

WASTE (WALES) MEASURE 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 9 – Regulations prohibiting deposit of waste in a landfill

40. Subsection (1) provides the Welsh Ministers with a power to make provision by regulations for and in connection with prohibiting or otherwise regulating the deposit of specified kinds of waste in landfill sites in Wales. “Specified” means specified in regulations made by the Welsh Ministers (section 17).
41. The deposit of waste in a landfill is currently regulated (in part) by the [Environmental Permitting \(England and Wales\) Regulations 2007 \(SI 2007/3538\)](#). Those regulations are made under section 2 of the [Pollution Prevention and Control Act 1999 \(c. 24\)](#). The purpose of section 2 of the 1999 Act is (among other things) to regulate activities that are capable of causing any environmental pollution. The regulation-making power under section 2 is exercisable by the Welsh Ministers in relation to Wales¹. The purpose of section 9 of this Measure is to give the Welsh Ministers the power to prohibit or otherwise regulate deposit of waste in a landfill whether or not the deposit of that type of waste is capable of causing environmental pollution.
42. Subsection (2) specifies that the regulations may amend regulations made under section 2 of the Pollution Prevention and Control Act 1999 which relate to the operation of a landfill. This will allow provision under section 9 of the Measure to be incorporated into the existing environmental permitting regime. The subsection also provides that regulations may (among other things) make failure to comply with the regulations an offence; provide for penalties in relation to such offences; and set out who the enforcement authorities will be, and what their functions will be.
43. The power of the Welsh Ministers to create criminal offences under this section is subject to the limits imposed by paragraph 2 of Part 2 of Schedule 5 to the Government of Wales Act 2006. They would not be able to use this power to create any criminal offence punishable—
- on summary conviction, with imprisonment for more than the prescribed term or with a fine exceeding level 5 on the standard scale (currently £5000), or
 - on conviction on indictment, with a period of imprisonment exceeding two years.

The prescribed term is currently six months in relation to a summary conviction, whether or not the offence was triable either way. But on the coming into force of sections 154(1) and 281(5) of the [Criminal Justice Act 2003 \(c. 44\)](#) it will be 51 weeks in the case of a summary offence and 12 months where the offence is triable either way².

¹ Except in so far as the power is exercisable in relation to offshore oil and gas exploration and exploitation: the power rests with the Secretary of State in these circumstances. Where the power is exercisable in relation to a cross-border body but, by its nature, cannot be specifically exercised in relation to Wales, the power is exercisable by the Welsh ministers in relation to that body concurrently with the Secretary of State ([National Assembly for Wales \(Transfer of Functions\) Order 2005 \(SI 2005/1958\)](#), article 3).

² Paragraph 52, Schedule 11 Government of Wales Act 2006.

44. Regulations under this section are subject to an affirmative resolution procedure in the National Assembly for Wales (section 20(3)).