Draft Regulations laid before Parliament and the National Assembly for Wales under section 2(8) and (9)(d) and (e) of the Pollution Prevention and Control Act 1999, for approval by resolution of each House of Parliament and of the Assembly.

DRAFT STATUTORY INSTRUMENTS

2018 No. 000

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

WASTE, ENGLAND AND WALES

The Waste Enforcement (England and Wales) Regulations 2018

Made - - - - ***

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")(**a**).

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(**b**).

Citation, commencement and extent

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

(**a**) 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.

(**b**) 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(**a**) is amended as set out in Schedule 1.

Amendment of the Environment Act 1995

3. The Environment Act 1995(**b**) 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(**c**) or regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(**d**), 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(**e**).

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

Name
Minister for Environment
Under authority of the Cabinet Secretary for Energy, Planning and Rural Affairs,
Date one of the Welsh Ministers

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(**f**) insert—

(**a**) 1990 c. 43.
(**b**) 1995 c. 25.
(**c**) Section 33(1) was amended by S.I. 2007/3538 and 2009/1799.
(**d**) S.I. 2016/1154.
(**e**) 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).
(**f**) Section 59ZA was inserted by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 50(2).

"**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,

(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(**a**) 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

(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".

(6) 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.

(**a**) 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.

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

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

(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)(**c**), in subsection (4)(a), after "section 59" insert ", 59ZA, 59ZB or 59ZC".

5. In section 78YB (interaction of Part 2A with other enactments)(**d**), 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—

(a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and

(b) the notice is necessary to prevent that risk from continuing.

(3) A restriction notice is a notice prohibiting access to, and the importation of waste into, the premises or a specified part of the premises.

(4) But a restriction notice does not prohibit access to the premises, or the specified part of the premises, by the occupier or the owner.

(5) A restriction notice has effect for a period specified in the notice, which may not exceed 72 hours.

(6) Where a restriction notice is issued, the appropriate agency may do anything necessary to secure the premises against access in contravention of the notice.

(7) A restriction notice may include provision for—

(a) persons, or a description of persons, to whom the prohibition in subsection (3) does not apply;

(b) times at which the prohibition in subsection (3) does not apply;

(c) circumstances in which the prohibition in subsection (3) does not apply.

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

(8) Provision included in accordance with subsection (7) may be unconditional or subject to specified conditions.

(9) A restriction notice must—

(a) identify the premises, or part of the premises, to which the notice applies;

(b) explain the effect of the notice;

(c) state that failure to comply with the notice is an offence;

(d) state the penalties applicable to a person guilty of an offence;

(e) state that a restriction order will be applied for under section 109D;

(f) state that notice will be given of when and where the application for a restriction order will be heard;

(g) explain the effect of a restriction order.

(10) Before issuing a restriction notice, the appropriate agency must make reasonable efforts—

(a) to inform the occupier and the owner of the premises that the notice is going to be issued;

(b) to consult the occupier and the owner of the premises on the arrangements for access to the premises, or to the particular part of the premises, by persons acting on behalf of the occupier or the owner for any purpose, including—

(i) the purpose of maintaining machinery and apparatus;

(ii) the purpose of securing the premises.

Cancellation or variation of restriction notices

109B. Where a restriction notice is in force and the authorised person is no longer satisfied that the conditions in section 109A(2) are met—

(a) as regards the premises as a whole, the authorised person must issue a notice cancelling the restriction notice (a "cancellation notice");

(b) as regards a particular part of the premises, the authorised person must issue a notice varying the restriction notice so that it does not apply to that part of the premises (a "variation notice").

Service of restriction notices etc.

109C.—(1) A restriction notice, a cancellation notice or a variation notice must be served by an authorised person.

(2) The authorised person must make reasonable efforts to—

(a) fix a copy of the notice to each normal means of access to the premises;

(b) give a copy of the notice to the occupier and the owner of the premises;

(c) give a copy of the notice to the occupier and the owner of any other premises to which the authorised person believes access will be impeded by the restriction notice.

(3) In subsection (1), "cancellation notice" and "variation notice" have the meanings given by section 109B.

Power of court to make restriction orders: England and Wales

109D.—(1) An application to a magistrates' court for a restriction order—

(a) must be made by the appropriate agency when it has issued a restriction notice (unless the notice has been cancelled);

(b) may otherwise be made by the appropriate agency at any time.

(2) The application must be heard by the magistrates' court—

(a) where subsection (1)(a) applies, not later than 72 hours after service of the restriction notice;

(b) where subsection (1)(b) applies, not later than 7 days after the application is made.

(3) Where an application is made under subsection (1), the appropriate agency must serve a notice stating the date, time and place of the hearing of the application on—

(a) the occupier and the owner of the premises;

(b) the occupier and the owner of any other premises to which the appropriate agency believes access will be impeded if a restriction order is made.

(4) The court may make a restriction order in relation to premises where there is, or was, a regulated facility or an exempt facility if the court is satisfied that the conditions in subsection (5) or (6) are met.

(5) The conditions are that—

(a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and

(b) the order is necessary to prevent that risk from continuing.

(6) The conditions are that—

(a) in relation to the treatment, keeping, deposit or disposal of waste in or on the premises, a person has—

(i) contravened section 33(1) of the Environmental Protection Act 1990,

(ii) contravened regulation 12(1) of the Environmental Permitting Regulations or knowingly caused or knowingly permitted the contravention of regulation 12(1)(a) of those Regulations,

(iii) contravened or failed to comply with an environmental permit condition, or

(iv) failed to comply with the requirements of an enforcement notice, a landfill closure notice, a mining waste facility closure notice, a suspension notice, or a notice served under section 59, 59ZA, 59ZB or 59ZC of the Environmental Protection Act 1990,

(b) the conduct referred to in paragraph (a) has caused, is causing or has failed to prevent from continuing—

(i) pollution to the environment, or

(ii) harm to human health, and

(c) the order is necessary to prevent that pollution or harm from continuing.

(7) A restriction order is an order prohibiting access to, and the importation of waste into, the premises or a specified part of the premises.

(8) A restriction order has effect for a period specified in the order, which may not exceed 6 months.

(9) A restriction order may include provision for—

(a) persons, or a description of persons, to whom the prohibition in subsection (7) does not apply;

(b) times at which the prohibition in subsection (7) does not apply;

(c) circumstances in which the prohibition in subsection (7) does not apply.

(10) Provision included in accordance with subsection (9) may be unconditional or subject to specified conditions.

(11) A restriction order may include provision about access to other premises where that access could otherwise be impeded by the order.

(12) A restriction order must—

(a) identify the premises, or part of the premises, to which the order applies;

(b) explain the effect of the order;

(c) state that failure to comply with the order is an offence;

(d) state that the removal of a copy of a restriction order fixed to a normal means of access to the premises is an offence;

(e) state the penalties applicable to a person guilty of an offence.

(13) The restriction notice referred to in subsection (1)(a) ceases to have effect—

(a) on the making of a restriction order, or

(b) where the court decides not to make a restriction order, on the making of that decision, unless the court makes an order in accordance with section 109E(4).

(14) In subsection (6)(a)(iii) and (iv), "enforcement notice", "environmental permit condition", "landfill closure notice", "mining waste facility closure notice" and "suspension notice" have the meanings given in regulation 2(1) of the Environmental Permitting Regulations.

Temporary orders

109E.—(1) This section applies where an application has been made to a magistrates' court under section 109D(1)(a) for a restriction order.

(2) The court may adjourn the hearing of the application for a period of not more than 14 days to enable—

(a) the appropriate agency to show why a restriction order should be made;

(b) the occupier or the owner of the premises to show why a restriction order should not be made.

(3) If the court adjourns the hearing, the restriction notice continues in force until the court has determined the application.

(4) If the court does not make a restriction order it may nevertheless order that the restriction notice continues in force for a specified further period of not more than 72 hours if it is satisfied that—

(a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and

(b) the notice is necessary to prevent that risk from continuing.

Extension of restriction orders

109F.—(1) At any time before the expiry of a restriction order, the appropriate agency may apply to a justice of the peace, by complaint, for an extension (or further extension) of the period for which the order is in force.

(2) Where an application is made under this section, the justice of the peace may issue a summons directed to one or both of the occupier and the owner of the premises, requiring the person to appear before the magistrates' court to respond to the application.

(3) If a summons is issued under subsection (2), a notice stating the date, time and place of the hearing of the application must be served on the persons to whom the summons is directed.

(4) The court may make an order extending (or further extending) the period of the restriction order by a period not exceeding 6 months where satisfied that the conditions in section 109D(5) or (6) are met.

Variation or discharge of restriction orders

109G.—(1) At any time before the expiry of a restriction order, an application may be made to a justice of the peace, by complaint, for the order to be varied or discharged.

(2) Those entitled to make an application under this section are—

(a) the appropriate agency that applied for the restriction order;

(b) the occupier of the premises subject to the order;

(c) the owner of the premises subject to the order.

(3) Where the appropriate agency makes an application under this section, the justice of the peace may issue a summons directed to one or both of the occupier and the owner of the premises, requiring the person to appear before the magistrates' court to respond to the application.

(4) Where the occupier or the owner of the premises makes an application under this section, the justice of the peace must—

(a) issue a summons directed to the appropriate agency that applied for the restriction order requiring it to appear before the magistrates' court to respond to the application, or

(b) dismiss the application.

(5) If a summons is issued under subsection (3) or (4), a notice stating the date, time and place of the hearing of the application must be served on—

(a) the appropriate agency that applied for the restriction order (other than where the agency is the complainant);

(b) the occupier or the owner of the premises (other than the complainant).

(6) The magistrates' court may make an order varying or discharging the restriction order if it is no longer satisfied that the conditions in section 109D(5) or (6) are met in respect of all or part of the premises (or the part of the premises) to which the restriction order applies.

Enforcement of restriction orders

109H.—(1) The appropriate agency must make reasonable efforts to fix a copy of the restriction order to each normal means of access to the premises.

(2) Where a restriction order has been made, an authorised person may do anything necessary to secure the premises against access in contravention of the order.

Appeals against decisions on restriction orders

109I.—(1) The occupier or the owner of the premises may appeal against—

(a) a decision to make or extend a restriction order;

(b) a decision made under section 109G in relation to an application to vary or discharge a restriction order.

(2) The appropriate agency may appeal against—

(a) a decision not to order the continuation in force of a restriction notice (under section 109E);

(b) a decision not to make a restriction order;

(c) a decision not to extend a restriction order;

(d) a decision made in relation to an application to vary or discharge a restriction order (under section 109G).

(3) An appeal under this section is to the Crown Court.

(4) An appeal under this section must be made within 21 days beginning with the date of the decision to which it relates.

(5) On an appeal under this section the Crown Court may make whatever order it thinks appropriate.

(6) Pending the determination of an appeal under this section, the decision being appealed remains in force.

Access to other premises

109J.—(1) Where—

(a) access to premises is prohibited or restricted by an order under section 109D, 109E, 109F, 109G or 109I, and

(b) there are other premises to which access is impeded by that order,

an occupier or owner of those other premises may apply to the appropriate court for an order under this section.

(2) The appropriate court is—

(a) the magistrates' court, in the case of an order under section 109D, 109E, 109F or 109G;

(b) the Crown Court, in the case of an order under section 109I.

(3) Notice of an application under this section must be given to—

(a) the appropriate agency that applied for the restriction order;

(b) the occupier and the owner of the premises subject to the order.

(4) On an application under this section the court may make whatever order it thinks appropriate in relation to access to the other premises, whether or not provision has been made under section 109D(11).

Recovery of costs

109K.—(1) An appropriate agency that incurs expenditure for the purpose of securing premises in respect of which a restriction notice was issued is entitled to recover that expenditure from the occupier or the owner of the premises, except such of that expenditure as the occupier or the owner shows was incurred unnecessarily.

(2) An appropriate agency that incurs expenditure for the purpose of securing premises in respect of which a restriction order is in force may apply to the court that made the restriction order for an order under subsection (3).

(3) On an application under this section, the court may make whatever order it thinks appropriate for the reimbursement (in full or in part) by the occupier or the owner of the premises of—

(a) the expenditure mentioned in subsection (2);

(b) any expenditure incurred by the appropriate agency for the purpose of securing the premises in respect of which a restriction notice (including a notice continued in force under section 109E) was issued, except such of that expenditure as has been recovered in accordance with subsection (1).

(4) An application for an order under this section may not be heard unless it is made within 3 months beginning with the day on which the restriction order ceases to have effect.

(5) An order under this section may be made only against a person who has been served with the application for the order.

Exemption from liability

109L.—(1) The appropriate agency is not liable for damages arising out of anything done or omitted to be done by the appropriate agency in the exercise or purported exercise of a power under sections 109A to 109D, 109F to 109I and 109K in proceedings for—

(a) judicial review, or

(b) the tort of negligence or misfeasance in public office.

(2) Subsection (1) does not apply to an act or omission shown to have been in bad faith.

(3) Subsection (1) does not apply so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998(**a**).

(4) This section does not affect any other exemption from liability (whether at common law or otherwise).

Compensation

109M.—(1) Where the occupier or the owner of any premises to which access was impeded by a restriction notice or order (other than the premises which is subject to a restriction notice or order) claims to have incurred financial loss in consequence of that notice or order, that person may apply to the appropriate court for compensation.

(2) The appropriate court is—

(a) the magistrates' court (except where paragraph (b) applies);

(b) the Crown Court, in the case of a restriction order that was made or extended by an order of that Court on an appeal under section 109I.

(3) An application under this section may not be heard unless it is made within 3 months beginning with whichever of the following is applicable—

(a) the day on which the restriction notice was cancelled under section 109B;

(b) the day on which a restriction order was refused;

(c) the day on which the restriction order ceased to have effect.

(4) For the purposes of subsection (3)(b) the day on which a restriction order was refused is—

(a) the day on which the magistrates' court decided not to make a restriction order (except where paragraph (b) applies);

(b) the day on which the Crown Court dismissed an appeal against a decision not to make a restriction order.

(5) On an application under this section the court may order the payment of compensation by the appropriate agency if it is satisfied—

(a) that the applicant has incurred financial loss in consequence of the notice or order, and

(b) that having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.

Interpretation

109N.—(1) In sections 109A to 109M and this section—

"appropriate agency" means the Agency or the Natural Resources Body for Wales;

"authorised person" means a person who is authorised by the appropriate agency under section 108;

"the Environmental Permitting Regulations" means the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154);

"exempt facility" has the meaning given in regulation 5 of the Environmental Permitting Regulations;

(**a**) 1998 c. 42.

"occupier", in relation to premises, includes a person who habitually lives on the premises;

"owner", in relation to premises consisting of land, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let;

"premises" means premises in England or Wales, and includes any land, vehicle, vessel or mobile plant;

"regulated facility" has the meaning given in regulation 8 of the Environmental Permitting Regulations;

"restriction notice" has the meaning given by section 109A(3);

"restriction order" has the meaning given by section 109D(7);

"waste" has the same meaning as in section 75 of the Environmental Protection Act 1990(**a**).

(2) In calculating for the purposes of sections 109A(5), 109D(2) and 109E(4) when a period of 72 hours or 7 days ends, the following days are to be disregarded—

(a) Good Friday;

(b) Christmas Day;

(c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(**b**).".

4. In section 110 (offences)—

(a) after subsection (3) insert—

"(3A) It is an offence for a person to contravene, without reasonable excuse, a restriction notice issued under section 109A (including a notice continued in force under section 109E).

(3B) It is an offence for a person to contravene, without reasonable excuse, a restriction order made under section 109D, 109F, 109G or 109I.

(3C) It is an offence for a person to remove, without reasonable excuse, a copy of a restriction order fixed to a normal means of access to premises under section 109H(1).";

(b) after subsection (5) insert—

"(5D) A person guilty of an offence under subsection (3A) is liable on summary conviction to a fine or to imprisonment for a period not exceeding 51 weeks, or to both.

(5E) A person guilty of an offence under subsection (3B) is liable—

(a) on summary conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

(5F) A person guilty of an offence under subsection (3C) is liable on summary conviction to a fine.

(5G) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003(**c**), the reference in subsection (5D) to 51 weeks is to be read as a reference to 6 months.

(5H) In relation to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (5E)(a) to 12 months is to be read as a reference to 6 months.".

(**a**) Section 75(2) was substituted by S.I. 2011/988.
(**b**) 1971 c. 80.
(**c**) 2003 c. 44.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Protection Act 1990 (c. 43) and the Environment Act 1995 (c. 25) for England and Wales in connection with Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ L 312 22.11.2008, p. 3).

Regulation 2 amends the Environmental Protection Act 1990 by inserting sections 59ZB and 59ZC. These sections give a waste regulation authority or waste collection authority (defined respectively in section 30(1) and (3) of the Environmental Protection Act 1990) the power to issue a notice in respect of waste which is unlawfully kept or disposed of in or on land within the authority's area. A notice may be issued on the occupier of the land or (in the circumstances in section 59ZC(2) to (4)) on the owner of the land, and may include requirements to remove waste and take steps (to be specified in the notice) to eliminate or reduce the consequences of the unlawful keeping or disposal.

A person who fails without reasonable excuse to comply with a requirement is guilty of an offence (sections 59ZB(6) and 59ZC(5)). A requirement may be appealed. A waste regulation authority or waste collection authority may also take the required action and recover the costs of doing so from the occupier or owner of the land or from any other person who knowingly caused or permitted the keeping or disposal of the waste (section 59ZB(7) to (9)).

Regulation 3 amends the Environment Act 1995 by inserting sections 109A to 109N. These sections give the Environment Agency and the Natural Resources Body for Wales ("the regulators") the power to issue a "restriction notice" and to apply to the courts for a "restriction order". A restriction notice (section 109A) is a notice prohibiting access and the importation of waste to premises for a period specified in the notice of no more than 72 hours. This can only be issued where a person authorised by the regulator is satisfied in accordance with section 109A(2).

A restriction order (section 109D) is an order made by the courts which prohibits access and the importation of waste to the premises for a period specified in the order, which may not exceed 6 months. It can be extended, varied or discharged (sections 109F and 109G). A decision of the courts may be appealed (section 109L).

A regulator may apply to the courts for reimbursement of expenditure for the purpose of securing premises in respect of which a restriction order is in force (section 109K). On application from an occupier or the owner of other premises to which access was impeded by a restriction notice or restriction order, a court may order the regulator to pay compensation to that person in respect of financial loss incurred in consequence of the notice or order. The court may order such compensation to be paid where it considers that it is appropriate to do so (section 109M).

Regulation 4 contains transitional provision in respect of the amendments made by regulation 2.

An impact assessment has not been produced for this instrument in relation to England as no, or no significant, impact on the private, voluntary or public sector is foreseen.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As result a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations in relation to Wales. A copy can be obtained from the Waste Regulation Policy Team, Department for Environment and Rural Affairs, Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.

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