

WASTE (WALES) MEASURE 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

45. This section specifies that the power to make regulations in section 9 includes power to provide for civil sanctions in respect of offences created under section 9. Civil sanctions are an alternative to criminal penalties as a way of addressing breaches.
46. The power allows the Welsh Ministers to make equivalent provision, in relation to an enforcement authority, to that which could be made by an order under Part 3 of the [Regulatory Enforcement and Sanctions Act 2008 \(c. 13\)](#) (“RESA”) in relation to a regulator.
47. This means that the Welsh Ministers can make provision enabling an enforcement authority to—
 - impose a fixed monetary penalty (section 39 RESA);
 - impose a variable monetary penalty, determined by the enforcement authority (section 42 RESA);
 - require specified steps to be taken so as to secure that the offence does not continue or recur (ibid);
 - require specified steps to be taken so as to secure that the position is restored to what it would have been if the offence had not been committed (ibid);
 - issue a stop notice, which is a notice prohibiting a person from carrying on an activity until steps specified in the notice are taken (section 46 RESA);
 - accept an enforcement undertaking from a person in a case where the authority has reasonable grounds to suspect that the person has committed a relevant offence (section 50 RESA) (an enforcement undertaking is an undertaking to take specified action; fulfilling the undertaking will have the effect of preventing the person from being convicted of an offence in respect of the act or omission to which the undertaking relates or having fixed monetary penalties or discretionary requirements imposed on them in relation to that act or omission).
48. Sections 39(4) and 42(6) of RESA are disapplied in relation to the regulations made under section 9(1) of the Measure by subsection (3). This is because both provisions of RESA impose limits on penalties, and the limits they impose are potentially higher, than the limits permissible in Measures by virtue of paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006 (see paragraph 37 above).
49. Subsection (3)(b) also modifies subsection 49(1) of RESA, for the same reason. Section 49 of RESA makes provision requiring the enforcement of stop notices by the creation of criminal offences. The maximum fine on summary conviction specified in section 49 is more than the amount that can be imposed in relation to an offence created by or under an Assembly Measure (see above, paragraph 37). Subsection (3)(b) modifies subsection 49(1) of RESA so as to remove this discrepancy, by making clear that

reference in section 49(1)(a) of RESA to “£20,000” is to be read as a reference to “level 5 on the standard scale” – the maximum fine allowed under paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006.

50. Subsection (4) applies section 63 to 69 of RESA to regulations made under section 9 of the Measure as they would apply to an order made under Part 3 of RESA. Subsections (5) and (6) make related provision.
51. The combined effect of subsections (4) to (6) is set out in the following paragraphs.
52. Where the Welsh Ministers confer power on an enforcement authority to impose a civil sanction in relation to an offence, the Welsh Ministers must also ensure the following results (see section 63 of RESA)—
 - that the authority publishes guidance about its use of the sanction;
 - that guidance contains specified information, depending on the type of sanction - such as the circumstances in which a monetary penalty or stop notice is likely to be imposed, the circumstances in which it cannot be imposed; the amount of any monetary penalty; how to discharge penalties and rights of appeal and similar;
 - that the guidance is revised where appropriate;
 - that the authority consults persons specified in the Welsh Ministers’ regulations before publishing any guidance;
 - that the authority has regard to the guidance in exercising functions.
53. Where power is conferred on an enforcement authority to impose a civil sanction in relation to an offence the authority must also—
 - prepare and publish guidance about how the offence is to be enforced (see section 64 RESA);
 - publish reports about the cases in which the civil sanction has been imposed (see section 65 RESA).
54. The Welsh Ministers may not make provision enabling an enforcement authority to impose a civil sanction in relation to an offence unless the Welsh Ministers are satisfied that the authority will act in accordance with the following principles (referred to in RESA as “the regulatory principles”) in exercising that power—
 - that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
 - that regulatory activities should be targeted only at cases in which action is needed.
55. Where the Welsh Ministers have conferred a power to impose civil sanctions, they must review how that power is being operated (see section 67 of RESA) and may suspend the power of an enforcement authority to impose such sanctions (see section 68 of RESA).
56. Receipts from civil sanctions – e.g. from the payment of monetary penalties – must be paid into the Welsh Consolidated Fund where the enforcement authority has functions only in relation to Wales, and into the UK Consolidated Fund where the enforcement authority has functions in relation to Wales and another part of the UK (see section 69 of RESA).