STATUTORY INSTRUMENTS

2018 No. 369

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES
WASTE, ENGLAND AND WALES

The Waste Enforcement (England and Wales) Regulations 2018

Made - - - - 8th March 2018
Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(1), (2) and (3) of, and paragraph 20 of Schedule 1 to, the Pollution Prevention and Control Act 1999 ("the Act")(**1**).

The Secretary of State and the Welsh Ministers have, in accordance with section 2(4) of the Act, consulted—

(a) the Environment Agency,

(b) the Natural Resources Body for Wales,

(c) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses as they consider appropriate, and

(d) such other bodies or persons as they consider appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) and (e) of the Act(**2**).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Waste Enforcement (England and Wales) Regulations 2018.

(**1**) 1999 c. 24; section 2 was amended by the Water Act 2014 (c. 21), section 62(13) and S.I. 2013/755 (W. 90). Functions of the Secretary of State under or in relation to section 2, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, by the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958), article 3(1). Functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 (c. 32), Schedule 11, paragraph 30. Paragraph 20 of Schedule 1 was amended by S.I. 2011/1043.

(**2**) By virtue of paragraph 33(2) and (6)(a) of Schedule 11 to the Government of Wales Act 2006, section 2(8) has effect in relation to the exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999 by the Welsh Ministers as if the reference to each House of Parliament included a reference to the Assembly.

(2) Subject to paragraph (3), these Regulations come into force 21 days after the day on which they are made.

(3) Regulations 2 and 4(2) and (3) come into force 2 months after the day on which these Regulations are made.

(4) These Regulations extend to England and Wales only.

Amendment of the Environmental Protection Act 1990

2. The Environmental Protection Act 1990(**3**) is amended as set out in Schedule 1.

Amendment of the Environment Act 1995

3. The Environment Act 1995(**4**) is amended as set out in Schedule 2.

Transitional provision

4.—(1) Until regulation 2 comes into force, section 109D of the Environment Act 1995, as inserted by Schedule 2 to these Regulations, has effect as if the references in that section to sections 59ZB and 59ZC of the Environmental Protection Act 1990 were omitted.

(2) The amendments made by regulation 2 do not apply where the deposit in or on any land of controlled waste or extractive waste, which is subsequently kept or disposed of in contravention of section 33(1) of the Environmental Protection Act 1990(**5**) or regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(**6**), occurs before the coming into force of regulation 2.

(3) In paragraph (2), "controlled waste" and "extractive waste" have the same meaning as in the Environmental Protection Act 1990(**7**).

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs
8th March 2018

Hannah Blythyn
Minister for Environment Under the authority of the Cabinet Secretary for Energy, Planning and Rural Affairs,
one of the Welsh Ministers
7th March 2018

(**3**) 1990 c. 43.
(**4**) 1995 c. 25.
(**5**) Section 33(1) was amended by S.I. 2007/3538 and 2009/1799.
(**6**) S.I. 2016/1154.
(**7**) The definition of "controlled waste" is given in section 75(4). Section 29(13) gives "extractive waste" the same meaning as in S.I. 2016/1154 (see regulation 2).

SCHEDULE 1

Regulation 2

Amendment of the Environmental Protection Act 1990

1. The Environmental Protection Act 1990 is amended as follows.

2. After section 59ZA(**8**) insert—

"**Powers to require removal of waste unlawfully kept or disposed of: England and Wales**

59ZB.—(1) Subsection (2) applies if any controlled waste or extractive waste is kept or disposed of in or on any land in the area of an authority in contravention of section 33(1) or regulation 12 of the Environmental Permitting Regulations.

(2) The authority may, by notice served on the occupier, require the occupier to do one or both of the following—

(a) remove the waste from the land within a specified period of not less than 21 days beginning with the service of the notice;

(b) take within such a period specified steps with a view to eliminating or reducing the consequences of the keeping or disposal of the waste.

(3) A person on whom a requirement is imposed under subsection (2) may, within 21 days beginning with the service of the notice, appeal against the requirement to a magistrates' court.

(4) On any appeal under subsection (3), the court must quash the requirement if it is satisfied that—

(a) the appellant did not keep or dispose of, or knowingly cause or knowingly permit the keeping or disposal of, the waste, or

(b) there is a material defect in the notice,

and in any other case may modify the requirement or dismiss the appeal.

(5) Where a person appeals against a requirement imposed under subsection (2), the requirement has no effect pending the determination of the appeal; and where the court modifies the requirement or dismisses the appeal it may extend the period specified in the notice.

(6) If a person on whom a requirement imposed under subsection (2) fails, without reasonable excuse, to comply with the requirement, that person is liable, on summary conviction, to a fine.

(7) Where a person on whom a requirement has been imposed under subsection (2) by an authority fails to comply with the requirement, the authority may do what that person was required to do and may recover from that person any expenses reasonably incurred by the authority in doing it.

(8) If it appears to an authority that controlled waste or extractive waste has been kept or disposed of in or on any land in the authority's area in contravention of section 33(1) or regulation 12 of the Environmental Permitting Regulations, and that—

(a) in order to remove or prevent pollution of land, water or air or harm to human health, it is necessary that the waste be forthwith removed, or that steps are taken to eliminate or reduce the consequences of the keeping or disposal, or both,

(**8**) Section 59ZA was inserted by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 50(2).

(b) there is no occupier of the land or the occupier cannot be found without the authority incurring unreasonable expense, or

(c) the occupier did not keep or dispose of, or knowingly cause or knowingly permit the keeping or disposal of, the waste,

the authority may remove the waste from the land, or take steps to eliminate or reduce the consequences of the keeping or disposal of the waste, or both.

(9) Where an authority exercises any of the powers conferred on it by subsection (8), it is entitled to recover the cost incurred by it in removing the waste or taking the steps or both, and in disposing of the waste—

(a) in a case falling within subsection (8)(a), from the occupier of the land, unless the occupier proves that the occupier did not keep or dispose of, or knowingly cause or knowingly permit the keeping or disposal of, the waste,

(b) in any case, from any person who kept or disposed of, or knowingly caused or knowingly permitted the keeping or disposal of, the waste,

except such of the cost as the occupier or that person shows was incurred unnecessarily.

(10) An authority may not recover costs under subsection (9) if a compensation order has been made under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000(**9**) in favour of the authority in respect of any part of those costs.

(11) Subsection (10) does not apply if the compensation order is set aside on appeal.

(12) Any waste removed by an authority under subsection (8) belongs to that authority and may be dealt with accordingly.

(13) Subsections (2) and (8) do not apply in relation to household waste from a domestic property which is kept or disposed of within the curtilage of that property by a person other than an establishment or undertaking.

(14) In this section and section 59ZC, "authority" means—

(a) a waste regulation authority in England or Wales, or

(b) a waste collection authority in England or Wales.

Section 59ZB: supplementary power in relation to owner of land

59ZC.—(1) Where the grounds in subsection (2) or (3) are met, an authority may, by notice served on the owner of any land in its area, require the owner to comply with one or both of the requirements mentioned in section 59ZB(2)(a) or (b).

(2) The grounds in this subsection are that it appears to the authority that controlled waste or extractive waste has been kept or disposed of in or on the land in contravention of section 33(1) or regulation 12 of the Environmental Permitting Regulations, and—

(a) there is no occupier of the land, or

(b) the occupier cannot be found without the authority incurring unreasonable expense.

(3) The grounds in this subsection are that—

(a) the authority has served a notice under section 59ZB(2) imposing a requirement on the occupier of the land,

(b) the occupier of the land is not the same person as the owner of the land, and

(**9**) 2000 c. 6; section 130 was amended by the Fraud Act 2006 (c. 35), Schedule 1, paragraph 29, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), section 63(1), and the Criminal Justice and Courts Act 2015 (c. 2), Schedule 5, paragraph 6.

(c) either—

(i) the occupier has failed to comply with the requirement mentioned in paragraph (a) within the period specified in the notice, or

(ii) the requirement mentioned in paragraph (a) has been quashed on the ground specified in section 59ZB(4)(a).

(4) Section 59ZB(3) to (7) apply in relation to a requirement imposed under this section on the owner of the land as they apply in relation to a requirement imposed under that section on the occupier of land but as if in section 59ZB(4) there were inserted after paragraph (a)—

"(aa) in order to comply with the requirement the appellant would be required to enter the land unlawfully, or".

(5) Subsection (1) does not apply in relation to household waste from a domestic property which is kept or disposed of within the curtilage of that property by a person other than an establishment or undertaking.

(6) In this section, "owner" has the meaning given by section 78A(9)(**10**).".

3. In section 59A (directions in relation to exercise of powers under section 59)(**11**)—

(a) in the heading, after "section 59" insert ", 59ZA, 59ZB or 59ZC";

(b) in subsections (1) and (3), after "section 59" insert ", 59ZA, 59ZB or 59ZC".

4. In section 71 (obtaining of information from persons and authorities)(**12**), in subsection (4)(a), after "section 59" insert ", 59ZA, 59ZB or 59ZC".

5. In section 78YB (interaction of Part 2A with other enactments)(**13**), in subsection (3)—

(a) after "section 59" insert ", section 59ZA(1), 59ZB(1) or (8) or 59ZC(1)";

(b) after "deposit" in each place it occurs insert ", keeping or disposal";

(c) for "that section" substitute "section 59, 59ZA, 59ZB or 59ZC (as the case may be)".

SCHEDULE 2

Regulation 3

Amendment of the Environment Act 1995

1. The Environment Act 1995 is amended as follows.

2. For the italic heading before section 108 substitute "*Enforcement*".

3. After section 109 insert—

"**Power to issue restriction notices: England and Wales**

109A.—(1) An authorised person may issue a restriction notice in relation to premises where there is, or was, a regulated facility or an exempt facility if the person is satisfied that the conditions in subsection (2) are met.

(2) The conditions are that—

(**10**) Section 78A was inserted by the Environment Act 1995, section 57.
(**11**) Section 59A was inserted by the Anti-social Behaviour Act 2003 (c. 38), section 55(4).
(**12**) Section 71(4) was inserted by the Anti-social Behaviour Act 2003, section 55(5).
(**13**) Section 78YB was inserted by the Environment Act 1995, section 57.