

# **ENVIRONMENTAL PROTECTION (SINGLE-USE PLASTIC PRODUCTS) (WALES) ACT 2023**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Enforcement***

##### ***Section 7 - Enforcement action by local authorities***

29. Subsection (1) provides that a local authority may investigate complaints in respect of alleged offences under section 5 of the Act in its area, may bring prosecutions in respect of offences under section 5 of the Act in its area and may take other steps with a view to reducing the incidence of such offences in its area.
30. Subsection (2) explains that any reference in the Act to an authorised officer of a local authority is to any person authorised by the local authority.

##### ***Section 8 - Power to make test purchases***

31. This section enables an authorised officer to make purchases and arrangements, and secure the provision of services if the officer considers it necessary for the purpose of the local authority's functions under this Act. This permits test purchases for example, to take place.

##### ***Section 9 – Power of entry***

32. This section enables an authorised officer to enter, at any reasonable time, premises (excluding residential premises) if the officer has reasonable grounds to believe that an offence under section 5 has been committed in the area of the local authority, and the officer considers it necessary to enter the premises for the purpose of finding out whether such an offence has been committed. This power to enter premises does not enable the authorised officer to enter by force. If required, an authorised officer must, before entering the premises, show evidence of their authorisation.
33. Subsection (5) clarifies that for the purposes of sections 9, 10 and 11 of the Act, “residential premises” means premises, or any part of premises, used wholly or mainly as a dwelling.

##### ***Section 10 - Power of entry: residential premises***

34. This section provides that a justice of the peace may issue a warrant to enable an authorised officer to enter residential premises in certain circumstances.
35. A warrant may be issued only where the justice of the peace is satisfied on sworn information in writing that there are reasonable grounds to believe that an offence under section 5 has been committed in the area of the local authority, and that it is necessary to enter the premises for the purpose of establishing whether such an offence has been committed. Entry may be obtained by force if need be.

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36. Any such warrant will be in force for the period of 28 days beginning with the date it was issued.

### ***Section 11 – Power of entry: other circumstances requiring warrant***

37. If access to premises that are not residential premises (dealt with under section 10) is required because there are reasonable grounds to believe that an offence under section 5 has been committed, and entry is necessary to ascertain whether or not such an offence has taken place, this section enables a justice of the peace to issue a warrant authorising an authorised officer to enter such premises, if needs be by force. The premises to which entry is being sought under this section must be used for business purposes, or for use both as a business and a residence.
38. In order for a warrant to be issued, one or more of the requirements set out in subsections (3) to (4) must be met. The requirements include that a request to enter the premises has been, or is likely to be, refused and notice of intention to apply for a warrant has been given; and that requesting to enter, or giving notice of an intention to apply for a warrant, is likely to defeat the purpose of the entry.
39. Any such warrant will be in force for the period of 28 days beginning with the date it was issued.

### ***Section 12 – Powers of entry: supplementary***

40. Subsection (1) enables an authorised officer who has entered premises under the powers set out in sections 9, 10 or 11 to take with them any other persons and equipment as they consider appropriate.
41. Subsection (2) sets out that the powers of entry under section 9, 10, or 11 also apply to vehicles.
42. Subsection (3) sets out that if an authorised officer executes a warrant issued under sections 10 or 11 of the Act when the occupier is present, they must inform the occupier of their name, provide documentary evidence of their authority and supply the occupier with a copy of the warrant.
43. Subsection (4) also requires that if the premises are unoccupied or the occupier is temporarily absent, the authorised officer must leave them as effectively secured against unauthorised entry as the officer found them.

### ***Section 13 – Power of inspection***

44. This section confers powers on authorised officers entering premises under sections section 9, 10 or 11 to do various things so as to find out whether an offence under section 5 has been committed. Officers may carry out inspections and examinations of premises. Officers may also request items, inspect them, take samples from them and/or take the item(s) and/or samples from the premises. For example, officers may wish to review CCTV footage of the premises, or likewise take documents or copies of documents.
45. The officer may also require information and help from any person, but that person is not required to answer any questions or produce any document which they would be entitled to refuse to answer or produce in the course of court proceedings in England and Wales.
46. The authorised officer must leave on the premises a statement detailing any items that have been taken and identifying the person to whom a request for the return of property may be made.
47. This section also applies to a vehicle as if it were premises.

### ***Section 14 - Offence of obstruction etc. of officers***

48. Subsection (1) provides that a person commits an offence if they intentionally obstruct an authorised officer from exercising their functions under sections 9 to 13.
49. Subsection (2) provides that a person commits an offence if, without reasonable cause, they fail to provide an authorised officer with facilities that are reasonably required under section 13(1) or they fail to comply with a requirement under section 13(1)(b), (d) or (4)(b) such as providing information relating to matters within that person's control.
50. Subsection (3) sets out that a person found guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. The levels on the standard scale are set out in section 122 of the [Sentencing Act 2020 \(c. 17\)](#).
51. Subsection (4) provides that refusal to answer questions or provide documents that the person would be entitled to refuse to answer or produce in a court in Wales or England does not constitute an offence under this section.

### ***Section 15 - Retained property: appeals***

52. This section enables a person with an interest in anything taken away from the premises by an authorised officer under section 13(1)(c) to apply to a magistrates' court for an order requesting the release of the property. Depending on the court's consideration of an application, it may make an order requiring the release of the retained property.

### ***Section 16 – Appropriated property: compensation***

53. This section provides a right for a person with an interest in anything which has been taken possession of under section 13(1)(c) to apply to a magistrates' court for compensation. Where the circumstances set out in subsection (2) are satisfied, the court may order the local authority to pay compensation to the applicant. The circumstances are that property has been taken; that it was not necessary to take the property to discover whether an offence under section 5 had been committed; that the applicant has suffered loss or damage as a result; and that the loss or damage was not due to the applicant's own neglect or default.

### ***Section 17 – Civil sanctions***

54. This section enables regulations providing for civil sanctions to be made in respect of criminal offences created under section 5 of the Act. This power corresponds to that in Part 3 of the [Regulatory Enforcement and Sanctions Act 2008 \(c. 13\)](#) ("RESA").
55. [Part 3](#) of RESA allows the Welsh Ministers to make regulations to provide for alternative civil sanctioning powers for relevant criminal offences that relate to regulatory non-compliance. The civil sanctions available under RESA are fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings. They are an alternative to, rather than a replacement for, criminal conviction especially for minor breaches of regulatory requirements.
56. Subsection (3) applies section 63 to 69 of RESA to regulations made under this section as they would apply to an order made under Part 3 of RESA. The effect of subsection (3) is set out in the following paragraphs.
57. Where the Welsh Ministers confer power on a local authority to impose a civil sanction in relation to an offence, the Welsh Ministers must also ensure the following results (see section 63 of RESA)—
  - that the authority publishes guidance about its use of the sanction;
  - that guidance contains specified information, depending on the type of sanction - such as the circumstances in which a monetary penalty or stop notice is likely to

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be imposed, the circumstances in which it cannot be imposed; the amount of any monetary penalty; how to discharge penalties and rights of appeal and similar;

- that the guidance is revised where appropriate;
  - that the authority consults persons specified in the Welsh Ministers' regulations before publishing any guidance; and
  - that the authority has regard to the guidance in exercising functions.
58. Where power is conferred on a local authority to impose a civil sanction in relation to an offence the authority must also—
- prepare and publish guidance about how the offence is to be enforced (see section 64 RESA);
  - publish reports about the cases in which the civil sanction has been imposed (see section 65 RESA).
59. The Welsh Ministers may not make provision enabling a local authority to impose a civil sanction in relation to an offence unless the Welsh Ministers are satisfied that the authority will act in accordance with the following principles (referred to in RESA as “the regulatory principles”) in exercising that power—
- that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
  - that regulatory activities should be targeted only at cases in which action is needed.
60. Where the Welsh Ministers have conferred a power to impose civil sanctions, they must review how that power is being operated (see section 67 of RESA) and may suspend the power of a local authority to impose such sanctions (see section 68 of RESA).
61. Receipts from civil sanctions — e.g. from the payment of monetary penalties — must be paid into the Welsh Consolidated Fund where the local authority has functions only in relation to Wales, and into the UK Consolidated Fund where the enforcement authority has functions in relation to Wales and another part of the UK (see section 69 of RESA).
62. Subsection (4) applies section 59 and 60(1) and (2) of RESA to regulations made under this section as they would apply to an order made under Part 3 of RESA.
63. Regulations making provision enabled by this section must be made under the affirmative procedure.

### ***Section 18 - Offences committed by partnerships and other unincorporated associations***

64. This section provides that proceedings for offences under the Act alleged to have been committed by a partnership or unincorporated association other than a partnership are to be brought in the name of the partnership or association and not in the name of any of its members. Any fines on conviction for an offence under the Act are to be paid out of the assets of the partnership or the funds of the association.

### ***Section 19 – Criminal liability of senior officers etc.***

65. Where an offence under the Act is committed by a body corporate, partnership or an unincorporated association other than a partnership this section makes it possible, in the circumstances described in subsection (2), for individuals holding positions of responsibility within the relevant body, partnership or association (the “senior officers” defined by the section) to also be criminally liable for an offence.