

EXPLANATORY MEMORANDUM TO
THE CONTROL OF WASTE (DEALING WITH SEIZED PROPERTY) (ENGLAND
AND WALES) REGULATIONS 2015

2015 No. 426

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument establishes the procedures which a waste collection authority (most local authorities), the Environment Agency and Natural Resources Wales (“the seizure authority”) must follow once they have seized property (a vehicle and/or its contents) under either section 5 of the Control of Pollution (Amendment) Act 1989 (“the 1989 Act”) or section 34B of the Environmental Protection Act 1990 (“the 1990 Act”) because of suspected involvement in offences concerning the transport or disposal of waste (such as fly-tipping).

2.2 The instrument sets out what a seizure authority must do to ensure the safe custody and determine the rightful owner of any seized vehicle or other property. It also sets out the circumstances in which the authority must return the property to its owner and the circumstances in which it can sell, destroy or otherwise dispose of the property.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 5 of the 1989 Act and section 34B of the 1990 Act - as inserted by the Clean Neighbourhoods and Environment Act 2005 - give seizure authorities the power to seize property suspected of being, having been or being about to be involved in various offences concerning the carrying and disposal of controlled waste. Section 5A of the 1989 Act and section 34C of the 1990 Act respectively provide a regulation-making power in respect of the duties of a seizure authority and the procedures it must follow once it has seized property. These powers are being brought into force by order in parallel with these Regulations (by the Clean Neighbourhoods and Environment Act 2005 (Commencement No. 6 and Saving) (England and Wales) Order 2015). This memorandum concerns the regulations made under these powers.

4.2 This instrument revokes and replaces in England and Wales the existing rules set out in the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (S.I. 1991/1624).

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Seizure authorities currently have the power to seize a vehicle where they have reasonable grounds for believing that an offence under section 33 of the 1990 Act has been committed, including the deposit, treatment or disposal of waste without a permit. However, they can only seize a vehicle to ascertain who was using it at the time when the offence was committed and must return it once the registered keeper is identified. The seizure process can be expensive and burdensome since they must obtain a warrant from a magistrate prior to seizing the vehicle and must then publish details of the seizure in a local newspaper.

7.2 These costs are a disincentive to many seizure authorities who would otherwise use the powers more often than they currently do, thus reducing the effectiveness of what should be an important enforcement tool against waste crime. In view of this, the Clean Neighbourhoods and Environment Act 2005 amended both the 1989 and 1990 Acts to broaden the ranges of offences for which a vehicle can be seized and to remove the need for a warrant to be obtained before seizure. The relevant provisions of the 1989 and 1990 Acts are being brought into force by a parallel order to this instrument.

7.3 This instrument sets out the duties of a seizure authority once they have seized a vehicle (including mobile plant machinery) and its contents under either the 1989 or the 1990 Act. These include duties relating to the safe custody of seized property, the circumstances in which they must return property to its owner, and the circumstances in which the authority may sell, destroy or otherwise dispose of any seized property.

7.4 Under this instrument, on seizing a vehicle, a seizure authority must take steps to identify the registered keeper and issue a notice to them informing them of the reasons for the seizure and the process for making a claim for its return. The authority must also publish a notice of seizure at its offices and either on its website or in a local newspaper, informing anybody else who might have a claim to the property that it has been seized.

7.5 From the date of publication of the seizure notice, a seizure authority can retain the property for a specified period. If, during this period, no valid claim is made, the authority may, after the period has concluded, retain, sell, destroy or otherwise dispose of the seized property. If a valid claim is made during this period, the authority may either arrange for the return the vehicle or retain it until the end of the prescribed retention period (the period in which seized property can be retained).

7.6 Where there is an investigation of an offence, the retention period depends on which seizure authority seized the property and the offence for which it is suspected of involvement. The general rule is that, while investigating an offence, the authority may retain the property for up to 15 working days before it must release it to a legitimate claimant or it can be disposed of. However, if property is seized by the Environment Agency or Natural Resources Wales on suspicion of involvement in offences set out in section 33C(1) of the 1990 Act (section 33 of the 1990 Act and regulation 38(1) of the

Environmental Permitting (England and Wales) Regulations 2010) (“forfeiture offences”), it can be retained for up to 30 working days.

7.7 Where proceedings are commenced before the date of the determination notice or during the retention period, the return of the property is required where the authority is no longer of the opinion that it is necessary to retain it, or proceedings have been discontinued or have ended.

8. Consultation outcome

8.1 Defra held a formal consultation process on the proposals set out in these Regulations (and the associated Commencement Order) between 13th December 2014 and 3rd February 2015. The consultation document was sent to all local authorities in England and Wales, and a range of businesses and business organisations, particularly those involved in transporting or handling waste. There were 46 responses to the consultation.

8.2 The consultation sought views on the draft statutory instruments; the seizure procedure; the benefits of specific guidance for the proposals; and the costs and benefits of the proposals for businesses and seizure authorities.

8.3 The responses to the consultation revealed that there was almost unanimous support for these measures from seizure authorities, professional bodies and the business community. All but one of the 46 respondents supported the introduction of what they felt would be more effective powers to tackle waste crime. There was some difference in the detail but the vast majority of respondents agreed that these measures will bring more businesses into the regulated industry sector, and go some way to levelling the playing field for operators.

8.4 Six respondents had concerns that the proposed 15 working day retention period for local authorities when investigating a forfeiture offence (once a valid claim has been made by the property owner) would not always be sufficient time and therefore requested that local authorities, like the Environment Agency and Natural Resources Wales, should be able to retain seized property for up to 30 working days. While these concerns were noted, the Government considers that providing in the Regulations for a 15 working day retention period for local authorities to investigate such offences strikes the right balance between the operational and financial needs of those authorities and the rights of those individuals whose property has been seized. The Government considers that a longer retention period should be available to the Environment Agency and Natural Resources Wales when investigating forfeiture offences because they tend to deal with more serious and complex cases of illegal waste dumping (including organised tipping and criminal business practice), compared to local authorities. This position was supported by evidence gathered in a 2009 consultation on similar proposals, which focused on the retention period for seizure authorities, and in subsequent engagement with seizure authorities during the development of the Regulations.

8.5 As a result of the consultation, a minor procedural change was made in the Regulations in order to improve the operation of the seizure process; and a commitment was given by the Government to produce guidance on the operation of the Regulations.

9. Guidance

9.1 As a result of a need highlighted during the consultation, a guidance document will be available to seizure authorities, explaining in more detail their rights and responsibilities when exercising these powers. This document will also be useful to anybody who has their property seized as it sets out the circumstances in which the property can be returned to them. The guidance will be available on www.gov.uk when the Regulations come into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies is as follows. Legitimate businesses that deal with waste may benefit as the powers will help create a level playing field, if those who undercut the market by disposing of waste illegally are subject to more effective enforcement action. The primary focus of these powers is not householders or the carrying by householders of their own waste to legitimate disposal sites. However, these powers could be used to search and seize the vehicle of a householder if it is suspected of being used in fly-tipping.

10.2 The impact on the public sector is as follows. The key groups that will be affected by this instrument are local authorities, the Environment Agency and Natural Resources Wales who will be responsible for enforcing the Regulations. The instrument will assist seizure authorities in their investigations to identify those responsible for vehicles suspected of being associated with the commission of an offence and reduce their use in the commission of further illegal waste activity. The instrument will reduce the costs borne by seizure authorities when seizing a vehicle in connection with waste offences. It will also reduce the burden on HM Courts & Tribunals Service as seizure authorities will no longer have to secure a warrant from a magistrate before seizure.

10.3 An impact assessment has not been produced for this instrument as no impact on the costs of the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation applies to small business. The consultation document was sent to businesses and business organisations, including those that represent small business. The impact on small firms is expected to be beneficial as seizure authorities will have more effective powers to drive illegal waste operators, who often unfairly undercut legitimate businesses, out of carrying waste.

12. Monitoring & review

12.1 The Department for Environment, Food and Rural Affairs and the Environment Agency will monitor the effectiveness of these enforcement measures.

13. Contact

Ian Hill at the Department for Environment, Food and Rural Affairs Tel: 020 7238 3133 or email: ian.hill@defra.gsi.gov.uk can answer any queries regarding the instrument.