



29 January 2015

Consultation on the draft Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015 and the draft Clean Neighbourhoods and Environment Act 2005 (Commencement No. 6, Revocation and Savings) (England and Wales) Order 2015

Introduction

The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to UK Governments with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared jointly by UKELA's Wales Working Party and its Waste Working Party.

UKELA makes the following comments in response to the questions posed in the consultation:

1. Do you have any general comments on the draft Statutory Instruments at Annex A and B?

Annex A

Paragraphs 7 and 8 of the draft SI at Annex A require the seizure authority to give notice of the seizure of any vehicles at the office of the seizure authority and either to publish a notice in a local newspaper (or other similar publication) or on the seizure authority's website. However, Table 1 of the consultation document states that the new process will not require publication in a local newspaper, thereby making a relatively significant saving of £373.33 per case. The exact intention needs to be clear, as if it is intended to retain the requirement of publication in a local newspaper the actual savings from the new process will only be about £123 per case.

In relation to paragraph 11 (2), UKELA questions whether it is reasonable to only allow two working days for a claimant, who has made a claim, to provide additional evidence of entitlement.

Annex B

UKELA does not have any comments on the draft SI at Annex B.

2. Is the procedure for dealing with seized property clear?

The procedure for seizing a vehicle set out in the Statutory Instrument is relatively clear to lawyers and others used to working with legislation and regulations. However, as drafted, it is not particularly easy for the lay person to follow the procedure in a logical sequence and fully comprehend the various requirements.

3. What benefits might be derived from guidance and what aspects of the draft Regulations would you like addressed in the guidance?

There would be clear benefits in developing guidance as this would assist enforcement staff in implementing the regulations. Guidance could set out the sequential steps to be followed; expand on the various stages in the process;

detail how to make the determination of entitlement; provide advice on how an entitlement dispute should be settled; and give supplementary advice in relation to particular circumstances which may arise. It would also be helpful to expand on some of the requirements such as the circumstances under which a vehicle should be sold, destroyed or otherwise disposed of (the latter method could benefit from an explanation); what would constitute a description of the vehicle; the circumstances under which it is determined that a claimant is not entitled to a claim; and the grounds for requiring immediate disposal of a vehicle.

4. Do you have any views on the estimated costs and benefits to business?

As stated in the consultation paper, there are unlikely to be any costs to waste management operators who work within the law, but there would be possible benefits from driving illegal operators out of the market. This would help ensure all waste management companies have similar financial liabilities in respect of complying with legislation and are, therefore, able to carry out business on a level playing field. However, it should be noted that there is an assumption that illegal operators undercut others, but there is no evidence presented in the consultation paper to support this assertion.

5. Do you have any views of the estimated costs and benefits to enforcement authorities?

The full extent of the estimated costs to enforcement authorities has not been calculated so it is difficult to offer any meaningful comment. However, it implies in the consultation paper that it is likely that more vehicles will be seized, which leads to the conclusion that costs may increase.

UKELA notes the need for vehicles suspected of being used for an offence to be stopped on a road by a member of the police force. This will inevitably mean additional costs for Police Authorities and, in the light of current budget cuts, it is considered unlikely that waste crime will be given a high priority by the police. There is also the possibility that different Police Authorities may attach differing priorities to waste crime.

6. Are there any other costs or savings that you expect to receive as a result of the proposed changes?

There appears to have been no attempt in the consultation paper to assess any likely proceeds from the sale of seized vehicles that could be used to offset expenses incurred by enforcement authorities in relation to their activities.

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