

# SL(5)467 – The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019

## Background and Purpose

---

This Order (the '2019 Order') amends article 21 of The Sustainable Drainage (Enforcement) (Wales) Order 2018 (S.I. 2018/1182) (W. 241) (the '2018 Order') to provide for an unlimited fine where an offence of failure to comply with a notice, (as set out in article 21) is committed.

## Procedure

---

Affirmative.

## Technical Scrutiny

---

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

---

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

### **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 Assembly).**

Article 21 of the 2018 Order provides for an offence of failure to comply with a notice. This may relate to a temporary stop notice, an enforcement notice, or a stop notice. This is, currently, subject to a fine not exceeding £20,000. The 2019 Order seeks to amend this to provide for an unlimited fine in relation to this offence.

Article 22 of the 2018 Order provides for an offence of obstruction. This is subject to a fine not exceeding level 3 on the standard scale. The 2019 Order does not seek to amend the amount of the fine in article 22.

The Explanatory Memorandum is not as clear as it might be. In paragraph 4.1 it states that article 21 limits the fines that can be passed in a case "for the offence of failing to comply with a temporary stop notice, enforcement notice or stop notice to a maximum of £20,000". This is correct and a clear explanation. However, it states at paragraph 4.3 that the 2019 Order will amend the 2018 Order to "...provide for an unlimited fine for each offence set out within that Order...". However, no changes have been made to the fine in respect of the article 22 offence, and so the changes will only provide an unlimited fine for each offence set out within article 21 of the 2018 Order. As such, this explanation could mislead the reader into thinking that an article 22 offence will now be subject to an unlimited fine.

The Explanatory Note to the 2019 Order also states that it will amend the 2018 Order "...to provide for an unlimited fine for each offence set out within that Order..." without noting that the amendments relate to an offence under article 21 only.



## Implications arising from exiting the European Union

---

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

## Government Response

---

This amendment is intended to remove the financial limit of £20,000 on the three offences under article 21 of The Sustainable Drainage (Enforcement) (Wales) Order 2018 (S.I. 2018/1182) (W. 241) (the '2018 Order') in order to bring the 2018 Order into line with the changes made by the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO).

Article 22 of the 2018 Order creates the offence of obstructing an authorised person who is exercising powers of entry and provides for a fine on the standard scale which is a system which continues to exist under LASPO and so did not require amendment (see s.196C(2) Town and Country Planning Act 1990).

It is accepted that neither the Explanatory Memorandum nor the Explanatory Note are as clear as they should be as they suggest the regulations also affect article 22.

With regard to the Explanatory Note the Government will commit to clarifying the Explanatory Note before publication. A duly corrected version of The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019 will be available for signature and registration once approved in Plenary. The publication of the Committee's report and the Government response avoid there being any transparency issues with this approach.

The explanatory memorandum will be withdrawn and re-laid in corrected form.

## Committee Consideration

---

The Committee considered the instrument and Government response at its meeting on 18 November 2019 and reports to the Assembly in line with the reporting point above.

