

SL(6)406 – The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023

Background and Purpose

These Regulations prohibit the incineration, or the deposit in landfill, of specified types of separately collected recyclable waste. The Welsh Government explains in the Explanatory Memorandum that *“this will ensure that waste that is presented and collected separately in accordance with the [Waste Separation Requirements (Wales) Regulations 2023] is recycled as intended.”*

The types of waste are:

- Food;
- Small waste electrical and electronic equipment;
- Card;
- Cartons; and
- Certain textiles (unsold textiles will be prohibited from incineration, whilst all textiles will be prohibited from landfill).

In addition, these Regulations prohibit the deposit in landfill of any wood waste, whether or not separately collected.

These Regulations expand on the changes implemented by the Waste (Circular Economy) (Amendment) Regulations 2020, which amended the Environmental Permitting (England and Wales) Regulations 2016 (“the Environmental Permitting Regulations”), to ban certain separately collected materials from incineration and landfill (glass; plastic; metal; and paper).

This new prohibition is achieved by adding the additional specified types of waste to provisions in the Environmental Permitting Regulations under which conditions are deemed to be contained in every environmental permit, which authorises a landfill, small waste incineration plant, waste co-incineration plant or waste incineration plant.

The relevant condition is that the operator of such a facility must not accept specified types of waste for incineration or landfill if that waste has been separately collected for the purpose of preparing for re-use or recycling.

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 7 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

In the preamble to these Regulations, section 55a of the Regulatory Enforcement and Sanctions Act 2008 is cited, along with a number of other provisions, as an enabling power for the making of these Regulations. However, the 2008 Act does not contain a section 55a. An explanation is required as to the inclusion of section 55a of the 2008 Act as an enabling power.

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

In regulation 3, the Environmental Permitting (England and Wales) Regulations 2016 are defined as “*the 2016 Regulations*”. But in the headings of Part 3 and of regulation 4, and also in the body of the text of regulation 4(1), those Regulations are referred to by their full title rather than by that defined term.

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

In the Schedule, in paragraphs 6(c), 16(c), 19(4)(c) and 22(3)(c), in the English text, the phrase “*how payment **may** be made*” occurs in a similar context. But in the Welsh text, the translation has used a different term to convey the meaning of “*may*” in paragraphs 6(c) and 16(c), when compared with paragraphs 19(4)(c) and 22(3)(c) of the Schedule.

In paragraphs 6(c) and 16(c), the translation has used “*gellir*” which is normally used for “*may*” when conveying possibility or “*can*”, so that the phrase would be understood as meaning “*how payment **can** be made*”. In paragraphs 19(4)(c) and 22(3)(c), the translation has used “*caniateir*” which is the standardised term found in the Legislative Translative Unit’s Drafting Guidance for “*may*” when conveying being given discretionary power to do something, “*permitted*” or “*is allowed*”, so that the phrase would be understood as meaning “*how payment **is permitted/ allowed** to be made*”.

The difference in the choice of terms in the translation suggests to the reader of the Welsh text that there is a difference in meaning when the phrase “*how payment may be made*” is used in paragraphs 6(c) and 16(c) compared with paragraphs 19(4)(c) and 22(3)(c) although no such difference of meaning is found in the English text.

In addition, in the corresponding paragraphs of the Schedule to the Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023, the Welsh text has consistently used “*caniateir*” on each occasion in the same phrase.



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

In paragraph 11(1) of the Schedule to these Regulations, in the Welsh text, two alternative words are used next to each other in the relevant sentence to convey the word “determine” (which is used in the English text), namely “ganfyddir bennir”. As a result, the sentence in the Welsh text does not make sense. The use of “bennir” would appear to be correct in this context.

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

In the opening words of paragraph 25(1) of the Schedule to these Regulations, the translation is ambiguous and could suggest to the reader of the Welsh text that it means “Where power is conferred on the regulator **in these Regulations** to impose a civil sanction”, rather than “Where **these Regulations** confer power on the regulator to impose a civil sanction”. The meaning of the Welsh text would be clearer if it had followed the syntax used in the translation of paragraph 25(1) of the Schedule to the Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023. It would then be translated as “Pan fo’r **Rheoliadau hyn** yn rhoi pŵer i’r rheoleiddiwr i osod sancsiwn sifil” rather than “Pan fo pŵer yn cael ei roi i’r rheoleiddiwr **yn y Rheoliadau hyn** i osod sancsiwn sifil”.

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

In the opening words to paragraph 25(2) and (3) of the Schedule to these Regulations, the references to “**paragraph** (1)(b)” should instead be described as “**sub-paragraph** (1)(b)” (emphasis added). A similar issue occurs in paragraph 28(2) of the Schedule, where the reference to “**paragraph** (1)(a)” should be described as “**sub-paragraph** (1)(a)” (emphasis added). See Writing Laws for Wales 6.16 about composite references.

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

In paragraph 25(3)(c) of the Schedule to these Regulations, in the English text, the phrase “**determining** the amount” (emphasis added) has been used in relation to the amount of the relevant penalty. However, in paragraph 26(c) of the Schedule, “**establishing** the amount” (emphasis added) has been used in relation to non-compliance penalties and enforcement cost recovery notices.

In the Welsh text, different words have been used in the corresponding places to maintain a difference of meaning. However, neither of the words used in the Welsh text appear to convey the different meanings of the English text (assuming there is an intended difference between “determining” and “establishing” in the relevant paragraphs) in the context of those paragraphs.

In paragraph 25(3)(c) of the Schedule, “ganfod” has been used. However, the context would suggest that “bennu” may be the more appropriate choice if “determining” is being used as



meaning to specify or set/fix the amount of penalty to be paid. It is noted that *“bennu”* has been used in the corresponding paragraph 25(3)(c) of the Schedule to the Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023.

In paragraph 26(c) of the Schedule to these Regulations, *“nodi’r”* has been used. However, the context would suggest that *“gadarnhau”* may be the more appropriate choice of word if *“establishing”* is being used as meaning ascertaining or discovering the amount. However, if the intention of the English text is to convey the same meaning as *“determine”* in paragraph 25(3)(c), then *“bennu’r”* would be the more appropriate choice of word in the Welsh text. It is noted that in the corresponding paragraph 26(c) of the Schedule to the Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023, and of Schedule 2 to the Waste Separation Requirements (Wales) Regulations 2023, the Welsh text has used *“bennu’r”* where the English text uses *“establishing”* in this context.

These inconsistencies between the Welsh and English texts leave it unclear as to whether there is a deliberate difference in the drafting between paragraphs 25(3)(c) and 26(c) of the Schedule to these Regulations, in terms of using *“determining”* and *“establishing”* respectively.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

8. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

These Regulations operate by deeming that all environmental permits issued under the Environmental Permitting Regulations, which authorise a landfill or incineration plant, contain a condition prohibiting the landfill or incineration (as applicable) of the specified separately collected waste materials. This condition will apply to all environmental permits including those issued prior to the making of these Regulations.

As a result, these Regulations will have retrospective effect to the extent that they affect past events or transactions. That is, they modify the terms of environmental permits issued before these Regulations come into force, albeit offences associated with the new permit conditions can only be committed after these Regulations have come into force.

Welsh Government response

A Welsh Government response is required except in relation to reporting point 8.

Legal Advisers

Legislation, Justice and Constitution Committee

16 November 2023

