interfere with, the amenity of the environment or any legitimate use of the environment.

(7) "Net proceeds of the charge" has the same meaning as in paragraph 7(4).

(8) "Young people" means persons who have attained the age of 18, but not the age of 25.".

(3) After paragraph 7(3) insert–

"(3A) Regulations made by the Welsh Ministers may also require the publication or supply of records or information relating to the amount received by a person from a seller by way of net proceeds of the charge to be applied to purposes specified under paragraph 4A(2).".

(4) After paragraph 8(2) insert–

"(2A) Regulations made by the Welsh Ministers may also confer powers on an administrator to question a person the administrator reasonably believes has received any net proceeds of the charge or officers or employees of such a person.".

2 Regulations: procedure

In section 77 of the Climate Change Act 2008, after subsection (4)(a) insert–

"(aa) they are the first regulations to be made by the Welsh Ministers under paragraph 4A of the Schedule,".

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Waste targets

3 Recycling, preparation for re-use and composting targets

(1) The recycling, preparation for re-use and composting targets are specified in subsections (2) and (3).

(2) A local authority must secure the recovery, by means of any of the operations specified in subsection (5), of at least the target amount of its municipal waste from–
- (a) each target financial year, and
- (b) each subsequent financial year until the next target financial year.

(3) In the following table–
- (a) column 1 specifies the target amount for a target financial year (and the financial years falling within subsection (2)(b)), and
- (b) column 2 specifies the target financial year to which the target amount in the corresponding entry in column 1 applies.

TABLE

Target amount	Target financial year
52%	2012/13
58%	2015/16
64%	2019/20
70%	2024/25

(4) The Welsh Ministers may amend this table by order.

(5) The operations referred to in subsection (2) are–
- (a) recycling;
- (b) preparation for re-use;
- (c) composting (including any other form of transformation by biological processes).

(6) The Welsh Ministers may make provision by order for establishing whether waste is recycled, prepared for re-use, or composted for the purposes of the targets under this section.

(7) A local authority that does not meet a recycling, preparation for re-use and composting target is liable to a penalty to be paid to the Welsh Ministers.

(8) For the purposes of this section, a local authority's municipal waste from a target financial year is the total amount by weight of each of the following–
- (a) all waste collected in that year by a local authority under section 45 of the Environmental Protection Act 1990;
- (b) 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;
- (c) such other waste as may be specified by order of the Welsh Ministers.

(9) In this section, “financial year” means a period of 12 months ending on 31 March.

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Commencement Information

I1 S. 3 in force at 4.3.2011 by S.I. 2011/476, **art. 2**

4 Regulations to set waste targets

(1) The Welsh Ministers may by regulations–

(a) specify waste targets to be met by a local authority in exercising its functions;

(b) specify indicators by reference to which a local authority's achievement of targets under paragraph (a) can be measured;

(c) impose liability on a local authority to pay a penalty to the Welsh Ministers if a target under paragraph (a) is not met.

(2) For the purposes of subsection (1)(a), "waste targets" are targets relating to preventing, reducing, collecting, managing, treating or disposing of waste.

5 Monitoring and auditing compliance with targets

(1) The Welsh Ministers may make provision by regulations–

(a) about how compliance with any relevant target is to be assessed;

(b) about arrangements for monitoring and auditing compliance with any relevant target;

(c) conferring powers of entry and inspection in connection with such monitoring and auditing for persons authorised by the Welsh Ministers;

(d) requiring the maintenance of records by a local authority in connection with relevant targets;

(e) requiring the provision of information by a local authority to specified persons in a specified form or manner in connection with relevant targets;

(f) requiring the publication of information in connection with relevant targets;

(g) imposing liability on a local authority to pay a penalty if it fails to comply with a requirement in regulations under any of paragraphs (b) to (f).

(2) In this section, "relevant targets" are–

(a) the recycling, preparation for re-use and composting targets under section 3;

(b) any waste targets under section 4(1)(a).

6 Regulations about penalties

(1) This section applies to penalties under section 3(7), section 4(1)(c) and section 5(1)(g).

(2) The Welsh Ministers may by regulations–

(a) specify the amounts of penalties or rules for calculating their amounts;

(b) make provision as to when payments in respect of penalties are due;

(c) make provision for interest where payments in respect of penalties are due but unmade;

(d) make provision for recovering or setting off, and securing, unpaid amounts in respect of penalties and interest;

(e) make provision about waiver of penalties.

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7 Guidance

In exercising its functions under sections 3 to 6 a local authority must have regard to guidance given from time to time by the Welsh Ministers.

8 Consultation

(1) Before making an order or regulations under section 3 or regulations under sections 4, 5 or 6, or giving guidance under section 7, the Welsh Ministers must consult the following–

(a) **[**[F1]the Natural Resources Body for Wales**]**;

(b) each local authority;

(c) such other persons as the Welsh Ministers consider appropriate.

(2) For the purposes of subsection (1), consultation undertaken before the passing of this Measure has effect as if undertaken after that passing.

Textual Amendments

F1 Words in s. 8(1)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), **Sch. 3 para. 2** (with Sch. 7)

Landfill

9 Regulations prohibiting deposit of waste in a landfill

(1) The Welsh Ministers may by regulations make provision for and in connection with prohibiting or otherwise regulating the deposit of specified kinds of waste in a landfill in Wales.

(2) Regulations under subsection (1) may (among other things)–

(a) amend regulations made under section 2 of the Pollution Prevention and Control Act 1999 which relate to the operation of a landfill;

(b) provide for offences in relation to failure to comply with provision made under the regulations;

(c) provide for penalties in relation to such offences;

(d) provide for enforcement authorities and the functions of such authorities.

(3) In subsection (1), "landfill" has the meaning given in Article 2(g) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste**[**[F2], as last amended by Council Directive 2011/97/EU**]**.

Textual Amendments

F2 Words in s. 9(3) inserted (22.3.2019) by The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/414), regs. 1(2)(a), **2(2)**

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10 Civil sanctions in respect of the deposit of waste in a landfill

(1) This section applies where the power to make regulations in section 9(1) has been or is being exercised so as to create an offence.

(2) Regulations under section 9(1) may make provision, in relation to an enforcement authority, which could be made by an order under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 ("RESA 2008") as if, for the purposes of Part 3 of that Act–

(a) the enforcement authority were a regulator, and

(b) the offence were a relevant offence in relation to that regulator.

(3) But in their application to offences created by regulations under section 9(1)–

(a) sections 39(4) and 42(6) of RESA 2008 do not apply, and

(b) section 49(1) is modified so that the reference to "£20,000" is to be read as a reference to "level 5 on the standard scale".

(4) Sections 63 to 69 of RESA 2008 apply to provision made under or by virtue of regulations under subsection (2) as they apply to provision made under or by virtue of Part 3 of RESA 2008.

(5) For the purposes of subsection (4), the references to a "regulator" in sections 63 to 69 of RESA 2008 are to be read as references to an enforcement authority.

(6) In this section, "enforcement authority" means a person who has an enforcement function in relation to an offence created by regulations under section 9(1).

11 Consultation

(1) Before making any regulations under section 9 the Welsh Ministers must consult the following–

(a) **[**[F3]the Natural Resources Body for Wales**]**;

(b) each local authority;

(c) such persons appearing to them to be representative of the interests of persons liable to be subject to duties under the regulations as they consider appropriate;

(d) such other persons as they consider appropriate.

(2) For the purposes of subsection (1), consultation undertaken before the passing of this Measure has effect as if undertaken after that passing.

Textual Amendments

F3 Words in s. 11(1)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), **Sch. 3 para. 2** (with Sch. 7)

Site waste management plans

12 Site waste management plans

(1) The Welsh Ministers may by regulations make provision requiring persons of a specified description–

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(a) to prepare plans for the management and disposal of waste created in the course of specified descriptions of works in Wales involving construction or demolition;

(b) to comply with such plans.

(2) Regulations may also include provision as to–

(a) the circumstances in which plans must be prepared;

(b) the contents of plans;

(c) enforcement authorities in relation to plans and the functions of such authorities;

(d) the keeping of plans and their production to enforcement authorities;

(e) the making of schemes by the Welsh Ministers or an enforcement authority which impose requirements on persons of a specified description to pay fees or other charges as a means of recovering the reasonable costs incurred by an enforcement authority in performing its functions under this section.

(3) Descriptions of works that may be specified under subsection (1) include (among other things) description by reference to the cost or likely cost of such works.

(4) Any regulations made by the Welsh Ministers under section 54 of the Clean Neighbourhoods and Environment Act 2005 that are in force immediately before this Part comes into force have effect as if made under this section and section 13.

(5) In this section, "Wales" does not include any area of the sea adjacent to Wales.

13 Offences and penalties

(1) The Welsh Ministers may make provision by regulations for–

(a) offences in relation to failure to comply with provision made under section 12;

(b) penalties in relation to such offences;

(c) the discharging of liability for an offence under paragraph (a) by the payment of a fixed penalty to an enforcement authority under section 12;

(d) about the uses to which payments under paragraph (c) may be put by enforcement authorities exercising functions under section 12.

(2) The regulations may not create offences that are–

(a) punishable by imprisonment, or

(b) punishable on summary conviction by a fine exceeding £50,000.

(3) The regulations may not create offences for failure to comply with provision made under section 12(2)(e) that are punishable on summary conviction by a fine exceeding level 5 on the standard scale.

14 Civil sanctions in respect of site waste management plans

(1) This section applies where the power to make regulations in section 13 has been or is being exercised so as to create an offence.

(2) Regulations may make provision, in relation to an enforcement authority, which could be made by an order under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 ("RESA 2008") as if, for the purposes of Part 3 of that Act–

(a) the enforcement authority were a regulator, and

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(b) the offence were a relevant offence in relation to that regulator.

(3) But section 49(1) of RESA 2008 is modified in its application to offences created by the regulations so that the reference to "£20,000" is to be read as a reference to "level 5 on the standard scale".

(4) Sections 63 to 69 of RESA 2008 apply to provision made under or by virtue of regulations under section 13 as they apply to provision made under or by virtue of Part 3 of RESA 2008.

(5) For the purposes of subsection (4), the references to a "regulator" in sections 63 to 69 of RESA 2008 are to be read as references to an enforcement authority.

(6) In this section, "enforcement authority" means a person who has an enforcement function in relation to an offence created by regulations under section 13.

15 Guidance

A person who is an enforcement authority under section 12 must have regard to guidance given from time to time by the Welsh Ministers when exercising the functions of an enforcement authority.

16 Consultation

(1) Before making any regulations under section 12, the Welsh Ministers must consult the following–

(a) **[**[F4]the Natural Resources Body for Wales**]**;

(b) each local authority;

(c) such persons appearing to them to be representative of the interests of persons liable to be subject to duties under the regulations as they consider appropriate;

(d) such other persons as they consider appropriate.

(2) For the purposes of subsection (1), consultation undertaken before the passing of this Measure has effect as if undertaken after that passing.

Textual Amendments

F4 Words in s. 16(1)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), **Sch. 3 para. 2** (with Sch. 7)

General

17 Interpretation

(1) In this Measure–

"function" ("swyddogaeth") means power or duty;

"local authority" ("awdurdod lleol") means a county or county borough council in Wales;

"specified" ("pennu") means specified in regulations made by the Welsh Ministers;

"waste" ("gwastraff") means anything that–

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(a) is waste for the purposes of the Waste Framework Directive, and
(b) is not excluded from the scope of that Directive by Article 2 of that Directive.

(2) For the purposes of the definition of "waste" in subsection (1), "the Waste Framework Directive" means Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives**[**[F5], as last amended by Council Regulation (EU) 2017/997**]**.

Textual Amendments

F5 Words in s. 17(2) inserted (22.3.2019) by The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/414), regs. 1(2)(a), **2(3)**

18 Minor and consequential amendments

The Schedule contains minor and consequential amendments.

19 Orders and regulations

(1) Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument.

(2) Any power of the Welsh Ministers to make an order or regulations under this Measure includes power–
(a) to make different provision for different cases or classes of case, different areas, different persons or descriptions of person or different purposes;
(b) to make different provision to apply at different times;
(c) to make provision generally or in relation to specific cases;
(d) to make incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers think fit.

(3) Any provision that may be made by order under this Measure may be made by regulations.

(4) Any provision that may be made by regulations under this Measure may be made by order.

20 Orders and regulations: procedures

(1) Any statutory instrument containing an order or regulations made under this Measure is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(2) Subsection (1) does not apply to–
(a) an order under section 21(1);
(b) orders and regulations to which subsection (3) applies.

(3) A statutory instrument containing an order under section 3(4) or regulations under section 4, 5(1)(g), 6, 9, or 14 (whether alone or with other provisions) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

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(4) Where regulations make provision that may be made by order, any procedure that would apply to the order under this section applies to the regulations.

(5) Where an order makes provision that may be made by regulations, any procedure that would apply to the regulations under this section applies to the order.

21 Commencement

(1) Section 3 comes into force in accordance with provision made by the Welsh Ministers by order.

(2) The remaining provisions of this Measure come into force at the end of a period of two months beginning on the day on which this Measure is approved by Her Majesty in Council.

22 Short title

This Measure may be cited as the Waste (Wales) Measure 2010.

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SCHEDULE

(introduced by section 18)

MINOR AND CONSEQUENTIAL AMENDMENTS

Clean Neighbourhoods and Environment Act 2005

1 (1) Section 54 of the Clean Neighbourhoods and Environment Act 2005 is amended as follows.

(2) In subsection (1)–

(a) for “appropriate person” substitute; “ “Secretary of State” ”

(b) in paragraph (a), after “works” insert; “ “in England” ”

(3) In subsection (8), for “appropriate person” substitute “ “Secretary of State” ”

(4) In subsection (9), omit the words from “ “appropriate person”” to “for Wales;”.

Climate Change Act 2008

2 (1) Section 98 (index of defined expressions) of the Climate Change Act 2008 is amended as follows.

(2) In the first column, after “ “the chair” (in Schedule 1)” insert “ “children” (in Schedule 6)” and at the corresponding place in the second column insert “paragraph 4B(2) of Schedule 6”.

(3) In the first column, after “ “non-monetary discretionary requirement” (in Schedule 6)” insert “ “nuisance” (in Schedule 6)” and at the corresponding place in the second column insert “paragraph 4B(6) of Schedule 6”.

(4) In the first column, after “ “participant” (in Part 3)” insert “ “pollution” (in Schedule 6)” and at the corresponding place in the second column insert “paragraph 4B(3) of Schedule 6”.

(5) In the first column, after “ “the waste reduction provisions” (in section 72)” insert “ “young people” (in Schedule 6)” and at the corresponding place in the second column insert “paragraph 4B(8) of Schedule 6”.

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