EXPLANATORY MEMORANDUM TO

THE WASTE ENFORCEMENT (ENGLAND AND WALES) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 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 This instrument enhances powers to tackle illegal activity at waste sites. It gives waste regulation authorities and waste collection authorities in England and Wales the power by notice to require waste from a site to be removed where it has been unlawfully kept or disposed of, including waste that was initially lawfully deposited. It also gives the Environment Agency and Natural Resource Body for Wales the power, by notice or by application to court for an order, to restrict access and the importation of waste to premises.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England and Wales.

3.3 The instrument extends to England and Wales only, and accordingly applies to England and Wales only (see regulation 1(4) of the instrument). The instrument does not have minor or consequential effects outside England and Wales.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to the prevention, reduction, collection, management, treatment and disposal of waste, which is within the devolved legislative competence of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 (c. 46) and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 (c. 47) and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of

that Act); the primary purpose of the subject matter of the instrument is within paragraph 6 of Schedule 7 to the Government of Wales Act 2006 (c. 32), and it is not otherwise outside the legislative competence of the National Assembly for Wales (see 108 of that Act).

4. Legislative Context

4.1 The instrument inserts new sections 59ZB and 59ZC into the Environmental Protection Act 1990 (c. 43), allowing waste regulation authorities and waste collections authorities (defined in section 30 of that Act) to issue a notice on the occupier or owner of land to remove unlawfully kept or disposed of waste and to take specified step to eliminate or reduce the consequences of the unlawful keeping or disposal of waste. The new sections supplement existing powers in sections 59 and 59ZA of that Act.

4.2 The instrument also inserts new sections 109A to 109N into the Environment Act 1995, allowing the Environment Agency (in respect of England) and the Natural Resource Body for Wales (in respect of Wales) to restrict access to premises and the importation of waste into premises for up to 72 hours by issuing a restriction notice where there is a risk of serious pollution to the environment or serious harm to human health as a result of the treatment, keeping, deposit or disposal of waste and the notice is necessary to prevent that risk from continuing. Access to premises and the importation of waste can be restricted for up to 6 months by the making of a restriction order by a court on application by the Environment Agency or the Natural Resource Body for Wales. The new section supplement existing powers in sections 108 and 109 of that Act.

4.3 The changes are being made 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).

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales only.

5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for the Environment has made the following statement regarding Human Rights:

“In my view the provisions of the Waste Enforcement (England and Wales) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1. The waste sector in England and Wales has changed since the introduction of the EU Waste Framework Directive. More waste has been diverted away from landfill and put to beneficial use, with clear benefits to the environment and the tax payer. Waste sites operating under a permit or exemption play a critical role in managing waste safely. Most of these sites operate responsibly and meet the required standards. There is significant evidence, however, that certain waste sites act illegally by not complying

with the conditions of their waste permit or exemption. Another part of the industry operates completely outside of the law by running waste sites without a permit or exemption.

7.2. These waste sites have many negative impacts. They can cause serious pollution to the natural environment. Nearby communities are severely impacted by odour, litter, dust, vermin, fly infestations and fires. Issues at large scale problem waste sites feature frequently on local and national media. The cost to the UK economy in 2013 was estimated between £568m and £808m, and the cost to the English economy in 2016 was £604m. This also hampers resource efficiency by creating illegal shortcuts for disposing of waste cheaply, and so undercutting compliant businesses who seek to recycle or recover resources and feed them back into the economy.

7.3. The two new powers will help tackle these negative impacts. The power to restrict access and the importation of waste to premises will enable regulators to prevent serious pollution from operators stockpiling huge volumes of waste beyond the limit specified in their permit. The power to require waste that was initially lawfully deposited but subsequently unlawfully kept or disposed of to be removed will enable regulators to ensure all waste is removed from a site that has breached its permit conditions.

7.4. The introduction of these two new sets of powers will:

- support the vast majority of waste businesses that operate according to the rules;
- protect local communities affected by the actions of illegal and non-compliant operators;
- protect the environment;
- minimise the costs to the public purse in dealing with fires or clearance at waste sites; and
- reduce the avoidance of landfill tax.

7.5. Non-legislative options are not viable to fulfil the policy objectives. Enforcement of the waste site sector needs to be underpinned by legislation to enable the regulators to successfully prosecute illegal activity.

8. Consultation outcome

8.1. In 2015, Defra and Welsh Government carried out a 12 week consultation on six proposals to tighten regulators' powers at waste sites, two of which related to these two sets of proposed powers. The other four proposals were implemented in October 2015. The vast majority (90%) of respondents to the consultation were in favour of the proposals. The Government response to the 2015 consultation is available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/466879/waste-crime-consult-sum-resp.pdf

8.2. Defra and the Welsh Government undertook a 4 week targeted stakeholder engagement exercise in April 2017 to seek confirmation on our approach to the two new sets of powers. The 113 organisations that responded to the 2015 consultation were contacted directly by email. Eight organisations provided responses. All respondents expressed support for the two new powers. Our response to the targeted stakeholder engagement in 2017 was sent to the 113 organisations which responded in respect of this area in the 2015 consultation. The 2017 exercise was not published

more widely, but is available from Defra waste regulation and crime team (waste.regulationandcrime@defra.gsi.gov.uk).

9. Guidance

9.1. Defra and the Welsh Government will publicise the introduction of the two new powers to the waste sector through partnership with stakeholders and the waste trade press.

9.2. Guidance for the two new powers will not be produced. The regulators will use their enforcement & prosecution policy and guidance on enforcement & sanctions when using the two new powers.

10. Impact

10.1. The impact on business, charities or voluntary bodies is a cost of £128,000 - £302,100. This is the cost on compliant landowners from the introduction of the new powers.

10.2. The impact on the public sector is a benefit of £50,721-£1,615,416 from the additional landfill tax revenue that the introduction of the new powers will generate.

10.3. An Impact Assessment has not been prepared for this instrument because the impact on businesses fall below the threshold for producing one.

11. Regulating small business

11.1. The legislation applies to activities that are undertaken by small businesses.

11.2. No specific action is proposed to minimise regulatory burdens on small businesses

11.3. The basis for the final decision on what action to take to assist small businesses was taken because the regulators need to be able to use the powers on waste businesses that are not compliant with the conditions in their waste permit regardless of whether they are a large or small company.

12. Monitoring & review

12.1. Given that this instrument inserts a regulatory provision into primary legislation, it is not considered appropriate to include a review provision under the provisions of the Small Business, Enterprise and Employment Act 2015 (c. 26) since it is outside the scope of the policy objectives as set out in the statutory guidance, which relate to the inclusion of review provisions in secondary legislation.

12.2. The regulators will provide Defra and the Welsh Government with information on an annual basis on the number of times the new powers have been used. We will review the use of the powers with the regulators after three years to establish their effectiveness.

13. Contact

13.1. William Wakefield at the Department for Environment, Food and Rural Affairs. Telephone: 020 8026 4275 or email William.wakefield@defra.gsi.gov.uk can answer any queries regarding the instrument.