

SL(6)405 – The Waste Separation Requirements (Wales) Regulations 2023

Background and Purpose

These Regulations set out waste separation requirements in Wales (for the purposes of section 45AA of the Environmental Protection Act 1990 (c. 43) (the “1990 Act”)) with the aim of ensuring that waste is managed in a manner that promotes high quality recycling. The separation requirements apply in respect of all premises other than domestic properties and caravans. However, hospitals are not required to present waste separately for collection until 6 April 2026.

Separation requirements are specified in relation to the presentation of waste for collection (regulation 3), the collection of waste (regulation 4) and the handling of waste that has been collected (regulation 5).

“Recyclable waste streams” is defined in regulation 2 as meaning:

- (a) glass;
- (b) cartons and similar, metal and plastic;
- (c) paper and card;
- (d) food waste;
- (e) unsold small waste electrical and electronic equipment; and
- (f) unsold textiles.

Regulation 3 requires each recyclable waste stream to be presented separately for collection. Those collecting such waste must collect the recyclable waste streams separately (regulation 4). Those who subsequently handle the waste must not mix it with any other recyclable waste stream or with other types of waste or other substances or articles (regulation 5). Where an occupier of premises takes controlled waste to a centralised collection point (for example, a waste recycling centre) this constitutes “presenting for collection” under the Regulations.

These Regulations amend sections 46 (receptacles for household waste) and 47 (receptacles for commercial or industrial waste) of the 1990 Act to clarify the relationship between a requirement imposed by a waste collection authority in Wales by notice under those sections, and the requirements set out in section 45AA and these Regulations.

These Regulations also amend the Waste (England and Wales) Regulations 2011 (S.I. 2011/988) to restrict the application, in relation to Wales, of regulations 13 (duties in relation to collection of waste) and 14 (duty in relation to collected waste) of those Regulations to domestic properties and caravans.

The offences in respect of breaches of the separation requirements are contained in section 45AA(8) of the 1990 Act.



A civil sanctions regime is introduced to enable the regulator (the Natural Resources Body for Wales ("NRW")) to impose fixed monetary penalties, variable monetary penalties and non-compliance penalties.

These Regulations make provision for the procedure relating to the civil sanctions, including appeals. Appeals are to be made to the First-tier Tribunal.

Schedule 2 provides that guidance relating to the use of civil sanctions must be published by NRW. Guidance must also be published relating to the use of non-compliance penalties and enforcement cost recovery notices. Before any guidance is published, the regulator is required to consult. The Regulations also provide for the publication of information on enforcement action taken by the regulator. The regulator is able to recover certain costs of enforcement in the case of variable monetary penalties. The regulator is able to recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed by the regulator under the Regulations together with any financial penalty for late payment.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following six points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 2, there is a difference between the English and Welsh text. In the Welsh text, in the list of definitions, there is an additional definition that isn't found in the English text, namely "person acting in the course of a business". This definition appears correctly later in both language texts in regulation 5(2) and that is the only regulation where the term is used in these Regulations.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In the headings of Part 4 and of regulation 7, the title of " the Environmental Protection Act 1990" is repeated in full rather than using the defined term "the 1990 Act" which is actually used in the body of regulation 7.

3. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts



In Schedule 1, there is a difference between the English and Welsh text. The English text refers to “Rigid **paper** containers” under the heading “Cartons and similar” but the Welsh text has translated the meaning as “Rigid **plastic** containers”.

4. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In Schedule 2, in paragraph 11(1), in the Welsh text, “determine” has been translated as “ganfyddir”. The term “canfod” is noted in the Legislative Translation Unit’s Glossary as the preferred term when conveying the meaning of “determine” in the context of ascertaining, establishing or discovering something. But it does appear to be incorrect in the context of paragraph 11(1) where the determine refers to specifying the amount of the financial penalty to be paid to the regulator.

The term “pennu” is also noted in the Legislative Translation Unit’s Glossary as the preferred term when conveying the meaning of “determine” in the different context of specifying, setting or fixing an amount etc. Therefore, it would appear that “determine” should have been translated as “bennir” rather than “ganfyddir” to correctly convey the meaning of that term in the context of paragraph 11(1) of Schedule 2 to these Regulations.

5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In Schedule 2, in paragraph 25(2) and (3) there are references that are incorrectly described as “paragraph (1)(b)” but they should be described as “sub-paragraph (1)(b)”. A similar error occurs in paragraph 28(2) where there is a reference that is incorrectly described as “paragraph (1)(a)” but it should be described as “sub-paragraph (1)(a)” – see [Writing laws for Wales](#) 6.16 about composite references.

6. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In Schedule 2, in paragraph 25(3)(c), in the English text, the phrase “determining the amount” has been used in relation to the amount of the penalty. However, in the following paragraph 26(c), a slightly different phrase, “establishing the amount”, has been used in relation to the non-compliance penalties and enforcement cost recovery notices.

In the Welsh text, both “determining” and “establishing” have been translated using the same word “bennu” which conveys the meaning of specifying or setting/fixing an amount to be paid in this context. It suggests to the reader of the Welsh text that both “determining the amount” and “establishing the amount” bear the same meaning in those paragraphs. If there is a difference in meaning, it would have been more appropriate to use a different term in the Welsh text of paragraph 26(c), such as “gadarnhau” which is already used in paragraph 11(4) for “establishing the amount”. This would have conveyed the meaning of “establishing” in the sense of ascertaining or discovering the amount involved.



Therefore, the translation of paragraphs 25(3)(c) and 26(c) in the Welsh text of Schedule 2 does not convey the potential different meanings of the English text (if there is an intended difference) in the context of those paragraphs. In addition, it means that the translation of paragraphs 25(3)(c) and 26(c) in the Welsh text of Schedule 2 to these Regulations is different from that found in the corresponding paragraphs in the Schedule to the Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023, although the English text is identical. But it is also unclear whether the difference in the drafting of the English text by using “determining” and “establishing” is deliberate due to an intended difference in their meaning or an inconsistency in the drafting.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

15 November 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee