
WELSH STATUTORY INSTRUMENTS

2023 No. 1289 (W. 227)

ENVIRONMENTAL PROTECTION, WALES

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

Made - - - - 29 November 2023

Coming into force - - 6 April 2024

The Welsh Ministers make these Regulations⁽¹⁾ in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999⁽²⁾ (“the 1999 Act”), sections 39, 42, 52 to 55 and 62(2) of the Regulatory Enforcement and Sanctions Act 2008⁽³⁾ (“the 2008 Act”) and sections 9(1) and 9A(1) of the Waste (Wales) Measure 2010⁽⁴⁾ (“the 2010 Measure”).

The Welsh Ministers have consulted in accordance with section 2(4) of the 1999 Act, sections 59(3) and 60 of the 2008 Act⁽⁵⁾ and section 11 of the 2010 Measure.

The Welsh Ministers are satisfied (in accordance with section 66 of the 2008 Act) that Natural Resources Wales and local authorities (who are the regulators for the purpose of these Regulations) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by these Regulations.

In accordance with section 2(8) of the 1999 Act⁽⁶⁾, section 62(3) of the 2008 Act⁽⁷⁾ and section 20(3)⁽⁸⁾ of the 2010 Measure, a draft of these Regulations has been laid before, and approved by a resolution of, Senedd Cymru.

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- (1) The power to make orders under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (c. 13) may be exercised to make regulations by virtue of section 39 of the Legislation (Wales) Act 2019 (anaw 4).
- (2) 1999 c. 24. Section 2, amended by S.I. 2013/755 (W. 90); there are other amending instruments but none is relevant. Functions of the Secretary of State, 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 virtue of article 3(1) of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (3) 2008 c. 13. Sections 39 and 42 were amended by paragraph 12 of Schedule 5 to S.I. 2015/664. “Prescribed” is defined in section 71(1) of that Act.
- (4) 2010 nawm 8; section 9A was inserted by section 67 of the Environment (Wales) Act 2016 (anaw 3).
- (5) Section 71(1) of the 2008 Act provides that “relevant authority” means, in relation to provision made under or by virtue of Part 3 by the Welsh Ministers, the Welsh Ministers.
- (6) The reference in section 2(8) of the 1999 Act to approval by each House of Parliament has effect in relation to the exercise of functions by the Welsh Ministers as if it were a reference to approval by Senedd Cymru, by virtue of section 150A(2) of, and paragraph 33 of Schedule 11 to, the Government of Wales Act 2006.
- (7) The reference in section 62(3) of the 2008 Act to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006.
- (8) The reference in section 20(3) of the 2010 Measure to the National Assembly for Wales now has effect as a reference to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006.

PART 1

Introduction

Title, coming into force and application

1.—(1) The title of these Regulations is the Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023.

(2) These Regulations come into force on 6 April 2024.

(3) These Regulations apply in relation to Wales.

PART 2

Enforcement and civil sanctions

Regulator

2. The regulator, for the purposes of these Regulations is Natural Resources Wales save in respect of small waste incineration plants where the local authority for the area in which the plant is situated is the regulator.

Civil sanctions

3. The Schedule (civil sanctions) makes provision about civil sanctions that may be imposed for the purpose of the enforcement of an offence under regulation 38(2) of the Environmental Permitting (England and Wales) Regulations 2016(9) (“the 2016 Regulations”) where the offence relates to a breach of a permit condition mentioned in Schedule 9, Part 4, paragraph 1 or Schedule 10, paragraph 5A to the 2016 Regulations.

PART 3

Amendments to the 2016 Regulations

Amendments to the 2016 Regulations: Wales

4.—(1) The 2016 Regulations are amended as follows.

(2) In Schedule 9, Part 4, paragraph 1 (waste separately collected for preparing for re-use and recycling not to be incinerated)—

(a) in sub-paragraph (2)(a), for “any waste paper, metal, plastic or glass” substitute “in Wales, any waste paper, card, cartons, metal, plastic, glass, food, small electrical and electronic equipment or unsold textiles”;

(b) at the end, insert—

“(3) For the purposes of this paragraph—

“cartons” means fibre-based composite packaging, being packaging material which is made of paperboard or paper fibres, laminated with low density polythene or polypropylene plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand;

(9) [S.I. 2016/1154](#), amended by [S.I. 2020/904](#); there are other amending instruments but none is relevant.

“electrical and electronic equipment” means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current;

“small electrical and electronic equipment” means electrical and electronic equipment falling within one of the categories of EEE listed in Schedule 3 to the Waste Electrical and Electronic Equipment Regulations 2013⁽¹⁰⁾, excluding items with any external dimension of more than 50 centimetres;

“unsold” means an unused consumer product, in a factory, retail premises, wholesaler, warehouse or other premises, that has not been sold to a consumer or has been sold and returned by a consumer.”

(3) In Schedule 10, paragraph 5A (waste separately collected for preparing for re-use and recycling not to be landfilled)—

(a) in sub-paragraph (2)(a), for “any waste paper, metal, plastic or glass for landfill if that waste has been separately collected for the purposes of preparing for re-use or recycling; or” substitute “in Wales, any waste paper, card, cartons, metal, plastic, glass, food, small electrical and electronic equipment or textiles for landfill if that waste has been separately collected for the purposes of preparing for re-use or recycling;”;

(b) after sub-paragraph (2)(a) insert—

“(aa) any waste wood; or”;

(c) in sub-paragraph (2)(b), for “any waste for landfill that results from the treatment of waste referred to in paragraph (a), unless” substitute “in Wales, any waste for landfill that results from the treatment of waste referred to in paragraph (a) or (aa) unless”;

(d) at the end, insert—

“(3) For the purposes of this paragraph—

“cartons” means fibre-based composite packaging, being packaging material which is made of paperboard or paper fibres, laminated with low density polythene or polypropylene plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand;

“electrical and electronic equipment” means equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1,000 volts for alternating current and 1,500 volts for direct current;

“small electrical and electronic equipment” means electrical and electronic equipment falling within one of the categories of EEE listed in Schedule 3 to the Waste Electrical and Electronic Equipment Regulations 2013, excluding items with any external dimension of more than 50 centimetres.”

29 November 2023

Julie James
Minister for Climate Change, one of the Welsh
Ministers

⁽¹⁰⁾ S.I. 2013/3113, amended by S.I. 2018/1214; there are other amending instruments but none is relevant.

SCHEDULE

Regulation 3

Civil sanctions

PART 1

Fixed monetary penalties

Imposition of a fixed monetary penalty

1.—(1) The regulator may by notice impose a fixed monetary penalty on a person (“fixed monetary penalty”) in relation to an offence under regulation 38(2) of the 2016 Regulations where the offence relates to a breach of a permit condition mentioned in Schedule 9, Part 4, paragraph 1 or Schedule 10, paragraph 5A to the 2016 Regulations.

(2) Before doing so, the regulator must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) The amount of penalty to be paid to the regulator as a fixed monetary penalty is £500.

Notice of intent

2.—(1) Where the regulator proposes to impose a fixed monetary penalty on a person, the regulator must serve on that person a notice of what is proposed (“notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposal to impose the penalty;
- (b) the amount of the penalty;
- (c) a statement that liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was received;
- (d) information as to—
 - (i) the effect of that discharge payment;
 - (ii) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
 - (iii) the circumstances in which the regulator must not impose the penalty (including any defences relating to the offence in relation to which the notice is served).

Discharge of liability

3. The penalty is discharged if a person who receives a notice of intent pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was received.

Making representations and objections

4. A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was received, make written representations and objections to the regulator in relation to the proposed imposition of the fixed monetary penalty.

Service of final notice

5.—(1) If the person who has received a notice of intent does not discharge liability within 28 days, the regulator may serve a final notice (“final notice”) imposing a fixed monetary penalty.

(2) The regulator must not serve a final notice on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

(3) The regulator who serves a final notice relating to a fixed monetary penalty must not serve any other notice under these Regulations in relation to the offence.

Contents of final notice

6. A final notice must include information as to—
- (a) the grounds for imposing the penalty,
 - (b) the amount of the penalty,
 - (c) how payment may be made,
 - (d) the period of 56 days within which payment must be made,
 - (e) details of the early payment discounts and late payment penalties,
 - (f) rights of appeal, and
 - (g) the consequences of non-payment.

Discount for early payment

7. If a person who was served with a notice of intent made representations or objections concerning that notice within the time limit, that person may discharge a final notice by paying 50% of the penalty within 28 days beginning with the day on which the final notice was received.

Appeals against final notice

- 8.—(1) The person receiving a final notice may appeal against it.
- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable;
 - (d) any other similar reason.

Non-payment after 56 days (late payment penalty)

- 9.—(1) The penalty must be paid within 56 days of receipt of a final notice.
- (2) If the penalty is not paid within 56 days the amount payable is increased by 50%.
- (3) In the case of an appeal the penalty is payable within 28 days of the determination of the appeal (if the appeal is unsuccessful), and if it is not paid within 28 days the amount of the penalty is increased by 50%.

Criminal proceedings

- 10.—(1) If a notice of intent for a fixed monetary penalty is served on any person—
- (a) no criminal proceedings for the offence may be instituted against that person in respect of the act or omission to which the notice relates before 28 days from the date the notice of intent is received, and
 - (b) if that person so discharges liability, that person must not at any time be convicted of the offence in relation to that act or omission.

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(2) If a fixed monetary penalty is imposed on any person, that person must not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

PART 2

Variable monetary penalties

Imposition of a variable monetary penalty

11.—(1) The regulator may by notice impose a monetary penalty on a person requiring that person to pay such amount to the regulator as the regulator may determine (“variable monetary penalty”) in relation to an offence under regulation 38(2) of the 2016 Regulations where the offence relates to a breach of a permit condition mentioned in Schedule 9, Part 4, paragraph 1 or Schedule 10, paragraph 5A to the 2016 Regulations.

(2) Before doing so, the regulator must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) Where a variable monetary penalty is imposed in relation to an offence that is—

- (a) triable summarily only, and
- (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),

the amount of the variable monetary penalty must not exceed the maximum amount (if any) of that fine.

(4) Before serving a notice relating to a variable monetary penalty on a person, the regulator may require the person to provide such information as is reasonable for the purpose of establishing the amount of any financial benefit arising as a result of the offence.

Notice of intent

12.—(1) Where the regulator proposes to impose a variable monetary penalty on a person, the regulator must serve on that person a notice of what is proposed (“notice of intent”).

(2) The notice of intent must include—

- (a) the grounds for the proposal to impose the penalty;
- (b) the amount of the penalty;
- (c) information as to—
 - (i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
 - (ii) the circumstances in which the regulator must not impose the penalty (including any defences to the offence in relation to which the notice is served).

Making representations and objections

13. A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was received, make written representations and objections to the regulator in relation to the proposed imposition of the variable monetary penalty.

Third party undertakings

14.—(1) A person on whom a notice of intent is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any person affected by the offence (“third party undertaking”).

(2) The regulator must accept or reject a third party undertaking.

Service of final notice

15.—(1) At the end of the period for making representations and objections, the regulator must decide whether to impose the variable monetary penalty in the notice of intent, with or without modifications.

(2) The regulator must take into account any third party undertaking that it accepts in deciding—

- (a) whether or not to serve a final notice, and
- (b) the amount of any variable monetary penalty it imposes.

(3) Where the regulator decides to impose a variable monetary penalty, the regulator must serve a notice imposing it (“final notice”) that complies with paragraph 16.

(4) The regulator must not serve a final notice on a person where the regulator is satisfied that the person would not, by reason of any defence, be liable to be convicted of the offence to which the notice relates.

Contents of final notice

16. A final notice must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount of the penalty,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must be not less than 28 days,
- (e) rights of appeal, and
- (f) the consequences of non-payment.

Appeals against a final notice

17.—(1) The person receiving a final notice may appeal against it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the amount of the penalty is unreasonable;
- (d) that the decision was unreasonable for any other reason;
- (e) any other similar reason.

Criminal proceedings

18.—(1) If—

- (a) a variable monetary penalty is imposed on any person, or
- (b) a third party undertaking is accepted from any person,

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that person must not at any time be convicted of the offence in respect of the act or omission giving rise to the variable monetary penalty or third party undertaking except in a case referred to in sub-paragraph (2).

(2) The case referred to in sub-paragraph (1) is a case where—

- (a) a third party undertaking is accepted from a person,
- (b) no variable monetary penalty is imposed on that person, and
- (c) that person fails to comply with the third party undertaking.

(3) Criminal proceedings for offences triable summarily to which a third party undertaking in sub-paragraph (2) relates may be instituted at any time up to six months from the date when the regulator notifies the person that the person has failed to comply with that undertaking.

PART 3

Non-compliance penalties

Non-compliance penalties

19.—(1) If a person fails to comply with a third party undertaking, the regulator may serve a notice on that person imposing a monetary penalty (“non-compliance penalty”) in respect of the same offence, irrespective of whether a variable monetary penalty was also imposed in respect of that offence.

(2) The amount of the penalty must be determined by the regulator, and must be a percentage of the costs of fulfilling the remaining requirements of the third party undertaking.

(3) The percentage must be determined by the regulator, having regard to all the circumstances of the case, and may, if appropriate, be 100%.

(4) The notice must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount of the penalty,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must not be less than 28 days,
- (e) rights of appeal,
- (f) the consequences of non-payment, and
- (g) any circumstances in which the regulator may reduce the amount of the penalty.

(5) If a third party undertaking is fulfilled before the time set for payment of the non-compliance penalty, the penalty is not payable.

Appeals against non-compliance penalties

20.—(1) A person receiving a non-compliance penalty may appeal against it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unfair or unreasonable for any reason;
- (d) that the amount of the penalty is unreasonable;
- (e) any other similar reason.

PART 4

Combination of sanctions

Combination of sanctions

21.—(1) The regulator must not serve a notice of intent relating to a fixed monetary penalty if a variable monetary penalty has been imposed on that person relating to the same act or omission.

(2) The regulator must not serve a notice of intent relating to a variable monetary penalty on a person if, in relation to the same act or omission—

- (a) a fixed monetary penalty has been imposed on that person, or
- (b) that person has discharged liability for a fixed monetary penalty following service of a notice of intent to impose that penalty.

PART 5

Enforcement cost recovery notices

Enforcement cost recovery notices

22.—(1) The regulator may serve a notice (“enforcement cost recovery notice”) on a person on whom a variable monetary penalty has been imposed requiring that person to pay the costs incurred by the regulator in relation to the imposition of the variable monetary penalty up to the time of its imposition.

(2) Costs include in particular—

- (a) investigation costs;
- (b) administration costs;
- (c) costs of obtaining expert advice (including legal advice).

(3) The enforcement cost recovery notice must specify—

- (a) the grounds for imposing the notice,
- (b) the amount required to be paid,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must not be less than 28 days,
- (e) rights of appeal, and
- (f) the consequences of non-payment.

(4) The person on whom the notice is served may require the regulator to provide a detailed breakdown of the amount.

(5) The person required to pay costs is not liable to pay any costs shown by that person to have been unnecessarily incurred.

Appeals against enforcement cost recovery notices

23.—(1) The person required to pay costs under paragraph 22(1) may appeal—

- (a) against the decision of the regulator to impose the requirement to pay costs,
- (b) against the decision of the regulator as to the amount of those costs, or
- (c) for any other similar reason.

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- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the amount of the costs is unreasonable;
 - (d) that the decision was unreasonable for any other reason;
 - (e) any other similar reason.

PART 6

Administration and appeals

Withdrawing or amending a notice

24. The regulator may at any time in writing—
- (a) withdraw a fixed monetary penalty;
 - (b) withdraw a variable monetary penalty, a non-compliance penalty or an enforcement cost recovery notice, or reduce the amount specified in the penalty or notice.

Guidance as to use of civil sanctions

- 25.—(1) Where these Regulations confer power on the regulator to impose a civil sanction—
- (a) the regulator must publish guidance about its use of the sanction;
 - (b) in the case of guidance relating to a fixed monetary penalty or variable monetary penalty, the guidance must contain the relevant information;
 - (c) the regulator must revise the guidance where appropriate;
 - (d) the regulator must have regard to the guidance or revised guidance in exercising its functions.
- (2) In the case of guidance relating to a fixed monetary penalty, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
 - (b) the circumstances in which the penalty must not be imposed,
 - (c) the amount of the penalty,
 - (d) how liability for the penalty may be discharged and the effect of discharge, and
 - (e) rights to make representations and objections and rights of appeal.
- (3) In the case of guidance relating to a variable monetary penalty, the relevant information referred to in sub-paragraph (1)(b) is information as to—
- (a) the circumstances in which the penalty is likely to be imposed,
 - (b) the circumstances in which the penalty must not be imposed,
 - (c) the matters likely to be taken into account by the regulator in determining the amount of the penalty (including voluntary reporting by any person of their own non-compliance), and
 - (d) rights to make representations and objections and rights of appeal.

Additional guidance

26. The regulator must publish guidance relating to the use of non-compliance penalties and enforcement cost recovery notices specifying—

- (a) the circumstances in which they are likely to be imposed,
- (b) the circumstances in which they must not be imposed,
- (c) matters to be taken into account in establishing the amount involved, and
- (d) rights of appeal.

Consultation on guidance

27. The regulator must consult such persons as it considers appropriate before publishing any guidance or revised guidance under these Regulations.

Publication of enforcement action

28.—(1) Where a power is conferred on the regulator to impose a civil sanction under these Regulations, the regulator must from time to time publish reports specifying—

- (a) the cases in which the civil sanction has been imposed,
- (b) where the civil sanction is a fixed monetary penalty, the cases in which liability to the penalty has been discharged by payment of the penalty following the notice of intent, and without further action being taken, and
- (c) where the civil sanction is a variable monetary penalty, the cases in which a third party undertaking has been accepted.

(2) In sub-paragraph (1)(a) the reference to cases in which the civil sanction has been imposed does not include cases where the sanction has been imposed but overturned on appeal.

(3) This paragraph does not apply in cases where the Welsh Ministers consider that publication would be inappropriate.

Recovery of payments

29. The regulator may recover any fixed monetary penalty, variable monetary penalty or non-compliance penalty imposed under these Regulations and any financial penalty for late payment, on the order of a court, as if payable under a court order.

Appeals

30.—(1) An appeal under these Regulations is to the First-tier Tribunal (“the Tribunal”).

(2) In any appeal where the commission of an offence is an issue requiring determination, the regulator must prove that offence according to the same burden and standard of proof as in a criminal prosecution.

(3) In any other case the Tribunal must determine the standard of proof.

(4) All notices are suspended pending the determination or withdrawal of the appeal.

(5) The Tribunal may, in relation to the imposition of a penalty or service of a notice under these Regulations—

- (a) withdraw the penalty or notice,
- (b) confirm the penalty or notice,
- (c) vary the penalty or notice,

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- (d) take such steps as the regulator could take in relation to the act or omission giving rise to the penalty or notice, or
- (e) remit the decision whether to confirm the penalty or notice, or any matter relating to that decision, to the regulator.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prohibit the incineration, or the deposit in landfill, of specified types of waste. The types of waste are food, small electrical and electronic equipment, card, cartons, and certain textiles. The prohibition is achieved by adding specified types of waste to Schedule 9, Part 4, paragraph 1 (waste separately collected for preparing for re-use and recycling not to be incinerated) and Schedule 10, paragraph 5A (waste separately collected for preparing for re-use and recycling not to be landfilled) to the Environmental Permitting (England and Wales) Regulations 2016 ([S.I. 2016/1154](#)). In addition to this, there will be a prohibition on the deposit in landfill of waste wood (whether or not separately collected).

A civil sanctions regime is introduced to enable the regulator to impose fixed monetary penalties, variable monetary penalties and non-compliance penalties (regulation 3 and paragraphs 1, 11 and 19 of the Schedule). The regulator for the purposes of these Regulations is Natural Resources Wales save in respect of small waste incineration plants where the local authority for the area in which the plant is situated is the regulator.

These Regulations makes provision for the procedure relating to the civil sanctions, including appeals. Appeals under these Regulations are to be put before the First-tier Tribunal.

The Schedule to these Regulations (paragraphs 25 to 27) provides that guidance relating to the use of civil sanctions must be published. Guidance must also be published relating to the use of non-compliance penalties and enforcement cost recovery notices (paragraph 26). Before any guidance is published, the regulator is required to consult (paragraph 27). The Regulations also provide for the publication of information on enforcement action taken by the regulator (paragraph 28 of the Schedule). The regulator is able to recover certain costs of enforcement (paragraph 22 of the Schedule) 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 (paragraph 29 of the Schedule).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff CF10 3NQ and on the Welsh Government website at www.gov.wales.