

Explanatory Memorandum to The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011.

This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability and Housing and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 29(ii).

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011.

Jane Davidson
Minister for Environment, Sustainability and Housing
7 March 2011

1. Description

- 1.1 This instrument provides a description of the monitoring regime that will support the statutory recycling, preparation for re-use and composting targets (“the targets”) set for local authorities by section 3(3) of the Waste (Wales) Measure 2010 (“the Measure”).
- 1.2 The instrument also sets out the penalties regime which may be applied in the event of non-compliance with the targets set by the Measure and with the requirements set out in the regulations contained in this instrument.

2. Matters of special interest to the Constitutional Affairs Committee

- 2.1 None.

3. Legislative background

- 3.1 The instrument is made under sections 5(1), 6(2), and 19(1) and (2) of the Measure.
- 3.2 Further to section 20(3) of the Measure, the instrument is subject to the approval of the National Assembly for Wales i.e. it is subject to the affirmative procedure.

4. Purpose & intended effect of the legislation

- 4.1 *Towards Zero Waste*, the overarching waste strategy document for Wales, sets the strategic direction of waste and resource management in Wales up until 2050. Achieving high recycling across all waste streams and economic sectors is an important objective of the waste strategy and its sector plans, including the Municipal Sector Plan. The Measure sets statutory recycling targets for local authority collected wastes, to support the waste strategy objectives.
- 4.2 The intended effect of the legislation is to ensure that the targets are effectively monitored, and that penalties are available in the event of non-compliance.
- 4.3 The instrument achieves this by imposing requirements on local authorities to maintain and record detailed information about their compliance with the targets. It requires them to make timely returns of that information using the WasteDataFlow, the national waste database.
- 4.4 The instrument appoints the Environment Agency as the Monitoring Authority and imposes obligations on the Agency in relation to the validation of information provided by local authorities. Further, the instrument requires the Agency to provide information about compliance with the targets to the Welsh Ministers.

- 4.5 The Welsh Ministers will be able to impose penalties in the event of non-compliance with the targets and the record keeping requirements
- 4.6 The instrument sets out the level of penalties to which local authorities will be liable for non-compliance with the targets and the record keeping requirements.
- 4.7 Further clarification about the monitoring requirements and the provisions in respect of penalties will be provided in guidance issued under section 7 of the Measure.

5. Consultation

- 5.1 Further to section 8(1) of the Measure, a consultation about the Regulations was undertaken between 1 December 2010 and 26 January 2011 i.e. 8 weeks.
- 5.2 The Environment Agency and each local authority were consulted. To ensure that all those interested in the regulations were also consulted, the consultation was open.
- 5.3 Twenty-eight responses were received in total, from local government, the waste industry, the third sector, government agencies, non-governmental organisations (NGOs) and individuals.
- 5.4 Following consultation, regulation 5 has been amended to clarify the circumstances in which a local authority may be liable to a penalty.
- 5.5 A response to the consultation responses is being prepared and will be available from the Waste Strategy branch of the Welsh Assembly Government from April 2011.

6. Regulatory Impact Assessment (RIA)

- 6.1 These Regulations have no direct impact on the private or voluntary sectors. Any effects consequential upon the statutory targets set in the Measure were assessed in the RIA completed for the Measure.
- 6.2 The costs to local authorities of reporting against the requirements of this instrument are covered by the Sustainable Waste Management Grant (SWMG), a specific grant that is paid to local authorities each year by the Welsh Assembly Government. The SWMG also provides sufficient funds for all local authorities to achieve recycling, preparation for re-use and composting performances in line with the targets set.
- 6.3 The financial consequences to local authorities of non-compliance with the targets set in these Regulations are intended to be mitigated by a process of intervention and assistance aimed at promoting compliance. Financial penalties are intended to be an option of last resort.