

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament and published on 6th December 2023 (ISBN 978-0-348-25471-6). It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Draft Regulations laid before Parliament under section 2(8) of the Pollution Prevention and Control Act 1999 (c. 24), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No. ****

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

**The Waste Enforcement (Fixed Penalty Receipts) (Amendment)
(England and Wales) Regulations 2023**

Made - - - -

Coming into force - -

1st April 2024

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2 of, and paragraph 20(1)(b) of Schedule 1 to, the Pollution Prevention and Control Act 1999 (“the Act”)(a).

In accordance with section 2(4) of the Act, the Secretary of State has consulted—

- (a) the Environment Agency,
- (b) the Natural Resources Body for Wales,
- (c) such bodies or persons appearing to the Secretary of State to be representative of the interests of local government, industry, agriculture and small businesses as the Secretary of State considers appropriate, and
- (d) such other bodies or persons as the Secretary of State considers appropriate.

In accordance with section 2(8) of the Act, a draft of these Regulations has been laid before, and approved by resolution of, each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste Enforcement (Fixed Penalty Receipts) (Amendment) (England and Wales) Regulations 2023 and come into force on 1st April 2024.

(2) Any amendment made by these Regulations has the same extent as the provision amended.

(a) 1999 c. 24. Section 2 is amended by section 62 of the Water Act 2014 (c. 21) and S.I. 2013/755. Paragraph 20 of Schedule 1 is amended by S.I. 2018/942 and 2019/458.

Amendments to Part 2 of the Environmental Protection Act 1990

2. Part 2 of the Environmental Protection Act 1990 (waste on land)(a) is amended as follows—

- (a) after section 73 (appeals and other provisions relating to legal proceedings and civil liability)(b), insert—

“73ZA Use of fixed penalty receipts: England

- (1) The Environment Agency must pay amounts received by it under section 34ZA or 34A(c) to the Secretary of State.
- (2) A waste collection authority(d) may use its fixed penalty receipts under section 33ZA(e) or 34ZA only for the purposes of—
- (a) the employment or engagement of its authorised officers, as defined in section 33ZA(12) or 34ZA(12), or any of the functions of those officers,
 - (b) its functions relating to offences under—
 - (i) section 33(6), to the extent that it relates to a contravention of section 33(1)(a) (deposit of controlled waste)(f),
 - (ii) section 33ZA(7) (failure to give name or address in response to request from an authorised officer proposing to issue a fixed penalty notice),
 - (iii) section 34(6), to the extent that it relates to a contravention of section 34(2A) (duty to secure that transfer of household waste is only to an authorised person)(g), or
 - (iv) section 34ZA(14) (failure to give name or address in response to request from an authorised officer proposing to issue a fixed penalty notice),
 - (c) its functions relating to the collection and disposal of controlled waste(h) deposited in contravention of section 33(1)(a),
 - (d) its functions relating to the restoration of land following the deposit of controlled waste in contravention of section 33(1)(a), and
 - (e) such other of its functions as may be specified in regulations made by the Secretary of State.
- (3) A waste collection authority may use its fixed penalty receipts under section 34A, 46A or 47ZA(i) only for the purposes of—
- (a) its functions under this Part (including functions relating to offences under this Part), and

(a) 1990 c. 43 (“the 1990 Act”).

(b) There are amendments to section 73 not relevant to these Regulations.

(c) Section 34ZA is inserted by S.I. 2018/1227 and amended by section 69(4) of the Environment Act 2021 (c. 30) and S.I. 2023/770. Section 34A is inserted by section 45 of the Clean Neighbourhoods and Environment Act 2005 (c. 16) (“the 2005 Act”) and amended by S.I. 2013/755.

(d) Section 30(3) of the 1990 Act defines “waste collection authorities”.

(e) Section 33ZA is inserted by S.I. 2016/334 and amended by section 69(2) of the Environment Act 2021 and S.I. 2023/770. Section 33ZA will be amended by section 57(3) of the Environment Act 2021 when that section comes into force.

(f) Section 33 is amended by section 120 of, and paragraph 64 of Schedule 22 and Schedule 24 to, the Environment Act 1995 (c. 25), section 40(1) and 41(1) of the 2005 Act and S.I. 2005/894, 2006/937, 2007/3538, 2009/1799, 2015/664, 2016/738, 2016/1154, 2019/620 and 2023/149. There are other amendments not relevant to these Regulations.

(g) Section 34 is amended by section 33 of the Deregulation and Contracting Out Act 1994 (c. 40) and S.I. 1999/1820, 2000/1973, 2005/2900, 2006/123, 2007/3538, 2009/1799, 2010/675 and 2011/988. There are other amendments not relevant to these Regulations.

(h) Section 75(4) of the 1990 Act defines “controlled waste”.

(i) Section 46A is inserted by section 58(3) of the Deregulation Act 2015 (c. 20). Section 47ZA is inserted by section 48 of the 2005 Act.

- (b) such other of its functions as may be specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3)(b) may (in particular) have the effect that a waste collection authority may use its fixed penalty receipts under section 34A, 46A or 47ZA for the purposes of any of its functions.
- (5) A waste collection authority must supply the Secretary of State with such information relating to its use of its fixed penalty receipts as the Secretary of State may require.
- (6) The Secretary of State may by regulations make provision—
 - (a) about what a waste collection authority must do with its fixed penalty receipts pending the use of those receipts for the purposes referred to in subsection (2) or (3);
 - (b) about the period within which a waste collection authority must use those fixed penalty receipts for those purposes;
 - (c) about what a waste collection authority must do with those fixed penalty receipts that are not used for those purposes within that period;
 - (d) for accounting arrangements in respect of a waste collection authority’s fixed penalty receipts.
- (7) The provision that may be made under subsection (6)(c) includes (in particular) provision for the payment of sums to a person (including the Secretary of State) other than the waste collection authority.
- (8) Before making regulations under this section, the Secretary of State must consult—
 - (a) the waste collection authorities to which the regulations are to apply;
 - (b) such other persons as the Secretary of State thinks fit.
- (9) Regulations under this section may make different provision for different purposes (including different provision in relation to different waste collection authorities or different descriptions of authority).
- (10) In this section—
 - “fixed penalty receipts”, in relation to a waste collection authority, are amounts received by the authority under section 33ZA, 34ZA, 34A, 46A or 47ZA;
 - “waste collection authority” means a waste collection authority in England.”;
- (b) in section 73A (use of fixed penalty receipts)(a)—
 - (i) in the heading, at the end, insert “: Wales”;
 - (ii) omit subsection (1);
 - (iii) in subsection (2), omit—
 - (aa) “33ZA,”;
 - (bb) “34ZA,”;
 - (cc) “, 46A”;
 - (iv) in each of the following subsections, for “appropriate person” substitute “Welsh Ministers”—

(a) Section 73A is inserted by section 52 of the 2005 Act and amended by section 58(5) of the Deregulation Act 2015 and S.I. 2013/755, 2016/334, 2017/1024, 2018/1227 and 2019/331.

- (aa) (2)(b);
 - (bb) (4), in both places it occurs;
 - (cc) (5);
 - (dd) (6);
 - (ee) (7), in both places it occurs;
 - (v) in subsection (7)(b), for “thinks” substitute “think”;
 - (vi) at the end, insert—
- “(10) In this section, “waste collection authority” means a waste collection authority in Wales.”.

Amendments to Part 9 of the Clean Neighbourhoods and Environment Act 2005

3. Part 9 of the Clean Neighbourhoods and Environment Act 2005 (miscellaneous)(a) is amended as follows—

- (a) before section 96 (use of fixed penalty receipts: higher tier authorities), but after the italic heading before that section, insert—

“95A Use of fixed penalty receipts: higher tier authorities in England

- (1) This section applies in relation to amounts paid to an authority in England, other than a parish or community council, in pursuance of notices under—
 - (a) section 88 of the Environmental Protection Act 1990 (fixed penalty notices for leaving litter)(b);
 - (b) paragraph 7 of Schedule 3A to the Environmental Protection Act 1990 (free distribution of printed matter on designated land: fixed penalty notices)(c);
 - (c) section 43(1) of the Anti-social Behaviour Act 2003 (penalty notices for graffiti and fly-posting)(d).
- (2) The amounts to which this section applies which are paid to an authority are in this section called the authority's “fixed penalty receipts”.
- (3) An authority may use its fixed penalty receipts paid to it in pursuance of a notice under section 88 of the Environmental Protection Act 1990 only for the purposes of—
 - (a) the employment or engagement of its authorised officers, as defined in section 88(10) of the Environmental Protection Act 1990, or any of the functions of those officers,
 - (b) its functions relating to offences under the following provisions of the Environmental Protection Act 1990—
 - (i) section 87(1) (offence of leaving litter)(e), or
 - (ii) section 88(8B) (offence of failing to give a name and address or giving a false or inaccurate name or address)(f),

(a) 2005 c. 16.

(b) Section 88 is amended by section 127(2) of the Local Government Act 2003 (c. 26), section 19 of the 2005 Act, section 68(2) of the Environment Act 2021 and S.I. 2017/1050. There are other amendments not relevant to these Regulations.

(c) Schedule 3A is inserted by section 23(2) of the 2005 Act and is amended by S.I. 2017/1050. There are other amendments not relevant to these Regulations.

(d) 2003 c. 38.

(e) Section 87 is amended by section 18 of the 2005 Act and S.I. 2018/171.

(f) Section 88(8B) is inserted by section 19(3) of the 2005 Act.

- (c) its functions relating to the collection and disposal of litter and refuse,
 - (d) its functions relating to the restoration of land following littering, and
 - (e) such other of its functions as may be specified in regulations made by the Secretary of State.
- (4) An authority may use its fixed penalty receipts paid to it in pursuance of a notice under paragraph 7 of Schedule 3A to the Environmental Protection Act 1990 or section 43(1) of the Anti-social Behaviour Act 2003 only for the purposes of—
 - (a) its functions under Part 4 of the Environmental Protection Act 1990 (litter etc);
 - (b) its functions under section 43 of the Anti-social Behaviour Act 2003 (penalty notices for graffiti and fly-posting);
 - (c) such other of its functions as may be specified in regulations made by the Secretary of State.
- (5) Regulations under subsection (4)(c) may (in particular) have the effect that an authority may use those fixed penalty receipts for the purposes of any of its functions.
- (6) An authority must supply the Secretary of State with such information relating to its fixed penalty receipts as the Secretary of State may require.
- (7) The Secretary of State may by regulations make provision—
 - (a) about what an authority must do with its fixed penalty receipts pending the use of those receipts for the purposes referred to in subsection (3) or (4);
 - (b) about the period within which an authority must use those fixed penalty receipts for those purposes;
 - (c) about what an authority must do with those fixed penalty receipts that are not used for those purposes within that period;
 - (d) for accounting arrangements in respect of an authority’s fixed penalty receipts.
- (8) The provision that may be made under subsection (7)(c) includes (in particular) provision for the payment of sums to a person (including the Secretary of State) other than the authority.
- (9) Before making regulations under this section, the Secretary of State must consult—
 - (a) the authorities to which the regulations are to apply;
 - (b) such other persons as the Secretary of State thinks fit.”;
- (b) in section 96 (use of fixed penalty receipts: higher tier authorities)—
 - (i) in the heading, at the end, insert “in Wales”;
 - (ii) in subsection (1), in each of paragraphs (a) and (b), after “amounts paid to an authority” insert “in Wales”;
 - (iii) in each of the following subsections, for “appropriate person” substitute “Welsh Ministers”—
 - (aa) (4)(d);
 - (bb) (6), in both places it occurs;
 - (cc) (7);
 - (dd) (8);

- (ee) (9), in both places it occurs;
- (iv) in subsection (9)(b), for “thinks” substitute “think”;
- (c) in section 98 (sections 96 and 97: supplementary)—
 - (i) in the heading, after “sections” insert “95A,”;
 - (ii) in subsection (1), for “sections 96 and 97” substitute “section 97”;
 - (iii) in each of subsections (2) and (3), after “sections” insert “95A,”;
 - (iv) in subsection (4), for “section 96” substitute “section 95A”.

Amendments to the Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009

4. Regulation 5 (fixed penalty receipts and trading) of the Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009(a) is amended as follows—

- (a) in each of paragraphs (2) and (4), for “section 96” substitute “section 95A”;
- (b) in paragraph (2), after “higher tier authorities”, and within the brackets, insert “in England”.

Amendments to the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

5. Regulation 11 (use of receipts by litter authorities) of the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018(b) is amended as follows—

- (a) in paragraph (a), for “section 96(4)(a) to (c)” substitute “section 95A(4)(a) and (b)”;
- (b) in paragraph (b), for “section 96(4)(d)” substitute “section 95A(4)(c)”.

Name
Minister of State
Department for Environment, Food and Rural Affairs

(a) S.I. 2009/486. There are amendments not relevant to these Regulations.
(b) S.I. 2018/171. There are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Part 2 of the Environmental Protection Act 1990 (c. 43) (“the 1990 Act”) and Part 9 of the Clean Neighbourhoods and Environment Act 2005 (c. 16) (“the 2005 Act”). The amendments relate to the purposes for which local authorities may use amounts received by, or paid to, them under those sections of the 1990 Act and the 2005 Act that provide for the issuing of fixed penalty notices for certain waste and littering offences.

Regulation 2 inserts section 73ZA into the 1990 Act, thereby amending and extending the powers in section 73A of that Act, including powers to legislate, to create a new equivalent of section 73A to apply to waste collection authorities in England. Section 73A of the 1990 Act, as amended, will apply only to waste collection authorities in Wales.

Regulation 3 inserts section 95A into the 2005 Act, thereby amending and extending the powers in section 96 of that Act, including powers to legislate, to create a new equivalent of section 96 to apply to higher tier authorities in England. Section 96, as amended, will apply only to higher tier authorities in Wales.

Regulations 4 and 5 make consequential amendments to the Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009 (S.I. 2009/486) and the Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 (S.I. 2018/171) respectively.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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