

No time to waste – enhanced enforcement powers in waste law for 2016



Following the [Government response to a consultation on enhancing the enforcement of UK waste law on 9 October 2015](#)¹, stronger enforcement powers to improve waste law compliance have been implemented, and further reforms are scheduled for 2016.

Amendments to the Environmental Permitting Regulations (England and Wales) Regulations 2010² (the “[EPR Regulations](#)”) and anticipated legislative changes in the coming year will enable the Environment Agency and Natural Resources Wales to target waste operators which engage in persistent non-compliance with waste law. As certain reforms are aimed at permit compliance more generally, operators of regulated facilities other than waste management facilities should ensure that these proposals, alongside the enforcement of the relevant changes, are kept under review.

Powers to take steps to remove pollution risk

The EPR Regulations now enable regulators to suspend a permit where an operator has breached the terms of their permit and there is a resulting risk of pollution. Regulators must also specify the steps that must be taken by an operator to remedy such breaches in a suspension notice³.

Additionally, where regulators consider there is a risk of serious pollution as a result of the operation of a regulated facility or an exempt facility, they can arrange for steps to be taken to remove that risk⁴ (eg prohibition of access). Examples of sites in relation to which this power could be used include those which are operating illegally and those which have had their permit revoked.

Signs

Specifically in relation to waste facilities, where a suspension notice has the effect of preventing waste of a specified description being accepted at a regulated facility, the notice may require the operator of that facility to display signs which informs the public when no further waste can be accepted at the facility⁵.



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¹ “Government response to consultation on enhanced enforcement powers and other measures to tackle waste crime and entrenched poor performance in the waste management industry”, October 2015.

² Implemented through the Environmental Permitting Regulations (England and Wales) (Amendment) (No 3) Regulations 2015 which came into effect on 30 October 2015

³ Regulation 37 of the EPR

⁴ Regulation 57 of the EPR

⁵ Regulation 37 of the EPR

Access to the High Court

Before the amendments to the EPR took effect, regulators could make an application to the High Court for an injunction to enforce compliance with an enforcement, suspension or other notice only where they had given due consideration to the use of criminal proceedings for the relevant offence and concluded that such proceedings would be ineffectual. The EPR now remove this pre-condition⁶.

Removal of waste initially deposited in a lawful manner

Currently, landowners are required to remove waste that has been unlawfully deposited, but this requirement has had limited effect. Legislative amendments to the Environmental Protection Act 1990 will be proposed in 2016 to enable regulators to require the removal of waste from land in circumstances where the waste was initially deposited lawfully but is now being unlawfully kept eg where the relevant permit has been revoked, disclaimed or potentially where there are breaches of permit. If implemented, landowners should ensure that they are aware of any waste management activities undertaken by tenants in order to mitigate the risk of enforcement action.

Additional reforms

Defra also proposes to introduce legislation to:

- > introduce fixed penalty notices for small scale fly-tipping in England
- > ensure operators demonstrate they have permission from landowners before they are granted a permit for a regulated facility
- > enshrine in legislation the application of the operator competence test

Topics for further consideration

Financial provision

The Government also intends to consider by the end of 2016 whether the financial provision requirement for some or all permitted waste operations should be reintroduced based on the level of risk posed by such operations. Currently, only operators holding a permit for landfill or mining waste operations are required to make and maintain specific financial provision for their operations.

Defra also intends to pursue measures that will reduce the opportunity for the abandonment of waste management sites and ensure that operators have sufficient financial provision to meet permit obligations, site clearance costs and remediation⁷.

Powers to investigate, prevent and remedy pollution from waste

Consideration will also be given to whether regulators should be granted the power to:

- > investigate, prevent and remedy pollution caused by the deposit of waste on land and recover the costs of doing so, or
- > require responsible persons to take action or prevent or remedy pollution caused by the deposit of waste on land at their own cost

⁶ Regulation 42 of the EPR

⁷ This includes consideration of whether the financial provision for landfill operations should be increased to account for the fact that income from waste inputs may cease at the point when certain landfills are entering into the closure phase with essential site infrastructure still to be installed.

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