Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 10 December 2018

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

14.30

2 Legislation (Wales) Bill: Evidence from the Counsel General: Evidence session 1

14.30 (Pages 1 – 25)

Jeremy Miles AM, Counsel General

Dylan Hughes, First Legislative Counsel, Welsh Government

Dr James George, Legislative Counsel , Welsh Government

Claire Fife, Policy Advisor to the Counsel General, Welsh Government

Legislation (Wales) Bill

Explanatory Memorandum

Draft Taxonomy for Codes of Welsh Law

CLA(5)-32-18 – Briefing

CLA(5)-32-18 – Research Service Summary

CLA(5)-32-18 – Paper 56 – Correspondence with the Secretary of State for Wales

3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

15.30 (Pages 26 – 27)

CLA(5)-32-18 – Paper 1 – Statutory instruments with clear reports

Affirmative Resolution Instruments

3.1 **SL(5)287 – The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018**

Negative Resolution Instruments

3.2 **SL(5)290 – The Social Services and Well-being (Wales) Act 2014 (Isles of Scilly Modification) Regulations 2018**

4 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

4.1 **SL(5)285 – The Carcase Classification and Price Reporting (Wales) Regulations 2018**

(Pages 28 – 63)

CLA(5)-32-18 – Paper 2 – Report

CLA(5)-32-18 – Paper 3 – Regulations

CLA(5)-32-18 – Paper 4 – Explanatory Memorandum

Composite Negative Resolution Instruments

4.2 **SL(5)288 – The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018**

(Pages 64 – 88)

CLA(5)-32-18 – Paper 5 – Report

CLA(5)-32-18 – Paper 6 – Regulations

CLA(5)-32-18 – Paper 7 – Explanatory Memorandum

Affirmative Resolution Instruments

4.3 **SL(5)289 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2019**

(Pages 89 – 114)

CLA(5)-32-18 – Paper 8 – Report

CLA(5)-32-18 – Paper 9 – Regulations

CLA(5)-32-18 – Paper 10 – Explanatory Memorandum

5 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU

5.1 **SL(5)284 – The Environmental Noise (Wales) (Amendment) Regulations 2018**

(Page 115)

CLA(5)-32-18 – Paper 11 – Report

5.2 **SL(5)286 – The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018**

(Page 116)

CLA(5)-32-18 – Paper 12 – Report

6 Statutory Instruments requiring Consent: EU Exit

6.1 **SICM(5)8 – The Marine Environment (Amendment) (EU Exit) Regulations 2018**

(Pages 117 – 149)

CLA(5)-32-18 – Paper 13 – Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs

CLA(5)-32-18 – Paper 14 – Welsh Government Written Statement: Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)-32-18 – Paper 15 – Statutory Instrument Consent Memorandum

CLA(5)-32-18 – Paper 16 – Regulations

CLA(5)-32-18 – Paper 17 – Explanatory Memorandum

CLA(5)-32-18 – Paper 18 – Commentary

6.2 **SICM(5)9 – The Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018**

(Pages 150 – 179)

CLA(5)-32-18 – Paper 19 – Letter from the Cabinet Secretary for Economy and Transport

CLA(5)-32-18 – Paper 20 – Welsh Government Written Statement: Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

CLA(5)-32-18 – Paper 21 – Statutory Instrument Consent Memorandum

CLA(5)-32-18 – Paper 22 – Regulations

CLA(5)-32-18 – Paper 23 – Explanatory Memorandum

CLA(5)-32-18 – Paper 24 – Commentary

7 Written statements under Standing Order 30C

7.1 WS-30C(5)31 – The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment Etc.) (EU Exit) Regulations 2018

(Pages 180 – 183)

CLA(5)-32-18 – Paper 25 – Statement

CLA(5)-32-18 – Paper 26 – Commentary

7.2 WS-30C(5)32 – The European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018

(Pages 184 – 188)

CLA(5)-32-18 – Paper 27 – Statement

CLA(5)-32-18 – Paper 28 – Commentary

7.3 WS-30C(5)33 – The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment) (EU Exit) Regulations 2018

(Pages 189 – 192)

CLA(5)-32-18 – Paper 29 – Statement

CLA(5)-32-18 – Paper 30 – Commentary

7.4 WS-30C(5)34 – The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

(Pages 193 – 196)

CLA(5)-32-18 – Paper 31 – Statement

CLA(5)-32-18 – Paper 32 – Commentary

7.5 **WS-30C(5)35 - The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018**

(Pages 197 - 202)

CLA(5)-32-18 - Paper 33 - Statement

CLA(5)-32-18 - Paper 34 - Commentary

7.6 **WS-30C(5)36 - The CRC Energy Efficiency Scheme (Amendment) (EU Exit) Regulations 2018**

(Pages 203 - 206)

CLA(5)-32-18 - Paper 35 - Statement

CLA(5)-32-18 - Paper 36 - Commentary

7.7 **WS-30C(5)37 - The Justification Decision Powers (EU Exit) Regulations 2018**

(Pages 207 - 210)

CLA(5)-32-18 - Paper 37 - Statement

CLA(5)-32-18 - Paper 38 - Commentary

7.8 **WS-30C(5)38 - The Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residues Limits) (Amendment etc.) (EU Exit) Regulations 2018**

(Pages 211 - 214)

CLA(5)-32-18 - Paper 39 - Statement

CLA(5)-32-18 - Paper 40 - Commentary

7.9 **WS-30C(5)40 - The Trade in Animals and Related Products (Amendment etc.) (EU Exit) Regulations 2018**

(Pages 215 - 218)

CLA(5)-32-18 - Paper 41 - Statement

CLA(5)-32-18 - Paper 42 - Commentary

7.10 **WS-30C(5)41 - The Protocol 1 to the EEA Agreement (Amendment) (EU Exit) Regulations 2018**

(Pages 219 - 222)

CLA(5)-32-18 - Paper 43 - Statement

CLA(5)-32-18 - Paper 44 - Commentary

7.11 **WS-30C(5)42 - The Common Fisheries Policy (Amendment etc) (EU Exit) Regulations 2018**

(Pages 223 - 230)

CLA(5)-32-18 - Paper 45 - Statement

CLA(5)-32-18 - Paper 46 - Commentary

8 Papers to note

8.1 **Welsh Government Written Statement: Submission and Publication of the Law Commission's Final Report on Planning Law in Wales**

(Pages 231 - 232)

CLA(5)-32-18 - Paper 47 - Welsh Government Written Statement

8.2 **Letter from the Llywydd to the First Minister: the role of the Assembly and its committees in scrutinising Brexit-related legislation**

(Pages 233 - 234)

CLA(5)-32-18 - Paper 48 - Letter from the Llywydd

8.3 **Correspondence with the First Minister: Composite and Joint Statutory Instruments**

(Pages 235 - 244)

CLA(5)-32-18 - Paper 49 - Letter to the First Minister, 13 November 2018

CLA(5)-32-18 - Paper 50 - Letter from the First Minister, 28 November 2018

8.4 **Letter from the Cabinet Secretary for Economy and Transport: Response to the Committee's Report on the Scrutiny of Regulations made under the Trade Bill**

(Pages 245 - 246)

CLA(5)-32-18 - Paper 51 - Letter from the Cabinet Secretary for Economy and Transport

8.5 **Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs: UK Agriculture Bill**

(Pages 247 - 250)

CLA(5)-32-18 - Paper 52 - Letter from Cabinet Secretary for Energy , Planning and Rural Affairs

8.6 **Letter from the Llywydd: Assembly Reform**

(Pages 251 – 253)

CLA(5)-32-18 – Paper 53 – Letter from the Llywydd

9 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

16.00

10 Consideration of evidence: Legislation (Wales) Bill

11 Legislative Consent Memorandum: UK Agriculture Bill: Draft Report

(Pages 254 – 292)

CLA(5)-32-18 – Paper 54 – Draft Report

12 Scrutiny of regulations made under the EU (Withdrawal) Act 2018: Update

(Pages 293 – 296)

CLA(5)-32-18 – Paper 55 – Update

Agenda Item 2

Document is Restricted

Document is Restricted

Jeremy Miles AC/AM
Y Cwnsler Cyffredinol/Counsel General AC/AM

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales

6 December 2018

Dear Mick,

LEGISLATION (WALES) BILL – CORRESPONDENCE FROM THE SECRETARY OF STATE FOR WALES

With the agreement of the First Minister, I am sharing with the Committee a copy of a letter received from the Secretary of State for Wales on the Legislation (Wales) Bill.

I would be happy to answer questions on this, during my evidence on Monday or subsequently, if this would assist the Committee.

Yours sincerely

Jeremy Miles AM
Y Cwnsler Cyffredinol
Counsel General

Enc.

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UK Government
Llywodraeth y DU

Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

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The Rt Hon Carwyn Jones
First Minister of Wales
Welsh Government
Cardiff Bay
Cardiff
CF99 1NA

5 December 2018

Dear Carwyn,

Legislation (Wales) Bill

The Legislation (Wales) Bill was introduced in the National Assembly on Monday. Our officials have been discussing the Bill in draft in recent months.

I recognise of course that it is for the National Assembly to determine the content and interpretation of legislation within its legislative competence. But the UK Government is concerned that some of the provisions in the Bill, as introduced, raise questions relating to the devolution boundary. The Bill also has implications for the clarity and accessibility of Parliamentary legislation given that Parliamentary Acts and Statutory Instruments made under them are within its scope.

I would like our officials to continue to discuss the content of the Bill and to seek a mutually agreeable solution that respects the Welsh devolution settlement fully. In parallel, the Bill will be subject to competence analysis by my Office's legal team in the usual way.

I am copying this letter to the Solicitor General in the UK Government and the Counsel General in the Welsh Government.

Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Agenda Item 3

Statutory Instruments with Clear Reports

10 December 2018

SL(5)287 – The Landfill Disposals Tax (Tax Rates) (Wales) (Amendment) Regulations 2018

Procedure: Affirmative

These Regulations prescribe the standard rate, lower rate and unauthorised disposals rate for landfill disposals tax chargeable on taxable disposals made on or after 1 April 2019.

The standard rate from 1 April 2019 will be £91.35 per tonne, the lower rate will be £2.90 per tonne and the unauthorised disposals rate will be £137.00 per tonne.

Parent Act: Landfill Disposals Tax (Wales) Act 2017

Date Made: 21 November 2018

Date Laid: 26 November 2018

Coming into force date: 01 April 2019

Statutory Instruments with Clear Reports

10 December 2018

SL(5)290 – The Social Services and Well-being (Wales) Act 2014 (Isles of Scilly Modification) Regulations 2018

Procedure: Negative

These Regulations make a modification to the Social Services and Well-being (Wales) Act 2014, so that the Council of the Isles of Scilly is treated as a local authority in England for the purposes of that Act.

Parent Act: Social Services Well-being (Wales) Act 2014

Date Made: 29 November 2018

Date Laid: 03 December 2018

Coming into force date: 04 February 2019

Agenda Item 4.1

SL(5)285 – The Carcase Classification and Price Reporting (Wales) Regulations 2018

Background and Purpose

The European Commission conducted a formal review of existing EU rules which mandate the categorisation and classification of animals presented for slaughter against common European standards in order to make it more transparent.

As a result, they brought into force Commission Delegated Regulation 2017/1182 and Commission Implementing Regulation 2017/1184 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals.

The previous classification and enforcement regime was contained in the Beef and Pig Carcase Classification (Wales) Regulations 2011. Those Regulations are being revoked and replaced to align with the changes to the EU regime.

Procedure

Negative.

Technical Scrutiny

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation

Under regulation 19(b), authorised officers can, when exercising powers of entry:

- have access to computers,
- inspect computers, and
- check the operation of computers,

at the premises being inspected, where the computers are used in connection with records that are required to be kept under the Regulations.

It is unclear to us what is meant by "check the operation" of a computer. We ask the Welsh Government to explain the meaning of "check the operation" of a computer by: (a) providing examples of what it includes, and (b) explaining what can be achieved by checking the operation of a computer that cannot be achieved by having access to the computer and inspecting the computer.

We consider it essential that powers of entry are drafted without unnecessary or unclear provisions, especially when the powers of entry could be exercised in respect of a person's home.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The Regulations say that the Welsh Ministers may grant licences to carry out classification of bovine carcases. Under regulation 8, a licence may be granted for **visual classification**. Under regulation 9, a licence may be granted for using **automated grading equipment for classification**. It appears to us that regulations 8 and 9 relate to two distinct methods of classifying bovine carcases.

Regulation 29(1) says it is an offence if a "classification" is carried out without a licence granted under regulation 8.

Regulation 29(2) says it is an offence if "classification…is carried out…by means of automated grading equipment" without a licence granted under regulation 9.

It seems, therefore, that regulation 29(1) is intended to deal with visual classification and regulation 29(2) is intended to deal with classification by automated grading equipment. However, while regulation 29(2) is expressly confined to classification by automated equipment, regulation 29(1) seems, on the face of it, to apply to **all** classifications.

We ask the Welsh Government whether regulation 29(1) should refer to "visual classification". Regulation 29 creates criminal offences, therefore absolute clarity about the breadth of the criminal offence is required.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. 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

Under regulation 10, the Welsh Ministers can appoint a person to consider appeals against decisions of the Welsh Ministers. For example, if the Welsh Ministers refuse a licence to X under regulation 8 because the Welsh Ministers think that X is not fit and proper to have a licence, X can appeal to the person appointed by the Welsh Ministers.

We note there is no reference in the Regulations or the Explanatory Memorandum to the independence of the person considering such appeals. Issues such as being refused a licence or having a licence revoked are serious matters affecting the livelihoods of people. There should be a fair and independent mechanism for appealing decisions made by the Welsh Ministers in relation to licences.

We note that the Rural Payments Agency is responsible for enforcing the Regulations, but we assume that considering appeals against decisions of the Welsh Ministers does not amount to enforcement.

We would welcome clarification from the Welsh Government as to the procedure that applies to appeals under regulation 10 of these Regulations.

2. Standing Order 21.3(iv) - that it inappropriately implements European Union legislation

The updated regime contained in these Regulations should have been implemented by Member States by 11 July 2018. We note the deadline has been missed and we welcome the transparency of the Welsh Government in stating this in the Explanatory Memorandum.

However, the Explanatory Memorandum appears to say that, in complying with the current regime, the industry has in fact already been complying with this new, updated regime. While that appears to be the case for almost all of the requirements of the new regime, it is unclear whether the industry is already complying with the new requirement to include the "U4 deadweight category" in bovine classifications.

We ask the Welsh Government to confirm whether existing suppliers have complied with this new U4 deadweight category requirement under the current regime?

Implications arising from exiting the European Union

These Regulations form part of "EU-derived domestic legislation" under section 2 of the European Union (Withdrawal) Act 2018, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day.

Government Response

A government response to the technical and merits points raised in this report is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
4 December 2018

WELSH STATUTORY INSTRUMENTS

2018 No. 1215 (W. 248)

AGRICULTURE, WALES

The Carcase Classification and Price Reporting (Wales) Regulations 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Wales, revoke and replace the Beef and Pig Carcase Classification (Wales) Regulations 2011 (S.I. 2011/1826 (W. 198)) ("the 2011 Regulations") consequent to the repeal of Commission Regulation (EC) No 1249/2008 (OJ No L 337, 16.12.2008, p. 3).

The Regulations enforce—

— Article 10 of, and Annex IV to, Regulation (EU) No 1308/2013 of the European Parliament and of the Council (OJ No L 347, 20.12.2013, p. 671), which relate to European Union scales for the classification of carcases; and

— Commission Delegated Regulation (EU) No 2017/1182 (OJ No L 171, 4.7.2017, p. 74) ("the Commission Delegated Regulation"); and Commission Implementing Regulation (EU) No 2017/1184 (OJ No L 171, 4.7.2017, p. 103) ("the Commission Implementing Regulation") which set out further details regarding the implementation of those scales.

The Regulations relate to the carcases of adult bovine animals (being animals aged eight months or more) and pigs.

Regulation 5 requires notifications to be made to the Welsh Ministers by operators of slaughterhouses which slaughter adult bovine animals or pigs. However, the Regulations do not apply to small-scale bovine operators slaughtering fewer than 150 adult bovine animals per week as an annual average, unless they choose to classify bovine carcases (regulation 6); or to the operators of slaughterhouses at which fewer

than 500 clean pigs per week as an annual average are slaughtered (regulation 12).

The Regulations provide for a licensing system for anybody who visually classifies bovine carcases and for the licensing of slaughterhouses using automated grading equipment for classifying such carcases (regulations 8 to 10). Breach of the licensing requirements is an offence (regulation 29).

The classification of pig carcases must be carried out using an authorised grading method and grading techniques operated by qualified personnel (regulation 14). Breach of this requirement is an offence (regulation 30). An operator may, instead of marking a pig carcase, keep a record concerning its classification (regulation 15).

Operators of approved slaughterhouses are required to keep records relating to bovine and pig carcases respectively (regulations 11 and 16 and Schedules 3 and 4).

Part 5 of the Regulations concerns enforcement, and makes provision relating to the powers of authorised officers, enforcement notices, penalty notices and criminal proceedings. Regulations 20(3) and 26 to 32 set out the offences under the Regulations, which are all punishable on summary conviction by a fine, except for offences under regulation 31(2) or (3) (false marks).

In particular, regulations 26 and 27 provide that breach of specified provisions of European Union legislation is an offence, namely European beef provisions set out in Schedule 1 and European pig provisions set out in Schedule 2. The provisions specified in Schedules 1 and 2 include requirements for recording and reporting market prices for bovine and pig carcases respectively.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations as the amendments are technical in nature.

WELSH STATUTORY INSTRUMENTS

2018 No. 1215 (W. 248)

AGRICULTURE, WALES

The Carcase Classification and Price Reporting (Wales) Regulations 2018

Made	*22 November 2018*
Laid before the National Assembly for Wales	*23 November 2018*
Coming into force	*14 December 2018*

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(**1**).

The Welsh Ministers are designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union.

These Regulations make provision for a purpose mentioned in that section and it appears to the Welsh Ministers that it is expedient for references to the following Regulations to be construed as a reference to those Regulations as amended from time to time—

(a) Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products(**3**);

(**1**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006. Section 2(2) and paragraph 1A of Schedule 2 are prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) from exit day (*see* section 20 of that Act).

(**2**) S.I. 2010/2690.

(**3**) OJ No L 347, 20.12.2013, p. 671, as last amended by Regulation (EU) No 2017/2393 (OJ No L 350, 29.12.2017, p. 15).

(b) Commission Delegated Regulation (EU) No 2017/1182 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcases and as regards the reporting of market prices of certain categories of carcases and live animals(**1**); and

(c) Commission Implementing Regulation (EU) No 2017/1184 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcases and as regards the reporting of market prices of certain categories of carcases and live animals(**2**).

PART 1

GENERAL PROVISIONS

Title, application and commencement

1.—(1) The title of these Regulations is the Carcase Classification and Price Reporting (Wales) Regulations 2018.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 14 December 2018.

Interpretation

2.—(1) In these Regulations—

"the 2011 Regulations" ("*Rheoliadau 2011*") means the Beef and Pig Carcase Classification (Wales) Regulations 2011(**3**);

"adult bovine animal" ("*anifail buchol llawn-dwf*") means a bovine animal aged eight months or more;

"approved slaughterhouse" ("*lladd-dy cymeradwy*") means an establishment used for slaughtering adult bovine animals or pigs, the meat of which is intended for human consumption and which is approved or conditionally approved under Article 4 of Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(**4**);

(**1**) OJ No L 171, 4.7.2017, p. 74.
(**2**) OJ No L 171, 4.7.2017, p. 103.
(**3**) S.I. 2011/1826 (W. 198).
(**4**) OJ No L 139, 30.4.2004, p 55, as last amended by Commission Regulation (EU) No 2017/1981 (OJ No L 285, 1.11.2017, p. 10).

"authorised officer" ("*swyddog awdurdodedig*") means a person authorised by the Welsh Ministers for the purposes of these Regulations, but does not include a person appointed for the purpose of considering an appeal under regulation 10;

"bovine carcase" ("*carcas buchol*") means a carcase or half-carcase of a slaughtered adult bovine animal bearing a health mark provided for in Article 5(2) of, and Chapter III of Section 1 of Annex 1 to, Regulation (EC) No 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption(**1**); and in this definition—

(a) "carcase" means the whole body of a slaughtered animal as presented after bleeding, evisceration and skinning, and

(b) "half-carcase" means the product obtained by separating the carcase symmetrically through the middle of each cervical, dorsal, lumbar and sacral vertebra and through the middle of the sternum and ischiopubic symphysis;

"classification" ("*dosbarthu*") means—

(a) the classification of bovine carcases in accordance with the European beef provisions, or

(b) the classification of pig carcases in accordance with the European pig provisions and with regulation 14,

as the case may be and cognate terms are to be construed accordingly;

"clean pig" ("*mochyn glân*") means a pig which has not been used for breeding;

"Commission Delegated Regulation" ("*Rheoliad Dirprwyedig y Comisiwn*") means Commission Delegated Regulation (EU) No 2017/1182 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcases and as regards the reporting of market prices of certain categories of carcases of live animals(**2**);

"Commission Implementing Regulation" ("*Rheoliad Gweithredu'r Comisiwn*") means Commission Implementing Regulation (EU) No 2017/1184 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep

(**1**) OJ No L 139, 30.4.2004, p. 206, as last amended by Commission Regulation (EU) No 2015/2285 (OJ No L 323, 9.12.2015, p. 2).
(**2**) OJ No L 171, 4.7.2017, p. 74.

carcases and as regards the reporting of market prices of certain categories of carcases and live animals(**1**);

"European beef provision" ("*darpariaeth eidion Ewropeaidd*") means a provision which is specified in column (2) of Schedule 1, the subject matter of which is described in column (3) of that Schedule;

"European pig provision" ("*darpariaeth moch Ewropeaidd*") means a provision which is specified in column (2) of Schedule 2, the subject matter of which is described in column (3) of that Schedule;

"operator" ("*gweithredwr*") means a person carrying on the business of an approved slaughterhouse;

"pig carcase" ("*carcas mochyn*") means the body of a slaughtered clean pig, bled and eviscerated, whole or divided down the mid-line;

"prescribed communication" ("*cyfathrebiad rhagnodedig*") means a communication of the results of the classification as required by Article 1 of the Commission Implementing Regulation;

"Regulation (EU) 2013" ("*Rheoliad (EU) 2013*") means Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products.(**2**)

(2) Other terms used in these Regulations that are also used in Regulation (EU) 2013, the Commission Delegated Regulation or the Commission Implementing Regulation have the meaning they bear in those Regulations.

(3) In these Regulations, any reference to—

(a) Regulation (EU) 2013,

(b) the Commission Delegated Regulation, or

(c) the Commission Implementing Regulation,

is to be construed as a reference to that instrument as amended from time to time.

Transitional provisions

3. Any notice, licence, approval or authorisation, given or granted under the 2011 Regulations and which has effect at the coming into force of these Regulations remains in force as if it were given or granted under these Regulations.

(**1**) OJ No L 171, 4.7.2017, p. 103

(**2**) OJ No L 347, 20.12.2013, p. 671, as last amended by Regulation (EU) No 2017/2393 (OJ No L 350, 29.12.2017, p. 15).

Revocations

4. The following are revoked—

(a) the 2011 Regulations; and

(b) regulation 2 of the Single Common Market Organisation (Consequential Amendments) (Wales) Regulations 2013(**1**).

PART 2

NOTIFICATIONS BY OPERATORS

Notification by operators

5.—(1) Every person who—

(a) is an operator on the coming into force date of these Regulations, or

(b) becomes an operator on a subsequent date,

must, within 28 days of the coming into force date of these Regulations or of the date on which that person becomes an operator as the case may be, give notice to the Welsh Ministers of the particulars specified in paragraph (3).

(2) A person—

(a) who has given notice, or who has been deemed to have given notice, under regulation 5(1) or (2) of the 2011 Regulations, and

(b) to whom these Regulations apply by virtue of regulation 6 or 12,

is deemed to have given notice under paragraph (1).

(3) The particulars in paragraph (1) are—

(a) the full name and address of the operator;

(b) where the operator is a partnership or joint owners, the full names and addresses of all the partners or joint owners;

(c) where the operator is a body corporate, the full name, registered office address and registration number of the body; and

(d) the address, telephone number and approval number of the slaughterhouse.

(4) Where any change occurs in any of the particulars specified in paragraph (3), the operator must within 28 days of the change give notice to the Welsh Ministers of the particulars of the change.

(5) Where an operator ("O") ceases to be the operator of an approved slaughterhouse, O must within 10 days of the cessation give notice to the Welsh Ministers of—

(**1**) S.I. 2013/3270 (W. 320).

(a) the date of the cessation; and

(b) the person (if any) succeeding O as operator of that slaughterhouse.

(6) Where an approved slaughterhouse ceases to be such a slaughterhouse, its operator must within 10 days of such cessation give notice to the Welsh Ministers of the date of that cessation.

PART 3

BOVINE CARCASES

Application of these Regulations to small-scale bovine operators

6.—(1) A small-scale bovine operator is not required to classify bovine carcases.

(2) These Regulations do not apply to a small-scale bovine operator which does not classify bovine carcases.

(3) But if a small-scale bovine operator chooses to classify bovine carcases, these Regulations apply in relation to that operator and the classification of those carcases.

(4) In this regulation, "small-scale bovine operator" means an operator of an approved slaughterhouse at which fewer than 150 adult bovine animals per week as an annual average are slaughtered.

(5) Any small-scale bovine operator who, until the coming into force of these Regulations, was required to classify bovine carcases under the 2011 Regulations is not by that reason alone deemed to have chosen to do so for the purposes of paragraph (3).

(6) Nothing in this regulation prevents the application of these Regulations to an operator in relation to pig carcases if pigs are also slaughtered in that operator's slaughterhouse.

Competent authorities: bovine carcases

7.—(1) The Welsh Ministers are the competent authority for the purposes of—

(a) Article 12(2)(b) of the Commission Delegated Regulation (additional provisions on classification by automated grading techniques);

(b) Articles 13 and 14 of the Commission Delegated Regulation and Article 14 of the Commission Implementing Regulation (reporting of market prices and calculation of average price per class);

(c) Article 17(2) of the Commission Delegated Regulation (supplementary provisions for reporting of market prices for carcases);

(d) Article 4(1) of the Commission Implementing Regulation (making and keeping reports for on-the-spot checks).

(2) The Welsh Ministers are responsible for—

(a) Article 10 of the Commission Delegated Regulation (authorisation of automated grading methods);

(b) Article 25 of the Commission Delegated Regulation (notification to the Commission);

(c) on-the-spot checks as described in Articles 2 and 3 of the Commission Implementing Regulation.

Licence to carry out classification

8.—(1) The Welsh Ministers may grant a licence to carry out visual classification of bovine carcases to any person who applies for such a licence and who appears to the Welsh Ministers to be qualified to carry out the classification, if the Welsh Ministers are satisfied that the applicant is a fit and proper person to carry out classification of bovine carcases.

(2) The licence may be made subject to such terms and conditions as the Welsh Ministers consider necessary for the purposes of paragraph (1).

(3) In addition to the power to revoke a licence in the circumstances mentioned in Article 4(2) of the Commission Implementing Regulation (incorrect classification, presentations or identifications), the Welsh Ministers may suspend or revoke a licence granted to a person under this regulation if—

(a) the person has contravened any of the terms or conditions of that licence; or

(b) the Welsh Ministers are satisfied that the person holding that licence is no longer a fit and proper person to carry out classification of bovine carcases.

(4) Where the Welsh Ministers take any decision in relation to a licence under this regulation which gives rise to a right to appeal under regulation 10, the Welsh Ministers must—

(a) inform the person of the decision in writing;

(b) give the reasons; and

(c) explain that there is a right of appeal to a person appointed by the Welsh Ministers.

Licence for automated grading

9.—(1) The Welsh Ministers may grant to the operator of an approved slaughterhouse a licence authorising the use of automated grading equipment for classification of bovine carcases at that slaughterhouse, if the Welsh Ministers are satisfied

that the equipment and the manner of its operation would meet the standards required by Articles 9(b) and 10(2) (read with Part A of Annex IV) of the Commission Delegated Regulation.

(2) The licence may be made subject to such terms and conditions as are necessary to ensure compliance with those standards.

(3) In addition to the power to revoke a licence in the circumstances mentioned in Article 4(2) of the Commission Implementing Regulation, the Welsh Ministers may suspend or revoke a licence granted to an operator under this regulation if—

(a) the operator has contravened any of the terms or conditions of the licence; or

(b) the Welsh Ministers consider that the automated grading equipment no longer meets the standards required by the Commission Delegated Regulation, whether for reasons connected with the equipment itself or with the operator's manner of operation of the equipment.

(4) Where the Welsh Ministers take any decision in relation to a licence under this regulation which gives rise to a right to appeal under regulation 10, the Welsh Ministers must—

(a) inform the person of the decision in writing;

(b) give the reasons; and

(c) explain that there is a right of appeal to a person appointed by the Welsh Ministers.

Appeals regarding licences

10.—(1) A person may appeal against—

(a) a decision by the Welsh Ministers to refuse an application by that person for a licence under regulation 8 or 9;

(b) a term or condition imposed by the Welsh Ministers in a licence granted to that person under regulation 8 or 9; or

(c) a decision by the Welsh Ministers to suspend or revoke a licence under regulation 8 or 9.

(2) The appeal must be made to a person appointed for the purpose by the Welsh Ministers.

(3) The Welsh Ministers may also make written representations to the appointed person concerning the decision.

(4) The appointed person must consider the appeal and any representations made by the Welsh Ministers and must report in writing to the Welsh Ministers with the person's conclusions on the appeal and a recommendation as to the manner in which the matter should be finally determined by the Welsh Ministers.

(5) The Welsh Ministers must then reach a final determination and notify the person who made the appeal of that decision and the reasons for it.

Records: bovine carcases

11.—(1) An operator of an approved slaughterhouse must keep a record of the particulars specified in Schedule 3 relating to each bovine carcase which is classified in that slaughterhouse.

(2) The operator must retain each record for a period of 12 months from the end of the calendar year to which the record relates.

PART 4

PIG CARCASES

Exemption for small-scale pig operators

12.—(1) These Regulations do not apply to the operator of an approved slaughterhouse at which fewer than 500 clean pigs per week as an annual average are slaughtered.

(2) Nothing in paragraph (1) prevents the application of these Regulations to an operator in relation to bovine carcases if adult bovine animals are also slaughtered in that operator's slaughterhouse.

Competent authority: pig carcases

13.—(1) The Welsh Ministers are the competent authority for the purposes of—

(a) Article 7(4) of the Commission Delegated Regulation (classification and weighing);

(b) Article 12(2)(b) of the Commission Delegated Regulation (additional provisions on classification by automated grading techniques);

(c) Articles 13 and 14 of the Commission Delegated Regulation and Article 14 of the Commission Implementing Regulation (reporting of market prices and calculation of average price per class);

(d) Article 17(2) of the Commission Delegated Regulation (supplementary provisions for reporting of market prices for carcases);

(e) Article 4(1) of the Commissioning Implementing Regulation (making and keeping reports for on-the-spot checks).

(2) The Welsh Ministers are responsible for—

(a) Article 11 of the Commission Delegated Regulation (authorisation of automated grading methods);

(b) Article 25 of the Commission Delegated Regulation (notification to the Commission);

(c) the on-the-spot checks as described in Articles 2 and 3 of the Commission Implementing Regulation.

Authorised grading methods

14.—(1) The classification of pig carcases must be carried out at an approved slaughterhouse—

(a) using an authorised grading method provided for in Article 11 of the Commission Delegated Regulation; and

(b) using grading techniques provided for in Article 11 of the Commission Delegated Regulation which are operated by qualified personnel.

(2) In this regulation, "qualified personnel" refers to any person who is proficient in using the equipment and the grading techniques being operated by that person.

Records instead of marking

15. An operator or the person responsible for the classification of pigs may, instead of marking a carcase in accordance with the European pig provisions set out in Part 2 of Schedule 2, draw up a record for that carcase which comprises at least—

(a) the individual identification of the carcase by any unalterable means;

(b) the warm weight of the carcase; and

(c) the result of the classification.

Records: pig carcases

16.—(1) An operator of an approved slaughterhouse must keep a record of the particulars specified in Schedule 4 relating to each pig carcase which is classified in that slaughterhouse.

(2) The operator must retain each record for a period of 12 months from the end of the calendar year to which the record relates.

PART 5

ENFORCEMENT AND OFFENCES

Notices

17.—(1) Any notice required or authorised under these Regulations to be given to any person must be in writing.

(2) Any such notice may be given by—

(a) delivering it to the person;

(b) leaving it at the person's proper address; or

(c) sending it by post to the person at that address.

(3) Where any such notice is to be given to a body corporate, it may be given to an officer of the body.

(4) For the purpose of this regulation the proper address of any person to whom a notice is to be given is the person's last known address, except that in the case of a body corporate or an officer of the body, the proper address is the address of the registered or principal office of the body.

(5) In this regulation—

"director" ("*cyfarwyddwr*"), in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate; and

"officer" ("*swyddog*"), in relation to a body corporate, means any director, manager, secretary or other similar officer of the body corporate.

Powers of entry

18.—(1) An authorised officer may at any reasonable hour and on producing, if so required, a duly authenticated authorisation, enter an approved slaughterhouse and any associated premises in which carcases may be handled or records relating to those carcases may be kept, for the purpose of ascertaining whether—

(a) any offence under these Regulations is being or has been committed on the premises; or

(b) there is on the premises any evidence of any such offence.

(2) The officer may be accompanied by such other persons as the officer considers necessary.

(3) A justice of the peace may by signed warrant permit an authorised officer to enter any premises, if necessary by reasonable force, if satisfied on sworn information in writing that—

(a) there is reasonable ground for entry into the premises for any purpose in paragraph (1); and

(b) any of the following conditions are met—

(i) admission to the premises has been refused, or a refusal is anticipated and (in either case) notice of intention to apply for a warrant has been given to the operator;

(ii) asking for admission, or the giving of such notice, would defeat the object of the entry;

(iii) the case is one of urgency; or

(iv) the premises are unoccupied, or the operator is temporarily absent.

(4) A warrant granted under this regulation continues in force for three months.

(5) An officer who enters any unoccupied premises, or premises from which the operator is temporarily absent, must leave them as effectively secured against unauthorised entry as they were before entry.

Powers of authorised officers

19. An authorised officer entering premises under these Regulations may—

(a) inspect any bovine carcase or pig carcase or part of such a carcase, or any carcase or part of a carcase which the officer reasonably suspects to be a bovine or pig carcase or part of such a carcase;

(b) examine any record which an operator is required to keep under regulation 11 or 16 or under the Commission Delegated Regulation or the Commission Implementing Regulation, and where any such record is kept by means of a computer, have access to and inspect and check the operation of any computer and associated apparatus or material which is or has been in use in connection with that record;

(c) require that copies of or extracts from any such record be produced and, where such record is kept by means of a computer, require it to be produced in a form in which it may be taken away; and

(d) retain any such record which the officer has reason to believe may be required as evidence in proceedings under these Regulations.

Enforcement notices

20.—(1) If the Welsh Ministers have reason to believe that a person has committed an offence under these Regulations, the Welsh Ministers may give that person an enforcement notice in accordance with paragraph (2).

(2) An enforcement notice must—

(a) state the Welsh Ministers' grounds for believing that an offence has been committed;

(b) specify the matter that constitutes the offence;

(c) specify what that person must stop doing, or the measures that, in the Welsh Ministers' opinion, the person must take in order to comply with these Regulations;

(d) require the person to stop doing the action specified in the notice, or to take the measures specified in the notice or measures at least equivalent to them, within the period (being not less than 14 days) specified in the notice;

(e) inform the person of the right of appeal conferred by regulation 21; and

(f) inform the person of the period within which such an appeal may be brought.

(3) Any person who contravenes or fails to comply with an enforcement notice is guilty of an offence.

Appeals against enforcement notices

21.—(1) A person may appeal to a magistrates' court against an enforcement notice if that person has reason to believe that the notice should not have been given.

(2) A person may appeal within the period of one month beginning with the date on which the notice was given.

(3) The procedure is by way of complaint for an order; and the Magistrates' Court Act 1980(**1**) applies to the proceedings.

(4) On an appeal the court may either cancel or affirm the notice and, if the court affirms the notice, it may do so either in its original form or with such modifications as the court thinks fit.

Penalty notices

22.—(1) If the Welsh Ministers have reason to believe that a person has committed an offence under these Regulations, the Welsh Ministers may give that person a notice (a "penalty notice") in accordance with paragraphs (2) and (3).

(2) A penalty notice may be of any amount.

(3) A penalty notice must—

(a) give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information about the offence;

(b) state the amount of the penalty;

(**1**) 1980 c. 43; sections 51 and 52 have been substituted by the Courts Act 2003 (c. 39), section 47.

(c) state the period during which, by virtue of regulation 23, proceedings will not be taken for the offence;

(d) state the person to whom and the address at which the penalty may be paid; and

(e) state the means by which payment of the penalty may be made.

Restriction on proceedings for penalty offence

23.—(1) Where a person is given a penalty notice—

(a) no proceedings may be brought against that person for the offence to which that notice relates before the end of the period of 28 days, beginning on the date on which the notice was given; and

(b) that person may not be convicted of the offence if the penalty is paid in accordance with regulation 24 before the end of that period.

(2) Paragraph (1) does not apply if the penalty notice is withdrawn in accordance with regulation 25.

Payment of penalty

24.—(1) Payment of any penalty must be made to the Welsh Ministers by sending it by post or by such method as may be specified in the penalty notice.

(2) In any proceedings a certificate purporting to be signed by or on behalf of the Welsh Ministers stating that payment of a penalty was or was not received by the date specified in the certificate is evidence of the facts stated.

Withdrawal of penalty notice

25.—(1) A penalty notice may be withdrawn if the Welsh Ministers have reason to believe that it ought not to have been given (whether to the person named in the penalty notice or otherwise).

(2) A penalty notice may be withdrawn by the Welsh Ministers giving notice to the person named in the penalty notice before or after payment of the penalty.

(3) Where a penalty notice is withdrawn, the Welsh Ministers must repay any penalty paid under the penalty notice to the person named in the penalty notice within 28 days, beginning with the date on which notice of the withdrawal of the penalty notice was sent.

Offences: European beef provisions

26. Any person who—

(a) fails to comply with any requirement under a European beef provision; or

(b) contravenes any prohibition contained in a European beef provision,

is guilty of an offence.

Offences: European pig provision

27.—(1) Any person who—

(a) fails to comply with any requirement under a European pig provision; or

(b) contravenes any prohibition contained in a European pig provision,

is guilty of an offence.

(2) But where an operator or the person responsible for the classification of pig carcases draws up a record in compliance with the conditions referred to in regulation 15 (records instead of marking) no offence is committed by failure to comply with or contravening a Part 2 European pig provision.

(3) In this regulation, "Part 2 European pig provision" means a provision which is specified in column (2) of Part 2 of Schedule 2.

Offences: notifications by operators

28. Any person who fails to comply with any requirement of regulation 5 (notification by operators) is guilty of an offence.

Offences: licences (bovine carcases)

29.—(1) If classification of a bovine carcase is carried out at an approved slaughterhouse—

(a) without a licence granted under regulation 8, or

(b) in breach of any term or condition of such a licence,

the person who carries out the classification and the operator of that slaughterhouse are each guilty of an offence.

(2) If classification of a bovine carcase is carried out at an approved slaughterhouse by means of automated grading equipment—

(a) without a licence granted under regulation 9 for the use of that equipment at that slaughterhouse, or

(b) in breach of any term or condition of such a licence,

the person who carries out that classification and the operator of that slaughterhouse are each guilty of an offence.

(3) Any person who makes an alteration to a licence granted under regulation 8 or 9 is guilty of an offence.

Offences: authorised grading methods (pig carcases)

30. If classification of a pig carcase is carried out at an approved slaughterhouse using a grading method or grading technique in a manner which fails to comply with the requirements of regulation 14, the person who carries out the classification and the operator of that slaughterhouse are each guilty of an offence.

Offences: records and marks

31.—(1) Any person who fails to comply with any requirement of regulation 11 (records: bovine carcases) or regulation 16 (records: pig carcases) is guilty of an offence.

(2) Any person who marks a bovine carcase or part of such a carcase—

(a) as prescribed by Article 8(1), (2)(a), (3)(a) (read with the second paragraph of Article 8(3)), (4) and (5) of the Commission Delegated Regulation, or

(b) in a way closely resembling the marking prescribed by those provisions,

which is likely to mislead, is guilty of an offence.

(3) Any person who marks a pig carcase or part of such a carcase—

(a) as prescribed by Article 8(1), (2)(b), (3)(c) (read with the second paragraph of Article 8(3)), (4) and (5) of the Commission Delegated Regulation, or

(b) in a way closely resembling the marking prescribed by those provisions,

which is likely to mislead, is guilty of an offence.

Offences: obstruction etc.

32. Any person who—

(a) without reasonable excuse, obstructs any person acting under these Regulations,

(b) without reasonable cause, fails to give any person acting under these Regulations any assistance or information that that person may reasonably require for the purpose of carrying out functions under these Regulations,

(c) gives any person acting under these Regulations any information knowing it to be false or misleading, or

(d) fails to produce any document or record when required to do so by any person acting under these Regulations,

is guilty of an offence.

Period for bringing prosecution

33.—(1) Proceedings for an offence under regulations 20(3), 26, 27, 28, 29, 30, 31(1) or 32 may be brought within a period of 12 months from the date on which the prosecutor first knows of evidence sufficient, in the prosecutor's opinion, to justify proceedings.

(2) But no such proceedings may be brought more than 18 months from the commission of the offence.

(3) For the purposes of paragraph (1)—

(a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact;

(b) a certificate stating the matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

Offences by bodies corporate

34.—(1) If an offence under these Regulations committed by a body corporate is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer, that officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that member's functions of management as if that member were a director of the body.

(3) In this regulation, "officer", in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

Defence of due diligence

35. It is a defence for a person charged with an offence under these Regulations ("P") to prove that P took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by P or by a person under P's control.

Offences: punishment

36.—(1) A person guilty of an offence under—

(a) regulation 20(3) (enforcement notices),

(b) regulation 26 (European beef provisions),

(c) regulation 27 (European pig provisions),

(d) regulation 28 (notifications by operators),

(e) regulation 29 (licences (bovine carcases)),

(f) regulation 30 (authorised grading methods: pig carcases)),

(g) regulation 31(1) (records), or

(h) regulation 32 (obstruction etc.),

is liable on summary conviction to a fine.

(2) A person guilty of an offence under regulation 31(2) or (3) (misleading marks etc.) is liable—

(a) on summary conviction to a fine; or

(b) on conviction on indictment, to a fine.

Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers
22 November 2018

SCHEDULE 1 Regulation 2

European provisions: bovine carcases

(1) Regulation containing European provision	*(2) Provision*	*(3) Subject matter*
Regulation (EU) 2013	Article 10 and Annex IV, point A(II), together with Article 1 of the Commission Delegated Regulation (read with the Cattle Identification (Wales) Regulations 2007(**1**))	Requirement to indicate the category of carcase as specified in these provisions
	Article 10 and Annex IV, point A(III), together with Article 3(1) of, and Annex 1 to, the Commission Delegated Regulation	Requirement to indicate, in relation to a carcase, the class of conformation and fat cover as specified in these provisions
	Article 10 and Annex IV, point A(IV)	Requirement to present carcases in the specified manner
	Article 10 and Annex IV, point A(V), first sub-paragraph	Requirement for approved slaughterhouses to classify and identify carcases in accordance with the Union scale
Commission Delegated Regulation	Article 6(1)	Prohibition on removing fat, muscle or other tissue before weighing,

(**1**) S.I. 2007/842 (W. 74). The Cattle Identification (Wales) Regulations 2007 establish a bovine animal identification and registration system in Wales, as specified in Article 1 of Regulation (EU) 2013.

	grading and marking
Article 6(3)	Requirement to present carcase in specified manner, for the purpose of establishing market prices
Article 7(1)	Requirement as to the place and time of classification
Article 7(3)(a)	Requirements as to the time of classification and weighing
Article 7(5)	Requirement as to time of classification in cases where automated graded method fails to classify carcase
Article 8(1), 8(2)(a), Article 8(3)(a) read with the second paragraph of that Article, Article 8(4)	Requirements as to the marking of carcases to indicate the category and class of conformation and fat cover
Article 8(5)	Requirements in relation to labelling of a carcase
Article 10(7)	Prohibition on modifications of the technical specifications of authorised automatic grading methods without approval of the Welsh Ministers
Article 12	Requirements as to classification by automated grading techniques

	Article 14(1), (2) and (3)	Requirement concerning the weighing of the carcase for the reporting of market prices
	Article 14(4)	Requirements as to reporting of prices per class
	Article 17(2) in its application to supplementary payments for carcases	Requirements as to notification of any supplementary payments
Commission Implementing Regulation	Article 1	Requirements as to the prescribed communication
	Sub-paragraphs one and three of Article 5(1) and the Annex	Requirements as to the adjustments to the weight of the carcase
	Article 7	Requirement as to classes for recording of market prices for beef carcases
	Article 8(1), (3) and (4)	Requirement as to recording of market prices

SCHEDULE 2

Regulations 2, 15 and 27

European provision: pig carcases

PART 1

(1) Regulation containing European provision	*(2) Provision*	*(3) Subject matter*
Regulation (EU) 2013	Article 10 and Annex IV, point B(II)	Requirement to classify carcases into one of the specified classes
	Article 10 and Annex IV, point B(III), as modified by Articles 3 and 4 of Commission Decision 2004/370/EC authorising methods for grading pig carcases in the United Kingdom(**1**)	Requirement to present carcases in the specified manner
	Article 10 and Annex IV, point B(IV), sub-paragraph 1, together with Article 1 of, and Annex I to, Commission Decision 2004/370/EC authorising methods for grading pig carcases in the United Kingdom	Requirement to grade carcases by methods authorised by the Commission

(**1**) OJ No L 116, 22.4.2004, p. 32, as last amended by Commission Decision 2006/374/EC (OJ No L 142, 30.5.2006, p. 34).

Commission Delegated Regulation	Article 6(1)	Prohibition on removing fat, muscle or other tissue before weighing, grading and marking
	Article 7(1)	Requirement as to the place and time of classification
	Article 7(3)(b) and 7(4)(a)	Requirements as to weighing of carcase and weight adjustments
	Article 12	Requirements as to classification by automated grading techniques
	Article 14(1), (2) and (3)	Requirement concerning the weighing of the carcase for the reporting of market prices
	Article 14(4)	Requirements as to reporting of prices per class
	Article 17(2) in its application to supplementary payments for carcases	Requirements as to notification of any supplementary payments
	Point 2 of Part A of Annex V	Requirements as to assessment of lean meat content of carcases
Commission Implementing Regulation	Article 1	Requirements as to the prescribed communication
	Article 9	Requirements as to classes and weights for recording of market prices for pig carcases

	Article 10	Recording of market prices

PART 2

(1) Regulation containing European provision	*(2) Provision*	*(3) Subject matter*
Commission Delegated Regulation	Article 8(1), 8(2)(b), Article 8(3)(c) read with the second paragraph of that Article and Article 8(4)	Requirements as to marking or labelling of carcases
	Article 8(5)	Requirements in relation to labelling of a carcase

SCHEDULE 3 Regulation 11

Records: bovine carcases

1. The results of the classification.

2. The approval number of the slaughterhouse.

3. The kill or slaughter number of the animal from which the carcase was obtained, as allocated by the operator.

4. The date of slaughter.

5. The warm weight of the carcase together with a note of—

(a) any adjustment made for the cold carcase weight, and

(b) any co-efficient applied.

6. The dressing specification used.

7. A record that the prescribed communication has been effected.

8. The name, signature and classification licence serial number of the person who carried out the classification.

SCHEDULE 4 Regulation 16

Records: pig carcases

1. The results of the classification.

2. The approval number of the slaughterhouse.

3. The kill or slaughter number of the animal from which the carcase was obtained, as allocated by the operator.

4. The date of slaughter.

5. The warm weight of the carcase, together with a note of—

(a) any adjustment made for the cold carcase weight, and

(b) any coefficient applied.

6. The lean meat percentage of the carcase.

7. An indication as to whether the tongue, flare fat, kidneys and diaphragm were attached or removed.

8. A record that the prescribed communication has been effected.

9. The name and signature of the person who carried out the classification.

Explanatory Memorandum to *The Carcase Classification and Price Reporting (Wales) Regulations 2018*

This Explanatory Memorandum has been prepared by the *Department for Economy, Skills and Natural Resources* and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of *Carcase Classification and Price Reporting (Wales) Regulations 2018*.

Lesley Griffiths, AM, Cabinet Secretary for Energy, Planning and Rural Affairs:

Date: 23 November 2018

1. Description

These Regulations revoke The Beef and Pig Carcase Classification (Wales) Regulations 2011 and replace them with the Carcase Classification and Price Reporting (Wales) Regulations 2018.

These Regulations update in domestic legislation the arrangements for administering and enforcing carcase classification and price reporting for beef and pigs under Regulation 1308/2013 read with Commission Delegated Regulation (EU) 2017/1182 and Commission Implementing Legislation (EU) 2017/1184.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Article 27 of Commission Delegated Regulation 2017/1182 and Article 19 of the Commission Implementing Regulation 2017/1184 requires the Member States to bring into force the necessary legal framework by 11th July 2018. Delays to finalising these Regulations mean this deadline has not been met.

The Welsh Ministers and Secretary of State agreed to align the Welsh and English replacement Regulations to ensure slaughterhouses were subject to the same enforcement regime throughout England and Wales. As the same agency will enforce the regime in England and Wales, the Welsh Ministers and the Secretary of State have sought to bring the replacement Welsh and English Regulations into force at a similar time.

Whilst the Welsh Government has not been in contact with the European Commission in respect of the delay, the risk of infraction is considered to be low. To date there has not been a prosecution relating to the existing domestic regulations and the industry continues to comply with the requirements of the existing Regulations and the proposed Regulations. The Rural Payments Agency, on behalf of the Welsh Ministers, continues to monitor the relevant operators.

Changes made by the Commission Regulations have had minimal impact on the Welsh beef and pig Industry. Those slaughterhouses which previously complied with regulatory requirements continue to comply with the new reporting requirements.

Section 2(2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative resolution procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the Statutory Instrument because it is giving effect to European Union provisions

3. Legislative background

These Regulations are made in exercise of powers contained in section 2(2) of the European Communities Act 1972.

The Welsh Ministers are designated by virtue of Article 3 of the European Communities (Designation) (No. 5) Order (S.I. 2010/2690) for the purposes of making regulations under section 2(2) of the European Communities Act 1972 in relation to Common Agricultural Policy ("CAP").

The previous EU carcase classification and price reporting measures have been consolidated and modified by Commission Delegated Regulation 2017/1182 and Commission Implementing Regulation 2017/1184 supplementing EU Regulation 1308/2013 establishing a common organisation of the markets in agricultural products.

The Welsh Government needs to administer and enforce carcase classification and price reporting measures to give effect to the Welsh Ministers' European obligations arising from Commission Delegated Regulation 2017/1182 and Commission Implementing Regulation 2017/1184. The previous classification and enforcement regime was contained in the Beef and Pig Carcase Classification (Wales) Regulations 2011. Those 2011 Regulations are being revoked and replaced to align with the changes to the EU regime.

4. Purpose & intended effect of the legislation

The European Commission conducted a formal review of existing EU rules which mandate the categorisation and classification of animals presented for slaughter against common European standards in order to make it more transparent.

As a result they brought into force Commission Delegated Regulation 2017/1182 and Commission Implementing Regulation 2017/1184 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals.

The previous classification and enforcement regime was contained in the Beef and Pig Carcase Classification (Wales) Regulations 2011. Those Regulations are being revoked and replaced to align with the changes to the EU regime.

Carcase classification is a means of ensuring all livestock producers are paid in a fair and transparent way by consistently dressing, weighing and classifying animals. Price Reporting is a means of collecting data on the market which can be used for policy formulation and for forward planning of livestock producers

The aim of the European Union amendments is improve transparency and

reduce administrative and regulatory burden. The changes do not represent significant differences from current practice however the key changes to the 2011 Regulations will include:

- Increased thresholds for beef (bovines aged 8 months and over) from 75 to 150 per week and pig abattoirs from 200 to 500 per week (both on an annual average basis), which mandate the requirement to classify carcasses. Abattoirs slaughtering fewer than these amounts are no longer subject to the requirements of the Regulations.

- Requirement for pig abattoirs to provide details of classification results to the suppliers of animals sent for slaughter.

- Requirement for abattoirs slaughtering over the new thresholds (500 pigs per week) to supply details of deadweight prices for additional weight categories of pigs to AHDB, who will then collate and send a weekly return to the European Commission. The categories are 60kg to <120kg (codes S and E) and 120kg to <180kg (code R).

- Additional deadweight category, U4 to be price reported for bovine carcases of other female animals aged from 12 months

Officials advise the changes to policy will have limited impact on the Welsh industry as it stands currently.

The Welsh pig industry is relatively small, and **no** pig abattoirs in Wales would currently meet the throughput thresholds to be affected by the new reporting requirements. For beef, those abattoirs over the existing weekly threshold of 75 will also be over the new proposed threshold of 150 bovines; therefore, there will be no change to the number of abattoirs reporting within the beef sector. Existing suppliers will only need to ensure the U4 deadweight category is included in bovine classification.

The Rural Payments Agency (RPA) will continue to undertake enforcement throughout England and Wales (acting on behalf of the Welsh Ministers in relation to the latter), as it does under the current arrangements. This approach any avoids any risks that would otherwise arise as a result of cross border movement of livestock and different reporting and throughput thresholds in England and Wales (which could in fact threaten the viability and development of the slaughter / processing sector in Wales).

5. Consultation

A formal consultation has not been undertaken.

Stakeholder engagement was undertaken by way of targeted correspondence. This was deemed appropriate because the SI is in essence a technical update of classification and price reporting requirements in an existing SI. The letter was posted to key stakeholder organisations on the 27 June 2018. No

responses or queries were received from any Welsh slaughter houses as a result of this correspondence. No correspondence or feedback been received formally outside this communication chain.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers code of practice on the carrying out of Regulatory Impact Assessment was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment because the proposed legislative changes impose no costs or savings to the public, private or voluntary sector.

Agenda Item 4.2

SL(5)288 – The Environmental Protection (Miscellaneous Amendments) (England & Wales) Regulations 2018

Background and Purpose

These composite regulations make a number of amendments to two enactments, the Environmental Permitting (England and Wales) Regulations 2016 ("EPR") and the Environmental Protection Act 1990 ("the 1990 Act"). Amendments to the 1990 Act take effect in relation to England only.

This instrument amends the EPR to improve operator competence at permitted waste sites by introducing requirements for written management systems and requiring the operator to notify the regulator of their compliance with a technical competence scheme.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2 (ix): The Regulations have been made in English only. The Regulations have been made on an England and Wales basis.

Merits Scrutiny

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

Implications arising from exiting the European Union

Parts of these regulations form part of "EU-derived domestic legislation" under section 2 of the European Union (Withdrawal) Act 2018 ("the Act"), therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Act gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

Government Response

No government response is required.The Explanatory Memorandum says "this instrument makes amendments to existing enactments and is being made on a composite basis by the Welsh Ministers (in relation to Wales) and by the Secretary of State (in relation to England). As this composite instrument is subject to scrutiny by the National Assembly for Wales and by the UK Parliament, it is not considered reasonably practicable for this instrument to be made or laid bilingually."

Legal Advisers
Constitutional and Legislative Affairs Committee
November 2018

STATUTORY INSTRUMENTS

2018 No. 1227

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018

Made - - - - *22nd November 2018*

Laid before Parliament *26th November 2018*

Laid before the National Assembly for Wales 22nd November 2018

Coming into force in accordance with regulation 2

The Secretary of State makes these Regulations in relation to the transfer of household waste in England in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**a**).

The Secretary of State and the Welsh Ministers make these Regulations—

(a) in relation to the regulation of waste operations and radioactive substances activities, in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999(**b**); and

(b) in relation to the regulation of flood risk activities, in exercise of the powers conferred by section 61(1) of, and paragraphs 3 and 14 of Schedule 8 to, the Water Act 2014(**c**).

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the environment(**d**).

In accordance with section 2(4) of the Pollution Prevention and Control Act 1999 and section 61(5) of the Water Act 2014, the Secretary of State and the Welsh Ministers have consulted—

(a) the Environment Agency;

(b) the Natural Resources Body for Wales;

(**a**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(**b**) 1999 c. 24; section 2 was amended by section 62(13) of the Water Act 2014 (c. 21) and by S.I. 2013/755 (W.90). Schedule 1 has been amended as follows: paragraphs 3 and 20 were amended by S.I. 2011/1043; paragraph 9A was inserted by, and paragraph 24 amended by, S.I. 2005/925 and paragraph 9A was further amended by S.I. 2012/2788; paragraph 21A was inserted by section 38 of the Waste and Emissions Trading Act 2003 (c. 33), and paragraph 25 was amended by section 105(1) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and by S.I. 2015/664. Functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by virtue of article 3(1) of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**c**) 2014 c. 21, to which there are amendments not relevant to these Regulations.

(**d**) S.I. 2008/301.

(c) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small business as they consider appropriate; and

(d) such other bodies or persons as they consider appropriate.

PART 1

Introductory

Citation

1. These Regulations may be cited as the Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018.

Commencement

2.—(1) These Regulations (except regulation 4(2) and (5)) come into force on 7th January 2019.

(2) Regulation 4(2) and (5) comes into force on 7th April 2019.

PART 2

Amendments relating to household waste transfer: penalty notices in England

Amendments to EPA 1990

3.—(1) Part 2 of the Environmental Protection Act 1990 (waste on land)(**a**) is amended as follows.

(2) After section 34 (duty of care etc. as respects waste)(**b**) insert—

"**Fixed penalty notices: offences under section 34(6) relating to section 34(2A): England**

34ZA.—(1) This section applies where it appears to an enforcement authority in England that a person has failed to comply with the duty relating to the transfer of household waste in section 34(2A) in England.

(2) The authority may give to that person a notice offering the opportunity of discharging any liability to conviction for an offence under section 34(6) by payment of a fixed penalty.

(3) An authority may not give a person a notice under subsection (2) if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence.

(4) Where a waste collection authority (A) gives a notice to a person under subsection (2), A must, at the time of giving the notice—

(a) give the Environment Agency a copy of the notice; and

(b) where it appears to A that the failure to comply with the duty in section 34(2A) took place in the area of another waste collection authority (B), give B a copy of the notice.

(5) Where the Environment Agency gives a notice to a person under subsection (2), the Agency must, at the time of giving the notice, give a copy of the notice to the waste

(**a**) 1990 c.43.

(**b**) Section 34 was amended by S.I. 2005/2900, 2006/123 (W. 16), 2007/3538, 2011/988. There are other amending instruments but none is relevant.

collection authority in whose area the failure to comply with the duty in section 34(2A) took place.

(6) Where a person is given a notice under subsection (2) in respect of an offence—

(a) no proceedings may be instituted for that offence before the end of the period of 14 days following the date of the notice; and

(b) the person may not be convicted of the offence if the fixed penalty is paid before the end of that period.

(7) The fixed penalty payable to an enforcement authority under this section is—

(a) the amount specified by the authority in respect of the offence; or

(b) if no amount is specified by the authority, £200.

(8) The amount specified by an authority in respect of the offence under subsection (7)(a) must not be less than £150 or more than £400.

(9) The enforcement authority to which a fixed penalty is payable under this section may make provision for treating it as having been paid if a lesser amount of not less than £120 is paid within the period of 10 days following the date on which notice is given under this section.

(10) A notice under this section must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(11) A notice under this section must also—

(a) state the period during which, by virtue of subsection (6)(a), proceedings will not be instituted for the offence under section 34(6);

(b) state the period during which, by virtue of subsection (6)(b), payment of the fixed penalty will discharge any liability to conviction for the offence;

(c) state the amount of the fixed penalty;

(d) state any lesser amount payment of which, by virtue of subsection (9), is treated as payment of the fixed penalty, and the period for payment of the lesser amount;

(e) state the permissible methods of payment;

(f) explain that—

(i) the notice contains an offer to discharge liability to conviction for the offence by payment of a fixed penalty and that the person is not required to accept that offer; and

(ii) the person is entitled to make representations to the authority about the allegations contained in the notice;

(g) state the address to which the person may send any representations;

(h) explain that, by virtue of subsection (3), an authority may not give a person a notice under this section if such a notice has already been given to that person (whether by the same or another authority) in respect of the same offence;

(i) state which other enforcement authorities the authority has sent a copy of the notice to in accordance with subsections (4) and (5).

(12) An enforcement authority may authorise in writing a person (an "authorised officer") to give a notice under this section on its behalf.

(13) An authorised officer may require an occupier of domestic property to give the occupier's name and address if the officer proposes to give the occupier a fixed penalty notice.

(14) A person commits an offence if the person—

(a) fails to give a name or address when required to do so under subsection (13), or

(b) gives a false or inaccurate name or address in response to a requirement under that subsection.

(15) A person guilty of an offence under subsection (14) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(16) In any proceedings a certificate which—

(a) purports to be signed on behalf of the chief finance officer of the enforcement authority; and

(b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

(17) In this section—

"chief finance officer", in relation to an enforcement authority, means the person having responsibility for the financial affairs of the authority;

"enforcement authority in England" means the Environment Agency or a waste collection authority in England.".

(3) In section 73A (use of fixed penalty receipts)(**a**)—

(a) in subsection (1), after "section" insert "34ZA or";

(b) in subsection (2), after "33ZB," insert "34ZA,".

PART 3

Amendments relating to environmental permitting

Amendments to EPR 2016

4.—(1) The Environmental Permitting (England and Wales) Regulations 2016(**b**) are amended as follows.

(2) In regulation 38 (offences), after paragraph (2) insert—

"(2A) But it is not an offence for a person to fail to comply with the environmental permit conditions in Part 3 of Schedule 9 (waste operations: management and technical competence conditions).".

(3) In Schedule 3 (exempt facilities and waste operations to which section 33(1)(a) of the 1990 Act does not apply: descriptions and conditions), in Part 4, in paragraph 20—

(a) for the heading, substitute "Notches";

(b) in sub-paragraph (1), omit "fish passage".

(4) In Schedule 5 (environmental permits), in Part 1, in paragraph 10(2)(c), for "(b) and (c)" substitute "(a) and (b)".

(5) In Schedule 9 (waste operations and materials facilities), after Part 2 insert—

"PART 3

Waste operations: management and technical competence conditions

Written management system conditions

1.—(1) An environmental permit which meets each of the following criteria is subject to conditions A and B—

(a) the permit was granted before 6th April 2008;

(**a**) Section 73A was inserted by section 52 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).
(**b**) S.I. 2016/1154, amended by S.I. 2018/428. There are other amending instruments but none is relevant.

(b) the permit does not authorise a waste operation carried on at an installation or by means of a Part B mobile plant; and

(c) the permit does not, immediately before 7th April 2019, contain a condition referring to a management system recorded in writing relating to risks relating to pollution.

(2) Condition A is that the operator must manage and operate the waste operation in accordance with a system (a "written management system"), described in a document or documents, which identifies and minimises the risks of pollution arising from the waste operation, including (but not limited to) those—

(a) arising from operations (including maintenance);

(b) arising from an accident or other incident;

(c) arising from a failure to comply with or from a contravention of the environmental permit in question;

(d) identified following a complaint; or

(e) arising from the closure of the operation.

(3) Condition B is that the operator must—

(a) from time to time, review the written management system and keep it up to date; and

(b) keep a written record of—

(i) activities carried out in accordance with the written management system; and

(ii) any review or update under paragraph (a).

(4) If the regulator varies an environmental permit which meets the criteria in paragraph (1) so as to include a condition referring to a management system recorded in writing relating to risks relating to pollution, this paragraph ceases to apply to that environmental permit.

Technical competence: notification condition

2.—(1) An environmental permit is subject to the condition in sub-paragraph (6) if it meets one or both of the following criteria.

(2) The first criterion is that the permit authorises a waste operation which is not carried on at an installation or by means of a Part B mobile plant.

(3) The second criterion is that the permit authorises a specified waste management activity.

(4) Each of the following activities is a specified waste management activity—

(a) the disposal of waste in a landfill falling within Section 5.2 of Part 2 of Schedule 1;

(b) the disposal of hazardous waste falling within Section 5.3 of Part 2 of Schedule 1;

(c) the recovery of hazardous waste falling within Part A(1)(a)(i), (ii), (iii), (iv), (v), (viii) or (x) of Section 5.3 of Part 2 of Schedule 1;

(d) the disposal of non-hazardous waste falling within Part A(1)(a) of Section 5.4 of Part 2 of Schedule 1;

(e) the recovery or a mix of recovery and disposal of non-hazardous waste falling within of Part A(1)(b) of Section 5.4 of Part 2 of Schedule 1;

(f) the temporary or underground storage of hazardous waste falling within Section 5.6 of Part 2 of Schedule 1.

(5) But an activity falling within sub-paragraph (4)(b) to (f) is not a specified waste management activity if that activity—

(a) is carried on at the same installation as a Part A(1) activity not mentioned in sub-paragraph (4); and

(b) is not the activity which constitutes the primary purpose for operating the installation.

(6) The condition is that the operator must periodically give to the regulator—

(a) information demonstrating the operator's compliance with one of the following standards during the relevant period; or

(b) if the operator did not comply with one of the following standards during the relevant period, information to that effect.

(7) The first standard is the CIWM/WAMITAB Operator Competence Scheme, Version 9, September 2018, published by WAMITAB(**a**).

(8) The second standard is the Competence Management System: Requirements, Version 4, April 2015, published by Energy and Utility Skills(**b**).

(9) In sub-paragraph (6)—

(a) the reference to giving information periodically is a reference to giving information in each quarterly or annual return (as the case may be) for giving information about waste acceptance or removal in accordance with the environmental permit in question;

(b) "relevant period" means—

(i) in relation to the first period, the period beginning with 7th April 2019 and ending with the end of the period to which the first return relates;

(ii) in relation to each subsequent period, the quarter or year (as the case may be) to which the return relates.

(10) The regulator may amend the form for giving information about waste acceptance or removal in accordance with an environmental permit so as to enable information to be given in accordance with this paragraph.".

(6) In Schedule 23 (radioactive substances activities), in Part 4, in paragraph 7—

(a) after sub-paragraph (1) insert—

"(1A) Paragraph (1)(d) does not apply in relation to waste that is a sealed source.";

(b) for sub-paragraph (2) substitute—

"(2) In this paragraph—

"radioactive waste adviser" means an individual, or group of individuals, with the knowledge, training and experience needed to give radioactive waste management and environmental radiation protection advice in relation to radioactive waste in order to ensure the effective protection of members of the public, and whose competence in that respect is recognised by the regulator;

"sealed source" has the same meaning as in the Basic Safety Standards Directive(**c**).".

(7) In Schedule 25 (flood risk activities and excluded flood risk activities), in Part 2, in paragraph 5—

(a) for the heading, substitute "Ladders, scaffold towers and other similar apparatus";

(**a**) A copy of the document can be seen at https://wamitab.org.uk/wp-content/uploads/2018/09/CIWM-WAMITAB-Operator-Competence-Scheme-Version-9-Final.pdf or obtained by writing to WAMITAB, Peterbridge House, 3 The Lakes, Northampton, NN4 7HETBC.

(**b**) A copy of the document can be seen at https://www.euskills.co.uk/wp-content/uploads/2018/11/Competence-Management-System-Requirements-Version-4-April-2015.pdf or obtained by writing to Energy and Utility Skills, Friars Gate, 1011 Stratford Road, Shirley, Solihull, B90 4BN.

(**c**) Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom. OJ No L 13, 17.01.2014, p. 1.

(b) in sub-paragraph (1), for "and scaffold towers" substitute ", scaffold towers and other similar apparatus used for access, maintenance or repair".

Thérèse Coffey
Parliamentary Under Secretary of State
22nd November 2018 Department for Environment, Food and Rural Affairs

Hannah Blythyn
Minister for Environment, under authority of the Cabinet Secretary for
22nd November 2018 Energy, Planning and Rural Affairs, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Environmental Protection Act 1990 (c. 43) and the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154).

Part 2 amends Part 2 of the Environmental Protection Act 1990 by inserting provisions conferring power on certain authorities in England to give notices offering a person the opportunity of discharging any liability to conviction for the offence of failing to comply with section 34(2A) of that Act (duty to take measures to secure that transfer of household waste is only to certain authorised persons).

Part 3 amends various provisions of the Environmental Permitting (England and Wales) Regulations 2016. In summary—

(a) regulation 4(2) and (5) contains amendments relating to new conditions for environmental permits authorising certain waste operations;

(b) regulation 4(3) and (7) contains amendments relating to flood risk activities;

(c) regulation 4(6) contains an amendment relating to radioactive substances activities.

A full impact assessment of the effect that regulation 4(2) and (5) will have on the costs of business, the voluntary sector and the public sector is available from Waste Regulation and Crime, Department for Environment, Food and Rural Affairs, Seacole Building, 2 Marsham Street, London, SW1P 4DF or at www.legislation.gov.uk.

A full impact assessment has not been produced for the remainder of this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen in relation to the remainder of this instrument.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment in relation to Wales has been prepared as to the likely costs and benefits of complying with regulations 4(2) and (5) of these Regulations. A copy is available from Waste & Resource Efficiency Division of the Economy, Skills and Natural Resource Group, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or at www.assembly.wales. It was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with the remainder of these Regulations.

Explanatory Memorandum to The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Hannah Blythyn AM
Minister for Environment

26 November 2018

PART 1

1. Description

This Statutory Instrument make a number of amendments to two enactments, the Environmental Permitting (England and Wales) Regulations 2016 ("EPR") and the Environmental Protection Act 1990 ("the 1990 Act"). Amendments to the 1990 Act take effect in relation to England only.

This instrument amends the EPRto improve operator competence at permitted waste sites by introducing requirements for written management systems and requiring the operator to notify the regulator of their compliance with a technical competence scheme. The EPRs are amended to require all:

- regulated facilities which operate under a permit granted before 6 April 2008 that undertake waste operations (excluding at an installation or by means of a Part B mobile plant) to be managed and operated in accordance with a written management system which identifies and minimises the risks of pollution arising from the waste operation;

- waste operators to provide to the regulator information relating to their Technical Competence Management (TCM) arrangements at their waste site that demonstrates compliance (or not) with one of two Government approved schemes i) the CIWM/WAMITAB Operator Competence Scheme[1], or ii) the EU Skills Competence Management System[2].

To allow the pre-2008 permit holders time to produce and implement a written management system or to modify an existing one so as to comply with the new requirement and to allow the regulator time to ensure internal procedures are in place the operator competence requirements will not be commenced until 7 April 2019.

This instrument also fixes an unintended consequence resulting from amendments to the EPR made by the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018, it removes the need to consult a Radioactive Waste Advisor (RWA) on public protection matters in relation to any aspect of radioactive substances activities that concern radioactive waste that is a sealed source.

This instrument also makes changes to one of the exempt flood risk activities and to one of the excluded flood risk activities in the EPR.

This instrument amends the 1990 Act introducing a power for the English waste authorities to issue a fixed penalty notice for failure to comply (in England) with the household waste duty of care, which is set out in Section 34(2A) of the 1990 Act.

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[1] The CIWM/WAMITAB Operator Competence Scheme was approved by the Secretary of State and the Welsh Government on 22nd December 2008. Information about the Scheme and compliance can be seen at wamitab.org.uk.

[2] The Competence Management System was approved by the Secretary of State, the Welsh Government and the Environment Agency on 8th July 2009. Information about the Scheme and compliance can be seen at euskills.co.uk.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument makes amendments to existing enactments and is being made on a composite basis by the Welsh Ministers (in relation to Wales) and by the Secretary of State (in relation to England). As this composite instrument is subject to scrutiny by the National Assembly for Wales and by the UK Parliament, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

There is no difference in policy on these proposals between England and Wales apart from the provision for fixe penalty notices for failing to comply with the duty relating to the transfer of household waste, which is made for England only.

3. Legislative background

The powers to make to make regulations to amend the Environmental Permitting (England and Wales) Regulations 2016 are:

- in relation to the regulation of waste and radioactive substances activities, section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 ("the 1999 Act"); and

- in relation to flood risk activities, section 61(1) of, and paragraphs 3 and 14 of Schedule 8 to, the Water Act 2014.

Functions under section 2 of the 1999 Act were, in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Secretary of State is also using the power in section 2(2) of the European Communities Act 1972 to make provision in relation to powers of English waste authorities to issue fixed penalty notices for failures to comply with the duty of care relating to household waste placed on occupiers of domestic property by section 34(2A) of the Environmental Protection Act 1990.

This Instrument follows the negative procedure.

4. Purpose and intended effect of the legislation (Wales only)

Environmental permitting - waste operations – operator competence.

Waste sites operating under an Environmental Permit play a critical role in ensuring wastes are managed safely and under controlled conditions. Sites that

are not operated in accordance with the conditions of their permit, can cause serious pollution to the natural environment and nuisance to nearby communities in the form of odour, litter, dust, vermin, fly infestations and fires.

The overall policy objective is to improve operator compliance with the conditions of permits to reduce their impact on the environment and local communities and to reduce the potential for sites to be abandoned.

These Regulations focus on two elements of operator competence: 1) written management systems and 2) technical competence.

1. Written Management System Condition

The Regulations seek to improve operator competence at permitted wastes sites by inserting into Schedule 9 (waste operations and materials facilities) of the EPR a requirement for certain permitted sites to produce and review a written management system where their permit does not already contain a condition for them to do so. Written management systems are an important and effective means of ensuring waste is managed without endangering human health or the environment and minimising the risk of fire. The majority of permits issued or varied since April 2008 already contain a condition which requires a written management system. However, it is not a legal requirement for those operations whose permit does not contain the relevant condition before this date. The regulators are aware of approximately 2,000 sites in England and Wales potentially operating without a written management system in place, which can be a significant contributory factor in poor performance.

A well-written and implemented written management system identifies how day-to-day activities need to be carried out in order to minimise the risk of pollution and impact on the local community. These regulations will increase levels of compliance at the specified permitted sites by requiring those permitted waste operators to manage and operate in accordance with a written management system.

2. Technical Competence Notification

An appropriate standard of technical competence across the waste sector is essential to ensure that waste sites are being operated in a way that does not result in poor performance. There is, however, potentially a gap in the level of technical competence in the waste sector. There is some evidence that TCM may be providing cover at many waste sites and not spending the appropriate length of time at a site. Whilst the regulators are clear that waste sites need to demonstrate technical competence, currently there is no clear express requirement in the EPR that a waste site has to demonstrate their technical competence through a scheme approved by government.

Permits authorising waste operations (subject to certain exceptions) require a technically competent person to direct activities at the site and for that person to attend the site for a minimum period of time each week. The technically competent person can demonstrate their competence by satisfying one of the

accepted industry schemes approved by Government. There are currently two approved schemes; the CIWM/WAMITAB scheme of individual operator competence[3] and the ESA/EU Skills scheme of corporate competence[4].

This instrument will require operators of certain specified permitted waste operations to periodically give to the regulator information demonstrating compliance with one of the relevant schemes. If an operator does not comply with either scheme, they must also inform the regulator of that in their waste return.

The aim of this policy is to ensure that all relevant permitted waste operators demonstrate sufficient levels of technical competence by requiring operators to provide Natural Resources Wales (NRW) with information demonstrating compliance (or not) with one of the relevant schemes, including information as to the TCM arrangements at their waste site. This will enable NRW to build up a national list of TCMs against waste permit data and cross-reference that against data provided by WAMITAB and EU Skills. This will also enable NRW and the scheme operators to identify which sites do not have sufficient technical competence, and where TCMs are spreading themselves too thinly by providing their services at multiple sites.

Environmental permitting - Waste Radioactive Sealed Sources

The EPR set out an environmental permitting and compliance regime that applies to various activities and industries. Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations (EPR) 2018 amended the EPR to transpose the new requirements contained in the Basic Safety Standards Directive 2013/59/Euratom. However, these amendments caused an unintended consequence by requiring permit holders handling waste radioactive sealed sources to consult with a Radioactive Waste Adviser (RWA) on certain matters relating to protecting members of the public from exposure to ionising radiation. This is not what was intended or consulted upon, nor is it a requirement under the Basic Safety Standards Directive (2013/59/Euratom).

As there are no discharges to the environment from sealed sources there is no public exposure, and it is considered disproportionate and of no benefit to the environment in most circumstances to require operators handling waste sealed sources to consult an RWA on matters relating to public protection. The Ionising Radiations Regulations 2017, made under the Health and Safety at Work etc. Act 1974, require all operators to consult radiation protection advisers, so the requirements of the Basic Safety Standards Directive are satisfied.

This instrument therefore remedies this unintended consequence by removing the need to consult an RWA on public protection matters where the radioactive substances activities involve waste that is a sealed source.

[3] Chartered Institution of Wastes Management / Waste Management Industry Training and Advisory Board

[4] Environmental Services Association / Energy and Utilities Skills

Environmental permitting - Flood Risk Activities

In relation to flood risk activities there are changes one of the exempt flood risk activities, and one of the excluded flood risk activities -to make the exemption and exclusion clearer and less bureaucratic. The changes include the following:-

- Schedule 3, Part 4, paragraph 20 provides an exemption for construction of fish passage notches on an existing impoundment. This instrument removes the reference to fish passage so as to allow the exemption to cover notches more generally.
- Schedule 25, Part 2, Section 2, paragraph 5 provides an exclusion for erection and use of ladders and scaffold towers. This instrument broadens the exclusion to extend to “other similar apparatus”.

5. Consultation

Waste Operator Competence

The proposed amendments to the EPR 2016 were part of a range of proposals in a 12-week public consultation held jointly with DEFRA between the 15 January 2018 to 26 March 2018[5].

There were 275 responses to the consultation, 42 of the responses were from Wales. The responses were broken down as follows: 26% from private businesses, 21% from trade associations, 12% from local authorities, 12% from individuals, 12% from other public bodies, 10% from NGOs and 7% from professional bodies.

The responses on improving operator competence show overall support for strengthening the regulators assessment of waste operators competence including considering their past performance, management systems, technical competence and financial provision.

18 people answered questions on the management system requirement and all agreed it would be beneficial for all waste permit holders to operate in accordance with a written management system.

20 people answered the questions on technical competence. 95% agreed that an explicit requirement in the EPR for permitted waste sites to demonstrate technical competence through a scheme approved by government would address the current gap in technical competence.

A summary of the consultation responses is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721972/waste-crime-consult-sum-resp.pdf

[5] https://beta.gov.wales/reducing-crime-sites-handling-waste-and-introducing-fixed-penalties-waste-duty-care

Waste Radioactive Sealed Sources

No further consultation has been undertaken as the amendments correct unintentional provision made by the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations (EPR) 2018.

Flood Risk Activities

In respect of the changes relating to flood risk activities, a joint consultation by Defra and the Welsh Government on amending some of the exemptions and exclusions was published on 11 April 2018 and ended on 20 June 2018. 14 respondents submitted comments. The majority of respondents supported the proposed changes. A summary and response to the consultation can be seen at https://www.gov.uk/government/consultations/environmental-permitting-amending-flood-risk-exclusions-and-exemptions

PART 2 – REGULATORY IMPACT ASSESSMENT

Strengthening the Regulators Assessment and Enforcement of Operator Competence in the Waste Sector.

6. Options

The consultation to strengthen the assessment and enforcement of operator competence considered three options, (i) do nothing, (ii) improve four elements of operator competence including, assessing an operator's past performance, operator's financial competence, requiring written management systems and technical competent management, and (iii) financial provision for all permitted waste sites.

This instrument focusses on two elements of option 2, i.e. written management systems and TCM. Further work is being undertaken on the remaining elements. We intend to consult further on financial provision options and to look at amending Government guidance to strengthen the regulators assessment of past performance. Options 1 and 2 are covered below.

Option 1: 'Do nothing' will not address the impacts to the natural environment and local communities as there will be no action taken from government.

Option 2: 'Improving operator competence' provides the best value for money for the taxpayer, whilst achieving the policy aims. The majority of respondents to the consultation (80%) favoured this option.

The two main groups that are impacted by the costs are waste site operators and regulators (Natural Resources Wales and the Environment Agency in England).

Option 1: Do Nothing

The first option is for government not to intervene in the waste sector to improve operator competence.

Description of each element

Written Management Systems **—** no change to requirements for operators to produce written management systems or to how the regulators enforce these management systems. All permits issued after 2008, and all pre-2008 permits that are varied after 2008, will have a permit condition for a management system. Without intervention it will take approximately 20 years for all remaining UK pre-2008 permits to come up for variation to enable a written management system requirement to be included in these permits.

Technical Competent Management — no change how the regulators enforce TCM. As with written management systems, all permits issued after 2008 permits and all pre-2008 permits that are varied after 2008 will have a permit condition requiring technical competence. However, it will take approximately

20 years for remaining pre-2008 permits to come up for variation and a technical competency requirement to be included in these permits.

Option 2: Improving operator competence

The second option is improving operator competence which would involve amending the EPR. The mechanism for amending written management systems and TCM is outlined below. The majority of respondents to the consultation agreed that guidance and legislation should be amended to achieve the policy objectives of improving operator competence. In this option, the costs for each of the elements have been set out separately, however the benefits of each element have been combined to show the total impact of the reduction in the number of poor performing sites.

Options for each element

Technically Competent Management - amend EPR legislation to strengthen the regulators' assessment and enforcement of technical competence by enabling the regulators to require operators to inform them who the TCM is at their waste site.

Written Management Systems - amend EPR legislation to strengthen the regulator's assessment and enforcement of management systems by including a requirement for all permitted waste sites to have a written management system.

7. Costs and benefits

Option 1

Costs

There are no costs from this option.

Benefits

There are no benefits from this option.

Although the Environmental Services Association suggests that the level of waste crime may be increasing, in the absence of conclusive proof of such a trend, for this analysis the conservative working assumption was adopted that the cost to the regulators and society will remain the same over the next 10 years.

Option 2

Management Systems

<u>Costs to waste site operators</u>

There will be a transitional cost to a proportion of waste site operators to develop a written management system or amend their current working plan to comply with the modern format. From information supplied by the regulators we estimate that 2,602 waste operators in England and Wales do not currently have any system in place. Of the 543 waste facilities with permits in Wales at least 350 have a condition in the Permit requiring a Written Management System leaving 193 permits that will need a written management system or need to modify one.

From discussions with the regulators and waste management consultants we have estimated that the average cost of revising a working plan so it complies with the modern written management system condition is £1,000 and the cost of producing a new written management system is £3,000. Based on estimates from the regulators, we assume that half of the target population has a management plan that needs to be revised, and that the other half will need an entirely new management plan. Based on the figures of 193 facilities in Wales without a modern management system, the estimated cost is £386,000 ((193*0.5*3000)+(193*0.5*1000)). This is a transitional cost which will occur in year 1.

There will also be an ongoing cost to maintain written management systems. Only the cost of revising the written management system is attributable as any implementation costs are attributable to the operator choosing to amend their operations. Most updates will be minor and only significant change would necessitate major rewriting of the management system. The regulator estimates that such updates would take no more than 2 hours of a TCM's time per year, and we assume that 5% of the 193 operators will revise their plans every year based on the regulators experience of existing industry practice. Based on a TCM average annual salary of £30,000 to £65,000 per annum (according to National Career Service data) an hourly salary is estimated to range from £14-£31 giving an ongoing cost of £135 - £299. Where an operator already has an existing working plan this will already be maintained and so the additional cost does not arise.

Costs to regulators

The cost of checking management systems is already accounted for in the annual subsistence fee paid by a site operator to NRW for regulation of their site. A small additional workload may result in permit officers having to spend more time checking operations against the management system. This is estimated as an opportunity cost of their time that could have been spent on other activities. The regulator advises a permit officer (£90/hr) will spend an extra 15 minutes per application to assess the additional information, we estimate an opportunity cost in year 1 of £4,343 (from processing 193 applications), and an ongoing cost of £217 to process the renewals (5% of the 193 operators every year).

Technical Competence

Costs to waste site operators

There will be a minimal cost on operators to inform regulators who the TCM is at a waste site. The regulators will likely request this information through an additional field on the quarterly waste returns. It should not increase the time it takes for an operator to complete the form, as the operator already completes a waste return on a regular basis.

Costs to regulators

There will be a minimal cost to the regulator to include a TCM name field in the annual waste return and to communicate the changes and ensure their internal procedures are in place to manage the change.

Benefits

Option 2 would result in a reduction in the number of poor performing waste sites which fall into the lower bands of the regulators Operator Risk Appraisal system[6]. The management systems and technical competence proposals are expected to lead to a 20% reduction of permits in categories D, E or F (poorest performing sites) status, down from 40 to 32. The Environment Agency National Permitting Service recently audited 5 permits that fell into D,E,F status within one year of being issued. 1 in 5 (20%) had poor compliance because of insufficient management systems. We recognise that this is a small sample, however we are confident that this is a realistic representation, based on this we assume that policy approach will decrease the number of D,E,F sites by 20% (8) across Wales.

Benefits to society

The benefits to society have been calculated as the benefits per tonnes of waste that will no longer be kept at poor performing sites. From discussions with the regulators we estimated that approximately 7,500 - 10,000 tonnes of waste is kept at a poor performing (category D,E,F) site. This estimate is based on the mean volume of tonnes at a D,E,F site at a specific point in time.

Reducing D,E,F sites by 8 per year, due to site management systems and technical competence, will result in less waste (between 60,000 and 80,000 tonnes) being handled by non-compliant operators.

The latest data from Ricardo AEA's Technical Report on the Waste Crime Intervention and Evaluation Project[7] estimates the benefits of avoided ecological / environment damage by illegal waste sites are £1.86 - £1.88 per tonne. In terms of the consequences in environmental pollution and disamenity effects, the externalities at an illegal waste site and non-complaint permitted sites are not very dissimilar.

Table 1 Externality Costs

[6] Natural Resource Wales Operational Risk Appraisal (Opra) assessment categorises all permitted waste sites into bands from A to F. These bands are based on site performance and compliance levels in the previous year. In this categorisation Bands A, B and C constitute well run sites, which are compliant with the environmental permitting regulations. Bands D, E and F are considered poor performers and are not compliant with the regulations or the regulators' enforcement efforts.

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/662841/Waste_crime_interventions_and_evaluation_-_report.pdf

Estimates £/tonne	Low	High	Central
Environmental	£1.86	£1.88	£1.87
Disamenity	£6.02	£6.18	£6.10
Total	**£7.88**	**£8.06**	**£7.97**

Taking these estimated costs and multiplying by the estimated central (average) tonnage of waste from the 8 fewer D,E,F sites, the central estimate of the annual cost of non compliance by site operators is approximately £560,000 (the range is £470,000 to £640,000). Since the ongoing costs to the regulator, (as identified above), are minimal, the annual costs will remain roughly the same. These represent the cost savings to society under Option 2 and hence are counted as being among its benefits.

Benefits to the regulators of dealing with fewer incidents

The benefits to the regulators of dealing with fewer incidents have been calculated on a site basis. The Environment Agency's pollution incidents 2015 evidence summary[8] shows that 145 incidents were caused by waste sites. 72% (104) of these were caused by D,E,F sites. Meaning 22% (104 out of the 465) D,E,F sites caused category 1 and 2 incidents. This intervention will result in 8 fewer D,E,F sites in Wales. Assuming that the same incident rate (22%) applies, this suggests there may be 1-2 fewer incidents a year. The evidence summary shows that each incident generates an average cost of £24,048,[9] so the total benefit is £24,000-£48,000 per year.

Non-monetised benefits

Certain benefits have not been possible to quantify, but have been included as non-monetised benefits. A significant non-monetised benefit is the creation of a more level playing field where non-compliant waste operators will be less able to undercut legitimate and compliant businesses. Another benefit is the reduction in criminality in the waste sector as a whole. Improving the performance at permitted waste sites will help crack down on operators that use waste permits to hide other forms of waste crime, such as, illegal waste sites, large scale illegal dumping and illegal exporting of waste.

Other non-monetised benefits include the reduction of:

- Health impacts from incidents
- Risks of surface and groundwater contamination
- Reputational damage to waste industry from publicity surrounding poor performing sites
- Reputational damage to regulators

[8] Environment Agency: 'Pollution incidents: 2015 evidence summary'.

[9] EA Pollution incidents 2015 evidence summary; (July 2016). Available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/651707/Pollution_incidents_2015_evidence_summary_LIT_10487.pdf

- Greenhouse gas emissions from fires.

The intervention will deter future poor performance through a multiplier effect or scaling, however values were not sufficiently robust to accurately monetise, but could significantly increase benefit estimates of policies.

Summary of costs and benefits

A summary of the costs and benefits over 10 years are set out in Table 2. There will be some transition costs, the table shows a summary of these and regular ongoing costs per year to businesses and regulators, and benefits to the regulators and society. It has been assumed that the transition costs realised in year 1 are familiarisation costs and costs for all necessary sites to develop appropriate management systems. Ongoing regular costs incurred from year 1 through to year 10 are incurred in addition to these, and remain constant over time.

Benefits are all accounted for as regular, however those accruing in year 1 are attributed to 60% of the disamenity value and avoided sites rated DEF, and those accruing from years 2 to 10 are attributed to 100% of this disamenity. Assumptions on the time apportionment are made on the understanding that regulator and environmental benefits will not be fully realised immediately. The 60% is a reasonable assumption as there is no empirical evidence on the speed, continuation and implementation of compliance from sites.

Table 2: Costs & Benefits (undiscounted) summary tables of Option 2. Values are in £m

		2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Costs											
Transition Costs	Business	0.39	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Society	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Annual Costs	Business	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Regulator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Costs		**0.39**	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Benefits											
Transition Benefits	Business	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Society	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Annual benefits	Regulator	0.02-0.05	0.02-0.05	0.02-0.05	0.02-0.05	0.02-0.05	0.02-0.05	0.02-0.05	0.02-0.05	0.02-0.05	0.02-0.05
	Society	0.34	0.56	0.56	0.56	0.56	0.56	0.56	0.56	0.56	0.56
Total Benefits		**0.36-0.38**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**
Net Benefit		**-0.03-0.00**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**	**0.58-0.61**

Wider impacts

Small and Micro Business Assessment (SaMBA)

Regulators do not collect data on the size of individual permit holder's business as this is not relevant to the permitting process. However, based on its knowledge of the sector and an analysis of the current stock of waste permits they estimate that around 40% of waste site operators in England and Wales are considered to be Small and Micro Business (SMBs), 15% are considered small businesses and 25% are considered micro businesses. The waste industry comprises a small number of large national companies with a large network of permitted and exempt operations. Their coverage is extensive and their operations are usually large enough to require a permit rather than an exemption. At the other end of the scale there are a large number of small and micro-businesses which offer local collection and waste management services. This network of small operators typically pass their waste to larger sites, often after intermediate bulking up, sorting or other treatment. In the middle are a number of regional operators. They may be wholly independent or trading arms of one of the larger companies. Despite some consolidation within the industry in recent years, they still represent an important part of the waste sector. 15% of the costs (approximately £58,000 of the £390,000 total costs to business over the first ten years) will fall on small businesses and 25% (£97,000) on micro businesses.

If we excluded SMBs from the approach then it would significantly compromise the objectives of the policy. SMBs account for a large part of the waste sector, so excluding them would mean that the proposals would not be applied to a significant proportion of waste permits and the environmental and social benefits would not be achieved.

As such, this intervention will impose an impact on SMBs. However, mitigating this, the waste permitting regime already takes an operator's size into account. Small scale operations are able to register for a waste exemption (an exemption from a waste permit), if their waste activities are considered very low risk. Additionally, we have taken into account the size and scale of waste businesses when designing the policy to ensure that the regulators apply the appropriate level of regulation. An operator will be required to produce a management system which is proportional to its size and scale. Smaller sites will be required to complete and implement a less comprehensive system in comparison to a larger complex site, and therefore would have to commit less time and funds to do this.

In addition, an operator's size and scale will be taken into account when undertaking a technical competency qualification. The regulators' assessment of the permitting stock indicates smaller sites generally perform lower risk activities and therefore need to gain the cheaper lower risk qualifications. For example, small sites undertake basic and lower risk activities, such as, inert construction waste sorting whereas higher risk activities are performed by the larger and more complex sites. There are exceptions, for example a small site can specialise in higher risk activity such as asbestos removal, but these situations are rare.

The legislation to implement option 2 will include a suitable transition period to allow smaller sites time to develop a site management system or ensure they have correct technical competence qualifications. The regulators will

communicate the changes to all waste permit holders in advance of option 2 being implemented. This will make smaller sites aware of the changes to ensure that they are able to comply with the legislation when it comes into force.

Preferred option and implementation

After considering the cost benefit analysis, Option 2 is the preferred option to take forward because it provides the best value for money for the taxpayer while achieving the policy aims. Option 1 is not the preferred option, as the costs to the natural environment, local communities and pollution incidents are not addressed.

8. Competition Assessment

The intervention will create a level playing field in the waste sector by ensuring that all waste sites are operated to the same levels of compliance. Therefore, intervention should increase legitimate competition in the waste sector as non-compliant waste operators will be less able to undercut compliant and legitimate operators.

As existing permitted sites move out of the D,E,F categories into A,B,C, waste will continue to be managed at existing permitted sites so capacity and choice will not be diminished. Any apparent under-capacity in the market will be filled by more suitable operators. The Regulators have identified no reason to believe that waste will be diverted away from compliant sites as a result of a more effective screening of applicants. Indeed the core purpose of a permitting regime is to ensure permits are only issued to operators who are most likely to be compliant with their permit. Issuing permits to high-risk operators is the most likely way of driving waste into non-compliant sites so restricting their access to permits is an effective way of supporting good operators.

The competition filter test	
Question	**Answer**
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No

The competition filter test	
Question	**Answer**
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Specific Impacts

Officials have carried out an Integrated Impact Assessment in regard to the waste operator proposals which assessed the following-

- Welsh Language Impact Assessment (WLIA) concluded the powers would not directly impact on the Welsh Language. The regulations, being composite, will be issued in English only.

- Rights of the Child Assessment concluded no identifiable conflict with United Nations Convention on the Rights of the Child and these proposals have no negative impacts on children and young people. These proposals will bring positive action, intended to tackle illegal waste activity which harms the environment and threatens human health;

- Equalities Impact Assessment concluded no impact on Equality Act 2010 and Welsh Government engaged with the relevant stakeholders who provided no response to the consultation;

- Rural Proofing Assessment – the rural proofing screening tool concluded the powers would bring positive benefits in rural areas by reducing the numbers of poor performing and illegal waste sites with associated issues of fly infestations, odour and risk of fires;

- Privacy Impact Assessment concluded there would be no additional data protection issues arising from this regulation.

Flood Risk Activities
In respect of the changes to exemptions and exclusions in relation to flood risk activities, there is no significant impact on business given that most changes are deregulatory. The proposed changes to flood risk activity exemptions and

exclusions will primarily affect those individuals, businesses and organisations that carry out works on or near to main rivers, such as: landowners and farmers; internal drainage boards; Canal and Rivers Trust; local authorities; riparian owners and householders; and environmental groups. The changes are intended to make the regulations clearer and introduce more flexibility for individuals and businesses.

Radioactive Sealed Sources
Changes related to radioactive sealed sources remove a burden on businesses.

9. Post implementation review

The regulators will take a risk based approach to implementing the policy. When implementing technical competence the regulator will expect all sites to take a technical competent qualification within two years and will focus on DEF status sites in year 1. When implementing management systems, all operators will have completed a management system within a year.

The need for monitoring and a post implementation review have been recognised. The regulators will analyse the number of poor performing sites on a quarterly basis and publish figures on an annual basis. Data from the regulators on the number of D,E,F rated sites will be analysed on an annual basis to monitor and assess the effectiveness of the intervention. The regulators will also provide an assessment of the levels of improvement of operator competence. This data and the assessment will be used to determine the benefits of the intervention.

SL(5)289 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2019

Background and Purpose

Council Tax Reduction Schemes are the mechanism through which local authorities provide support to low income households in meeting their council tax liability.

These Regulations amend both the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (known collectively as "the 2013 CTRS Regulations"). It uprates certain figures used to calculate an applicant's entitlement to a reduction under a Council Tax Reduction Scheme, and the subsequent level of reduction.

Procedure

Affirmative.

Technical Scrutiny

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

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument:

1. **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.**

   At regulation 1(4), the English text has the corresponding Welsh term for "council tax reduction scheme" ("*cynllun gostyngiadau'r dreth gyngor*"), but the Welsh text does not have the corresponding English term.

   The 2013 CTRS Regulations are usually amended on an annual basis, and previous amending Regulations have always included the corresponding English term in the Welsh text.

Implications arising from exiting the European Union

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

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
4 December 2018

Draft Regulations laid before the National Assembly for Wales under section 13A(8) of the Local Government Finance Act 1992, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

COUNCIL TAX, WALES

The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 ("the Prescribed Requirements Regulations") and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 ("the Default Scheme Regulations") made under section 13A(4) and (5) of, and Schedule 1B to, the Local Government Finance Act 1992.

The Prescribed Requirements Regulations require each billing authority in Wales to make a scheme specifying the reductions which are to apply to amounts of council tax payable by persons, or classes of persons, whom the authority considers are in financial need. The Prescribed Requirements Regulations also set out the matters that must be included within such a scheme.

The Default Scheme Regulations set out a scheme that will take effect, in respect of dwellings situated in the area of a billing authority, if the authority fails to make its own scheme.

These Regulations amend both the Prescribed Requirements and the Default Scheme Regulations.

The amendments to the Prescribed Requirements Regulations made by regulations 4, 6(a)(i) to (v) and 7 increase certain figures that are used in calculating whether a person is entitled to a reduction and the amount of that reduction. The uprated figures relate to

non-dependent deductions (adjustments made to the maximum amount of reduction a person can receive to take account of adults living in the dwelling who are not dependents of the applicant); and the applicable amount in relation to an application for a reduction (the amount against which an applicant's income is compared in order to determine the amount of reduction to which the applicant is entitled). The same amendments are made in relation to the Default Scheme Regulations by regulations 12, 14 and 15.

The amendments to the Prescribed Requirements Regulations made by regulations 5, 9(b) and 10(a) and (c) are made in consequence of a new social security benefit called Bereavement Support Payment (BSP) for surviving spouses and civil partners who are widowed on or after 6 April 2017. The amendments ensure that the various payments of BSP are disregarded in the calculation of income so that firstly, the initial larger payment and any arrears which are included in the first monthly payment are treated as capital, and a 12 month disregard is applied from the date of payment and secondly, subsequent smaller monthly payments (except for arrears) are treated as income and disregarded for a month. The same amendments are made to the Default Scheme Regulations by regulations 17(b), 18 and 19(a) and (c).

The amendments to the Prescribed Requirements Regulations made by regulations 9(a) and 10(b) are made in consequence of the change of name and transfer of functions from the Secretary of State for Health to the Secretary of State for Health and Social Care made by the Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions (Commonhold Land) Order 2018. The same amendments are made to the Default Scheme Regulations by regulations 17(a) and 19(b).

The amendment to the Prescribed Requirements Regulations made by regulation 8 is intended to clarify the qualifying conditions for a disregard when an applicant is a member of a couple. It is intended to clarify that the person working must also be the person who meets the qualifying conditions by being the person who is –

- entitled to a disability premium, or
- is receiving the support component as part of their award of Employment and Support Allowance (ESA), or
- is in the work-related activity group for ESA.

The same amendment is made to the Default Scheme Regulations by regulation 16.

The amendments made to the Prescribed Requirements Regulations by regulations 3(b) and 6(b)

are made in consequence of the imminent commencement of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") in relation to a fostering service within the meaning of that Act. The scheme by which foster parents are currently approved is set out in the Fostering Services (Wales) Regulations 2003. However, those Regulations may be replaced by further Regulations made pursuant to section 93 of the Social Services and Well-being (Wales) Act 2014 during the next financial year. The amendment is made so as to ensure that foster parents approved under the 2003 Regulations or under any Regulations made pursuant to sections 87 and 93 of the 2014 Act will be subject to provision made in the Prescribed Requirements Regulations in respect of the treatment of child care charges. Regulation 13 makes the same amendment in the Default Scheme Regulations.

The amendment to the Prescribed Requirements Regulations made by regulation 6(a)(vi) clarifies the position in respect of non dependent deductions so that no deduction will occur where a non dependent is not in the work related activity group and is in receipt of certain benefits, namely income support, state pension credit, an income-based jobseeker's allowance or an income related employment and support allowance.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Local Government Finance and Public Services Performance Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 13A(8) of the Local Government Finance Act 1992, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

COUNCIL TAX, WALES

The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(2)

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon them by section 13A(4) and (5) of, and paragraphs 2 to 7 of Schedule 1B to, the Local Government Finance Act 1992(**1**).

In accordance with section 13A(8) of that Act, a draft of this instrument has been laid before and approved by resolution of the National Assembly for Wales.

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2019.

(2) These Regulations come into force the day after the day on which they are made.

(3) These Regulations apply in relation to a council tax reduction scheme made for a financial year beginning on or after 1 April 2019.

(**1**) 1992 c.14. Section 13A was substituted by section 10(1) of the Local Government Finance Act 2012 (c. 17) and Schedule 1B was inserted by section 10(2) of, and Schedule 4 to, that Act.

(4) In these Regulations "council tax reduction scheme" ("*cynllun gostyngiadau'r dreth gyngor"*) means a scheme made by a billing authority in accordance with the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013(**1**), or the scheme that applies in default by virtue of paragraph 6(1)(e) of Schedule 1B to the Local Government Finance Act 1992.

Amendments to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013

2. The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 are amended in accordance with regulations 3 to 10.

3. In Schedule 1 (determining eligibility for a reduction: pensioners)—

(a) in paragraph 3 (non-dependant deductions: pensioners)—

(i) in sub-paragraph (1)(a) for "£13.10" substitute "£13.75";

(ii) in sub-paragraph (1)(b) for "£4.35" substitute "£4.55";

(iii) in sub-paragraph (2)(a) for "£205.00" substitute "£210.00";

(iv) in sub-paragraph (2)(b) for "£205.00", "£355.00" and "£8.70" substitute "£210.00", "£365.00" and "£9.15" respectively;

(v) in sub-paragraph (2)(c) for "£355.00", "£440.00" and "£10.95" substitute "£365.00", "£450.00" and "£11.50" respectively;

(b) in paragraph 19(8)(k) (treatment of child care charges: pensioners), for "Fostering Services (Wales) Regulations 2003" substitute "Fostering Services (Wales) Regulations 2003(**2**) or any Regulations made under section 87 and 93 of the Social Services and Well-being (Wales) Act 2014(**3**) which make provision for the approval of local authority foster parents".

4. In Schedule 2 (applicable amounts: pensioners)—

(a) in column (2) of the Table in paragraph 1 (personal allowances)—

(**1**) S.I. 2013/3029 (W. 301), as amended by S.I. 2014/66 (W.6), S.I. 2014/825 (W. 83), S.I. 2015/44 (W. 3), S.I. 2015/971, S.I. 2016/50 (W. 21), S.I. 2017/46 (W. 20) and S.I. 2018/14 (W. 7).
(**2**) S.I. 2003/237 (W. 35)
(**3**) 2014 anaw.4

(i) in sub-paragraph (1) for "£163.00" and "£176.40" substitute "£167.25" and "£181.00" respectively;

(ii) in sub-paragraph (2) for "£248.80" and "£263.80" substitute "£255.25" and "£270.60" respectively;

(iii) in sub-paragraph (3) for "£248.80" and "£85.80" substitute "£255.25" and "£88.00" respectively;

(iv) in sub-paragraph (4) for "£263.80" and "£87.40" substitute "£270.60" and "£89.60" respectively;

(b) in the Table in Part 4 (amounts of premium specified in Part 3), in the second column—

(i) in sub-paragraph (1) for "£64.30" in each place where it occurs substitute "£65.85" and for "£128.60" substitute "£131.70";

(ii) in sub-paragraph (2) for "£25.48" substitute "£26.04";

(iii) in sub-paragraph (3) for "£62.86" substitute "£64.19";

(iv) in sub-paragraph (4) for "£36.00" substitute "£36.85".

5. In Schedule 5 (capital disregards: pensioners)—

(a) in paragraph 21(2)—

(i) in paragraph (p) omit "or";

(ii) in paragraph (q) for "." substitute "; or";

(iii) after paragraph (q) insert—

"(r) bereavement support payment under section 30 of the Pensions Act 2014,"; and

(b) after paragraph 28B, insert—

"**28C.** Any bereavement support payment in respect of the rate set out in regulation 3(2) or (5) of the Bereavement Support Payment Regulations 2017(**1**) (rate of bereavement support payment), but only for a period of 52 weeks from the date of receipt of the payment.".

6. In Schedule 6 (determining eligibility for a reduction under an authority's scheme, amount of reduction and calculation of income and capital: persons who are not pensioners)—

(a) in paragraph 5 (non-dependent deductions: persons who are not pensioners)—

(i) in sub-paragraph (1)(a) for "£13.10" substitute "£13.75";

(**1**) S.I. 2017/410.

(ii) in sub-paragraph (1)(b) for "£4.35" substitute "£4.55";

(iii) in sub-paragraph (2)(a) for "£205.00" substitute "£210.00";

(iv) in sub-paragraph (2)(b) for "£205.00", "£355.00" and "£8.70" substitute "£210.00", "£365.00" and "£9.15" respectively;

(v) in sub-paragraph (2)(c) for "£355.00", "£440.00" and "£10.95" substitute "£365.00", "£450.00" and "£11.50" respectively;

(vi) in sub-paragraph (8), for paragraph (a) substitute—

"(a) who is not a member of the work-related activity group, and is on income support, state pension credit, an income-based jobseeker's allowance or income related employment and support allowance";

(b) in paragraph 21(8)(k) (treatment of child care charges) for "Fostering Services (Wales) Regulations 2003" substitute "Fostering Service (Wales) Regulations 2003 or any Regulations made under sections 87 and 93 of the Social Services and Well-being (Wales) Act 2014 which make provision for the approval of local authority foster parents."

7. In Schedule 7 (applicable amounts: persons who are not pensioners)—

(a) in column (2) of the Table in paragraph 1 (personal allowances)—

(i) in sub-paragraph (1) for "£76.10" in each place in which it occurs substitute "£77.90" and for "£60.25" substitute "£61.70";

(ii) in sub-paragraph (2) for "£76.10" substitute "£77.90;

(iii) in sub-paragraph (3) for "£119.50" substitute "£122.35";

(b) in the Table in Part 4 (amounts of premiums specified in Part 3), in the second column—

(i) in sub-paragraph (1) for "£33.55" and "£47.80" substitute "£34.35" and "£48.95" respectively;

(ii) in sub-paragraph (2) for "£64.30" in each place in which it occurs substitute "£65.85" and for "£128.60" substitute "£131.70";

(iii) in sub-paragraph (3) for "£62.86" substitute "£64.19";

(iv) in sub-paragraph (4) for "£36.00" substitute "£36.85";

(v) in sub-paragraph (5) for "£25.48", "£16.40", and "£23.55" substitute "£26.04", "£16.80" and "£24.10" respectively;

(c) in Part 6 (amount of components), in paragraph 24 (amount of support component), for "£37.65" substitute "£38.55".

8. In Schedule 8 (sums disregarded in the calculation of earnings: persons who are not pensioners), in paragraph 18(2)(b), for sub-paragraph (iv) substitute—

"(iv) not being a member of a couple, is engaged in remunerative work for on average not less than 16 hours per week and—

(aa) the applicant's applicable amount includes a disability premium under paragraph 9 of Schedule 7, or the support component under paragraph 22 of Schedule 7; or

(bb) the applicant is a member of the work-related activity group; or

(v) is a member of a couple and at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week and that member of the couple—

(aa) satisfies the qualifying conditions for the disability premium under paragraph 9 of Schedule 7 or the support component under paragraph 22 of Schedule 7; or

(bb) is a member of the work-related activity group."

9. In Schedule 9 (sums disregarded in the calculation of income other than earnings: persons who are not pensioners)—

(a) in paragraph 46(2), after "Secretary of State for Health" insert "and Social Care";

(b) after paragraph 66 insert—

"**67.** Any bereavement support payment under section 30 of the Pensions Act 2014 (bereavement support payment) except any such payment which is disregarded as capital under paragraph 12(1)(h) or 65 of Schedule 10.".

10. In Schedule 10 (capital disregards: persons who are not pensioners)—

(a) in paragraph 12(1)—

(i) in sub-paragraph (g) for "," substitute ";";

(ii) after sub-paragraph (g) insert—

"(h) bereavement support payment under section 30 of the Pensions Act 2014,";

(b) in paragraph 43(2), after "Secretary of State for Health" insert "and Social Care";

(c) after paragraph 64, insert—

"**65.** Any bereavement support payment in respect of the rate set out in regulation 3(2) or (5) of the Bereavement Support Payment Regulations 2017 (rate of bereavement support payment), but only for a period of 52 weeks from the date of receipt of the payment.".

Amendments to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013

11. The scheme set out in the Schedule to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013(**1**) is amended in accordance with regulations 12 to 19.

12. In paragraph 28 (non-dependant deductions: pensioners and persons who are not pensioners)—

(a) in sub-paragraph (1)(a) for "£13.10" substitute "£13.75";

(b) in sub-paragraph (1)(b) for "£4.35" substitute "£4.55";

(c) in sub-paragraph (2)(a) for "£205.00" substitute "£210.00";

(d) in sub-paragraph (2)(b) for "£205.00", "£355.00" and "£8.70" substitute "£210.00", "£365.00" and "£9.15" respectively;

(e) in sub-paragraph (2)(c) for "£355.00", "£440.00" and "£10.95" substitute "£365.00", "£450.00" and "£11.50".

13. In paragraph 55(8)(k) (treatment of child care charges) for "Fostering Services (Wales) Regulations 2003" substitute "Fostering Services (Wales) Regulations 2003 or any Regulations made under sections 87 and 93 of the Social Services and Well-

(**1**) S.I. 2013/3035 as amended by S.I. 2014/66 (W.6), S.I. 2014/825 (W.83), S.I 2015/44 (W.3), S.I. 2015/971 , S.I. 2016/50 (W.21), S.I. 2017/46 (W.20) and S.I. 2018/14 (W.7).

being (Wales) Act 2014 which make provision for the approval of local authority foster parents".

14. In Schedule 2 (applicable amounts: pensioners)—

(a) in column (2) of the Table in paragraph 1 (personal allowances)—

(i) in sub-paragraph (1) for "£163.00" and "£176.40" substitute "£167.25" and "£181.00" respectively;

(ii) in sub-paragraph (2) for "£248.80" and "£263.80" substitute "£255.25" and "£270.60" respectively;

(iii) in sub-paragraph (3) for "£248.80" and "£85.80" substitute "£255.25" and "£88.00" respectively;

(iv) in sub-paragraph (4) for "£263.80" and "£87.40" substitute "£270.60" and "£89.60" respectively;

(b) in the Table in Part 4 (amounts of premiums specified in Part 3), in the second column—

(i) in sub-paragraph (1) for "£64.30" in each place in which it occurs substitute "£65.85" and for "£128.60" substitute "£131.70";

(ii) in sub-paragraph (2) for "£25.48" substitute "£26.04";

(iii) in sub-paragraph (3) for "£62.86" substitute "£64.19";

(iv) in sub-paragraph (4) for "£36.00" substitute "£36.85".

15. In Schedule 3 (applicable amounts: persons who are not pensioners)—

(a) in column (2) of the Table in paragraph 1 (personal allowances)—

(i) in sub-paragraph (1) for "£76.10" in each place in which it occurs substitute "£77.90" and for "£60.25" substitute "£61.70";

(ii) in sub-paragraph (2) for "£76.10" substitute "£77.90";

(iii) in sub-paragraph (3) for "£119.50" substitute "£122.35";

(b) in the Table in Part 4 (amount of premiums specified in Part 3), in the second column—

(i) in sub-paragraph (1) for "£33.55" and "£47.80" substitute "£34.35" and "£48.95" respectively;

(ii) in sub-paragraph (2) for "£64.30" in each place in which it occurs substitute

"£65.85" and for "£128.60" substitute "£131.70";

(iii) in sub-paragraph (3) for "£62.86" substitute "£64.19";

(iv) in sub-paragraph (4) for "£36.00" substitute "£36.85";

(v) in sub-paragraph (5) for "£25.48", "£16.40" and "£23.55" substitute "£26.04", "£16.80" and "£24.10" respectively;

(c) in Part 6 (amount of components), in paragraph 24 (amount of support component), for "£37.65" substitute "£38.55".

16. In Schedule 6 (sums disregarded in the calculation of earnings: persons who are not pensioners), in paragraph 18(2)(b), for sub-paragraph (iv) substitute—

"(iv) not being a member of a couple, is engaged in remunerative work for on average not less than 16 hours per week and—

(aa) the applicant's applicable amount includes a disability premium under paragraph 9 of Schedule 3 or the support component under paragraph 22 of Schedule 3; or

(bb) the applicant is a member of the work-related activity group; or

(v) is a member of a couple and at least one member of that couple is engaged in remunerative work for on average not less than 16 hours per week and that member of the couple—

(aa) satisfies the qualifying conditions for the disability premium under paragraph 9 of Schedule 3 or the support component under paragraph 22 of Schedule 3; or

(bb) is a member of the work-related activity group."

17. In Schedule 7 (sums disregarded in the calculation of income other than earnings: persons who are not pensioners)—

(a) in paragraph 46(2), after "Secretary of State for Health" insert "and Social Care";

(b) after paragraph 66 insert—

"**67.** Any bereavement support payment under section 30 of the Pensions Act 2014(**1**) (bereavement support payment) except any such payment which is disregarded as capital under paragraph 12(1)(h) of Schedule 9 or paragraph 65 of Schedule 9.".

18. In Schedule 8 (capital disregards: pensioners)—

(a) in paragraph 21(2)—

(i) in paragraph (p) omit "or";

(ii) in paragraph (q) for "." substitute "; or";

(iii) after paragraph (q) insert—

"(r) bereavement support payment under section 30 of the Pensions Act 2014.";

(b) after paragraph 28B insert—

"**28C.** Any bereavement support payment in respect of the rate set out in regulation 3(2) or (5) of the Bereavement Support Payment Regulations 2017 (rate of bereavement support payment), but only for a period of 52 weeks from the date of receipt of the payment.".

19. In Schedule 9 (capital disregards: persons who are not pensioners)—

(a) for paragraph 12(1) substitute—

"(1) Subject to sub-paragraph (2), any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of the following, but only for a period of 52 weeks from the date of the receipt of the arrears or of the concessionary payment—

(a) any payment specified in paragraphs 11, 13 or 14 of Schedule 7;

(b) an income-related benefit under Part 7 of the SSCBA(**2**);

(c) an income-based jobseeker's allowance;

(d) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001(**3**);

(e) working tax credit and child tax credit;

(f) an income-related employment and support allowance;

(**1**) 2014 c.19.

(**2**) The "SSCBA" ("DCBNC") means the Social Security Contributions and Benefits Act 1992 (c4); see definition in regulation 2 of the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and in paragraph 2 of the scheme set out in the Schedule to the Council Tax Reduction Schemes (Default Schemes((Wales) Regulations 2013.

(**3**) S.I. 2001/1167.

(g) universal credit;

(h) bereavement support payment under section 30 of the Pensions Act 2014(**1**).
”

(b) in paragraph 43(2), after “Secretary of State for Health” insert “and Social Care”;

(c) after paragraph 64, insert—

“**65.** Any bereavement support payment in respect of the rate set out in regulation 3(2) or (5) of the Bereavement Support Payment Regulations 2017 (rate of bereavement support payment), but only for a period of 52 weeks from the date of receipt of the payment.”.

Name
Cabinet Secretary for Finance, one of the Welsh Ministers

Date

(**1**) 2014 c.19

Explanatory Memorandum to the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2019

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2019. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Cabinet Secretary for Finance
27 November 2018

1 Description

1.1 Council Tax Reduction Schemes (CTRS) are the mechanism by which local authorities provide support to low income households in meeting their council tax liability.

1.2 This statutory instrument makes amendments to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (referred to collectively in this Explanatory Memorandum as "the 2013 CTRS Regulations"). It uprates certain figures used to calculate an applicant's entitlement to a reduction under a Council Tax Reduction Scheme, and the subsequent level of reduction.

2 Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 None.

3 Legislative background

3.1 Section 10 of, and Schedule 4 to, the Local Government Finance Act 2012 inserted a new Section 13A and new Schedule 1B into the Local Government Finance Act 1992 (the 1992 Act). These provisions enabled the Welsh Ministers to introduce Council Tax Reduction Schemes (CTRS) in Wales via regulations.

3.2 The relevant provisions in the Local Government Finance Act 2012 were subject to a Legislative Consent Motion which was approved by the National Assembly for Wales on 26 June 2012. The Local Government Finance Act 2012 received Royal Assent on 1 November 2012.

3.3 This statutory instrument is laid and made under the new section 13A of, and the new Schedule 1B to, the Local Government Finance Act 1992. The instrument is subject to approval of the Assembly (the affirmative procedure).

4 Purpose and intended effect of the legislation

4.1 This statutory instrument amends the 2013 CTRS Regulations to uprate certain figures in those Regulations used to calculate entitlement to a council tax reduction, and the amount of any reduction awarded to applicants in the 2019-20 financial year.

<u>Background</u>

4.2 The Welfare Reform Act 2012 contained provisions to abolish Council Tax Benefit from 31 March 2013. From 1 April 2013, responsibility for providing support for council tax was devolved to local authorities in England. Fixed funding, reduced by 10% compared to the 2012-13 costs, was passed to the

Welsh Government and to the Scottish Government to allow the Devolved Administrations to develop replacement schemes.

4.3 Following the UK Government's decision, the Welsh Government sought provisions in the Local Government Finance Act 2012 which amended the Local Government Finance Act 1992 (the 1992 Act), to provide the Welsh Ministers with executive powers to introduce Council Tax Reduction Schemes in Wales via regulations.

4.4 The 2013 CTRS Regulations were approved by the National Assembly for Wales on 26 November 2013.

4.5 The Welsh Government provided £244m in the Local Government Settlement for CTRS for 2013-14. This was partly funded through the fixed budget of £222m which was transferred from the UK Government. The Welsh Government provided an additional £22m to enable local authorities to continue to provide all eligible applicants with their full entitlement to support. The Welsh Government has continued to provide £244m within the local government settlement each year since.

2013 CTRS Regulations

4.6 Aligned with the provisions in the 1992 Act, the 2013 CTRS Regulations govern the operation of CTRS in Wales. These regulations were closely based on the previous Council Tax Benefit rules to prevent low-income households facing sharp changes in the level of support they received. All eligible applicants were automatically and seamlessly transferred from Council Tax Benefit onto Council Tax Reduction Schemes from 1 April 2013.

4.7 If an applicant receives Income Support, Income-Based Jobseeker's Allowance (JSA), Income-Based Employment and Support Allowance (ESA), Pension Credit, or Pension Credit Guarantee, they are entitled to the maximum, full, reduction in their council tax liability. Approximately 70% of CTRS applicants in Wales receive the passported benefits.

4.8 If an applicant does not receive any of the passported benefits, the weekly amount of money which they are judged to need to live on is calculated. This is known as the 'applicable amount' and consists of two components:

- The first is the personal allowance – the basic amount a person needs to live, which varies according to the household's circumstances. For example, the allowance for a couple with children is higher than for a single person without children. These allowances are also set at higher rates for those who have reached State Pension Age.

- The second component is the premium – additional amounts added to reflect any personal circumstances which increase the cost of living, such as a disability or carer's responsibilities. Once the applicable amount has been determined, the applicant's level of income is calculated.

4.9 Universal Credit (UC) recipients are treated in a similar way to non-passported applicants. However, instead of an 'applicable amount' being calculated, the 'maximum amount' (calculated within their UC application) is used instead.

4.10 If the applicable amount (or maximum amount) is higher than an applicant's calculated income, they are entitled to the maximum reduction in their council tax liability. If income exceeds the applicable amount, the weekly entitlement is reduced by 20p for each £1 of excess weekly income, until entitlement is withdrawn – this is known as the taper.

4.11 Adjustments can be made to the maximum amount of reduction a person can receive to take account of adults living in the dwelling who are not dependants of the applicant and who are therefore assumed to make a financial contribution to the household (non-dependant deductions).

4.12 Adjustments can also be made to take into account of savings. If an applicant has capital of £6,000 (or £10,000 for pension age claimants) or less, this will be ignored when working out whether they are entitled to a reduction.

4.13 If a working-age applicant has capital of between £6,000 and £10,000, the local authority will treat it as income. This is known as tariff income. The local authority will assume an applicant has an income of £1 a week for each £500 of capital between £6,000 and £10,000. This will be added to other income to work out whether an applicant is entitled to a reduction and how much they are entitled to.

Uprating figures for 2019-20

4.14 This statutory instrument amends the 2013 CTRS Regulations to uprate financial figures used to calculate entitlement to a reduction in line with Welsh Government policy.

4.15 The statutory instrument seeks to uprate a number of other figures included in the 2013 CTRS Regulations. These include:

- Personal allowances in relation to working age, and carer and disabled premiums
  The financial figures in respect of these allowances have been amended and have increased in line with the cost of living rises. The convention is to uprate in line with the Consumer Price Index figure for September from the previous year (2017), which is 3.0%.

- Personal allowances in relation to pensioners
  The financial figures in respect of pensioner rates have been amended and are aligned with Housing Benefit. These have been calculated with assistance from the Department of Work and Pensions following the Chancellor's Autumn Budget 2017 and have been uprated by different mechanisms. For example, the Pension Credit standard minimum

guarantee is uprated by earnings, whereas the Additional Pension and increments are uprated by prices.

- Non-dependant deductions
  The financial figures for the income bands and deductions made in relation to non-dependants will be uprated. If amendments are not made, the deductions from CTRS awards would not be appropriate as the income thresholds would no longer reflect average earnings and the deduction would no longer reflect the overall cost of council tax.

Bereavement Support Payments

4.16 A social security benefit called Bereavement Support Payment (BSP) was introduced for surviving spouses and civil partners who are widowed after April 2017. Unlike previous bereavement benefits which can be paid for as long as the applicant satisfies the conditions of entitlement, BSP is only payable for a maximum period of up to 18 months from the date the spouse or civil partner died. The amendments made to the 2019 Regulations ensure that various payments of BSP are disregarded in the calculation of income so that:

- The initial larger payment and any arrears which are included in the first monthly payment are treated as capital, and a 12-month disregard is applied from the date of payment, to allow for sufficient time for monies to be spent by the recipient;
- Subsequent smaller monthly payments (except for arrears) are treated as income and disregarded for a month.

Additional Consequential Amendments

4.17 In addition to uprating the financial figures, this statutory instrument makes a number of consequential amendments to the 2013 CTRS Regulations. These ensure the 2013 Regulations remain up-to-date and fit for purpose.

Transfer of Name and Functions to Secretary of State

4.18 The Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions (Commonhold Land) Order 2018 changes the name of the Secretary of State for Health to the Secretary of State for Health and Social Care and transfers functions from the Secretary of State for Housing, Communities and Local Government.

4.19 This statutory instrument makes consequential changes to the 2013 CTRS Regulations to reflect the change in name and transfer of functions.

Disregards for Members of a Couple

4.20 ESA is an income-replacement benefit for people of working age who cannot work because of a health condition or disability. Universal Credit provides a

new single system of means-tested support for people of working age who are either in or out of work. UC is gradually replacing income-based ESA as it is rolled out across the UK.

4.21 In the Summer Budget 2015, it was announced that the Work-Related Activity Component paid to those in the ESA (Work-Related Activity Group) (WRAG) would be abolished for new claims from 3 April 2017. The equivalent element in UC will also be abolished. However, there will be some ESA cases after April who will continue to have access to the Work-Related Activity Component.

4.22 The 2013 Regulations make provision for a number of payments to be disregarded for the purposes of calculating income and/or capital. The amendments to the 2019 Regulations are intended to clarify the qualifying conditions for a disregard when an applicant is a member of a couple so that the person working must also be the person who meets the qualifying conditions by being the person who is:

- entitled to a disability premium, or
- is receiving the support component as part of their award of ESA, or
- is in the work-related activity group for ESA.

Non-dependant deductions

4.23 The 2013 Regulations make provision for deductions to be made when calculating the maximum council tax reduction a person will be entitled to including deductions for non-dependants who live with the applicant. However, further provision is made for certain non-dependants. The 2019 Regulations clarify the position in respect of non-pensioners so that that no deduction will occur where a non-dependant is not in the work related activity group and is in receipt of certain benefits (income support, state pension credit, income-based JSA or income related ESA). This mirrors provision made in the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2018 concerning pensioners.

The Regulation and Inspection of Social Care (Wales) Act 2016

4.24 Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 replaces the regime for the regulation and inspection of social care settings under the Care Standards Act 2000. Part 1 of the 2016 Act was commenced in respect of the following services in April 2018:

- A care home service
- A secure accommodation service
- A residential family service and
- A domiciliary support service.

4.25 In April 2019, Part 1 will be commenced in respect of a fostering service. The process for approving foster parents is set out in the Fostering Services (Wales) Regulations 2003. However, in consequence of the commencement of Part 1, those Regulations may be replaced by further regulations made

pursuant to sections 87 and 93 of the Social Services and Well-being (Wales) Act 2014 during the next financial year.

4.26 In calculating income for the purposes of determining eligibility for a council tax reduction, the 2013 Regulations make provision for relevant childcare charges to be deducted from earnings including charges where the childcare is provided by a foster parents or a kinship carer who has been approved as such under the 2003 Regulations. The amendments in the 2019 Regulations ensure that foster parents approved under the current scheme set out in the 2003 Regulations or under any regulations made pursuant to sections 87 and 93 of the 2014 Act will be subject to provision made in the 2013 Regulations in respect of the treatment of childcare charges.

Regulatory Impact Assessment (RIA)

Options

Option 1 – Do nothing

1 If the financial figures used to assess household allowances in the council tax reduction means-test remained static, the criteria used would be slightly less generous for non-passported applicants and lead to a small decrease in support in real terms.

2 The financial figures used to assess the eligibility of households with non-dependants would be out-of-date. The income thresholds would no longer reflect average earnings and the adjustment made to the final council tax reduction would no longer reflect overall cost of council tax.

3 It would also mean that consequential amendments would not be made to the 2013 CTRS Regulations to take account of changes to related welfare benefits and other legislation. This could disadvantage some applicants by reducing or stopping their entitlement to support. It could also create confusion for applicants and increase the administrative burden for local authorities and advice providers.

Option 2 – Make amending Regulations

4 This option would mean that amendments would be made to uprate the financial figures in the 2013 CTRS Regulations in line with to Welsh Government policy, cost-of-living increases and changes to qualifying benefits.

5 The financial figures in relation to working age, disability or carer rates will continue to increase with the cost of living (2.4%, as measured by CPI) for 2019-20. The personal allowances for pensioners will be uprated to align with those for Housing Benefit and the benefit system. The increase would be aligned to the UK Government's Standard Minimum Guarantee and Savings Credit.

6 The financial figures used to calculate the adjustment for non-dependant deductions would be uprated. The income thresholds in relation to non-dependants would be uprated to reflect average earnings and the non-dependant deduction from CTRS would reflect the average increase in council tax.

Costs and Benefits

Costs

Option 1 – Do nothing

7 If the financial figures for working age and pensioner allowances do not increase with the cost of living (as measured by CPI), CTRS recipients would be slightly worse off in real terms.

8 The financial figures used to assess the eligibility of households with non-dependants would also be out-of-date. The calculation would no longer make a fair assessment of the income of non-dependants or the overall cost of council tax. There is a risk that this aspect of the scheme would be viewed as unfair or inequitable.

9 If the technical and consequential amendments to the 2013 CTRS Regulations are not made, they would no longer align with Housing Benefit provisions or other related benefits. It would lead to references being out of sync with the overall benefits system and could disadvantage certain applicants by reducing their entitlement to support. This could potentially lead to additional administrative burden on local authorities and advice providers. It may also lead to confusion for some applicants who, as a result, could be treated significantly differently under benefit schemes.

Benefits

10 Not uprating pensioner and working age figures would help to limit any increases in total reductions under CTRS. However not uprating figures in relation to non-dependant deductions, would result in council tax reductions for relevant households being higher than they would otherwise be.

Option 2 – Make amending Regulations

Costs

11 Uprating the financial figures in respect of pensioners and working age allowances would slightly increase total reductions under CTRS. However, if the financial figures in relation to non-dependant deductions were also uprated, this would mitigate some of the increase in total reductions. Consequently, total council tax reductions are not expected to rise significantly as a result of the uprating.

Benefits

12 Uprating the financial figures in the 2013 CTRS Regulations will ensure that the personal allowance for working age applicants continues to increase in line with the CPI (2.4%).

13 Uprating the financial figures in respect of the personal allowance for pensioners continues to increase in line with the standard minimum guarantee and savings credit.

14 If the financial figures in relation to non-dependant deduction rates are uprated, this will ensure the calculation used to assess the eligibility of non-dependant households remains up-to-date. The calculation would continue to make a fair assessment of the income of non-dependants and the cost of council tax. This will ensure the system remains fair and equitable.

15 As part of these Regulations, consequential and technical amendments are made that are associated with wider welfare changes made by the UK government. This would ensure CTRS reflects changes made to interrelated social security benefits which often determine entitlement to a reduction. It would also avoid any additional administrative burden for local authorities or advice providers arising from managing different regimes.

Sectors

16 Local government and the voluntary sector were consulted during the development of proposals to introduce CTRS in Wales. Draft regulations for 2019-20 have been shared with local authorities.

17 This legislation will not affect the business sector.

Duties

18 In drafting these Regulations consideration has been given to the duty on Welsh Ministers to promote equality and eliminate discrimination.

19 An Equality Impact Assessment was completed for the introduction of the 2013 CTRS Regulations.

20 This statutory instrument is provided bilingually. CTRS is implemented and operated by local authorities who are under general duties to comply with Welsh language and sustainable development duties.

21 Further consideration has been given as to whether CTRS could be used to improve the opportunities of persons to use the Welsh language treating the Welsh language no less favourably than the English language. As the sole purpose of CTRS is to provide support to low-income households in meeting their council tax liability, it is considered there are no such opportunities.

22 Maintaining full entitlements to CTRS will continue to help low-income households in meeting their council tax liability and, as such, will contribute to the Welsh Government's commitment to make council tax fairer.

Competition Assessment

23 These Regulations have been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

Consultation

24 No consultation has been undertaken in respect of this statutory instrument. The 2013 CTRS Regulations were consulted upon and details are provided in the Regulatory Impact Assessments accompanying those Regulations.

Post implementation review

25 Amendments are required on an annual basis to uprate the financial figures used to calculate entitlements to reductions. This provides an opportunity to review the legislation.

SL(5)284 – The Environmental Noise (Wales) (Amendment) Regulations 2018

Background and Purpose

These Regulations amend the Environmental Noise (Wales) Regulations 2006 so as to require the Welsh Ministers and operators of non-designated major airports (of which there are currently none in Wales) to use the assessment methods set out in Annex II to Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise.

The 2002 Directive has been replaced by the Annex to Commission Directive 2015/996 which has established common noise assessment methods when preparing strategic noise maps under the 2006 Regulations.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

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

Implications arising from exiting the European Union

These Regulations implement and enforce EU obligations in respect of environmental noise.

These Regulations form part of "EU-derived domestic legislation" under section 2 of the European Union (Withdrawal) Act 2018, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
29 November 2018

Agenda Item 5.2

SL(5)286 – The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018

Background and Purpose

These Regulations make a number of technical amendments to a number of statutory instruments relating to planning, agriculture, animal health, fisheries and the environment and do not introduce any policy changes.

Procedure

Negative

Technical Scrutiny

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

Merits Scrutiny

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

Implications arising from exiting the European Union

These Regulations correct out of date references to European and domestic legislation prior to the UK's exit from the EU.

As para 4 of the EM notes, "the technical changes made by these Regulations are necessary to ensure the effective and correct functioning of the statute book following the UK's exit from the EU. The amendments include updating references to European and domestic legislation, minor drafting corrections and the revocation of legislation which is no longer applicable".

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
27 November 2018

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA - L/LG/0758/18

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

26 November 2018

Dear Mick

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of The Marine Environment (Amendment) (EU Exit) Regulations 2018, as required by Standing Order 30A.

I am writing to inform you that I am not minded to lay a motion for debate about this SI in this instance. I have reached this decision on the basis that our interest in this SI is restricted to operability amendments that will arise as a result of the UK leaving the EU.

The SI provision covers operability amendments in relation to the Marine and Coastal Access Act 2009, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI, and I would be happy to participate in a debate, should one be held.

Regards

Lesley Griffiths

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Marine Environment (Amendment) (EU Exit) Regulations 2018**

DATE **26 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Marine Environment (Amendment) (EU Exit) Regulations 2018

The law which is being amended

- Commission Decision 2017/848
- The Marine Strategy Framework Directive 2008/56

Domestic legislation

- The Marine and Coastal Access Act 2009
- The Marine Strategy Regulations 2010

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The National Assembly for Wales and Welsh Ministers have some legislative and executive competence in relation to the marine environment.

Functions within Commission Decision (EU) 2017/848 have been transferred so that they are exercisable by the Secretary of State alone, but with the consent of the Welsh Ministers, First Minister or Counsel General in specified circumstances.

Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government**.**

The purpose of the amendments

The Marine Environment (Amendment) (EU Exit) Regulations 2018 ensure that the current legislation continues to operate effectively after we leave the EU. The changes include the replacement of references to "Member States" with references to the UK or to an

appropriate UK body, the replacement of references to “Community legislation” or “EU law” with references to “retained EU law”, and the replacement of requirements to notify or report to the Commission with requirements to report publicly. The changes also ensure that cross references to the Marine Strategy Framework Directive and other EU legislation will continue to work after exit.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-marine-environment-amendment-eu-exit-regulations-2018

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK’s exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Marine and Coastal Access Act 2009.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Marine Environment (Amendment) (EU Exit) Regulations 2018

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.

2. The Marine Environment (Amendment) (EU Exit) Regulations 2018 ("2018 Regulations") were laid before the sifting committees in the Houses of Parliament on 20 November 2018. The Regulations can be found at:

   https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-marine-environment-amendment-eu-exit-regulations-2018

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arsing from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018. It also covers operability amendments.

4. In addition. the SI makes amendments to:

- The Marine and Coastal Access Act 2009 ("2009 Act")

Relevant provision to be made by the SI

5. The amendments made to the 2009 Act by the 2018 Regulations, are to the following provisions:

   a) Section 60(8) to reflect amendments to Scottish devolution legislation under Part 3 of Schedule 3 to the European Union (Withdrawal) Act 2018.
   b) Section 76(2) to ensure operability of the provisions post exit from the European Union.
   c) Section 123(5) to ensure operability of the provisions post exit from the European Union.
   d) Section 141 removing the definition of a 'third country vessel.'
   e) Section 244 providing that EU Member States vessels and vessels from Gibraltar will be treated as 'third country vessels.

6. The changes identified in paragraph 4.3 (c) to (e) relate to functions that are within the legislative competence of the National Assembly for Wales, which could be the subject of a National Assembly Bill.

7. The National Assembly for Wales possess some legislative competence within the marine environment in relation to Wales, subject to reservations such as shipping, oil and gas. Further, the Welsh Ministers possess executive functions in relation to Wales in accordance with section 58B of the Government of Wales Act 2006 (designation for the purposes of s.2(2) European Communities Act 1972 in those areas where the National Assembly for Wales has legislative competence within the marine environment). The Welsh Minsters further possess various executive functions under a number of enactments in relation to Wales and the Welsh Zone.

Why it is appropriate for the SI to make this provision

8. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

26 November 2018

STATUTORY INSTRUMENTS

2018 No. 000

EXITING THE EUROPEAN UNION

ENVIRONMENTAL PROTECTION

MARINE MANAGEMENT

The Marine Environment (Amendment) (EU Exit) Regulations 2018

Sift requirements satisfied	***
Made - - - -	***
Laid before Parliament	***
Coming into force in accordance with regulation 1	

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

The requirements of paragraph 3(2) of Schedule 7 to that Act (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Marine Environment (Amendment) (EU Exit) Regulations 2018 and come into force on exit day.

PART 2

Amendment of primary legislation

Amendment of the Marine and Coastal Access Act 2009

2.—(1) The Marine and Coastal Access Act 2009(**b**) is amended as follows.

(**a**) 2018 c.16.
(**b**) 2009 c.23. Sections 60(8) and 76 were amended by S.I. 2011/1043.

(2) In section 60(8)—

(a) omit paragraph (a);

(b) for paragraph (b) substitute—

"(b) functions under section 58 of the Scotland Act 1998 (c. 46) (international obligations);"(**a**);

(c) in paragraph (d)—

(i) omit ", or paragraph 5 of Schedule 3 to,";

(ii) for "(EU obligations)" substitute "(retained EU obligations)".

(3) In section 76(2)(a), for the words from "under EU law" to "(c. 46))" substitute "exercisable under retained EU law".

(4) In section 123(5), for "obligations under EU or international law" substitute "retained EU obligations or obligations under international law".

(5) In section 141—

(a) omit subsection (6);

(b) in subsection (7), omit the definition of "third country vessel".

(6) In section 244(1), in the definition of "third country vessel"—

(a) in paragraph (a), for "(other than Gibraltar) which is not a member State" substitute "other than the United Kingdom";

(b) in paragraph (b), for "a member State" substitute "the United Kingdom".

PART 3

Amendment of subordinate legislation

Amendment of the Marine Strategy Regulations 2010

3.—(1) The Marine Strategy Regulations 2010(**b**) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(i) omit the definition of "the Commission";

(ii) in the definition of "devolved policy authority", for "and" substitute "or";

(b) in paragraph (4), for "as amended from time to time" substitute "as it had effect immediately before exit day";

(c) after paragraph (4) insert—

"(5) For the purposes of any reference to an Article or an Annex of the Directive, the Article or Annex is to be read—

(a) subject to the modifications specified in Schedule 3; and

(b) as if—

(i) references to "Member State" or "Member States" (except in Articles 20 to 22) included a reference to the United Kingdom; and

(ii) references to "Community legislation" or "existing Community legislation" were, in relation to the United Kingdom, references to retained EU law.

(6) Any reference in these Regulations to "the requirements of the Directive" is a reference to the requirements of the Directive in so far as any such requirements are not

(**a**) Section 58 was amended by section 12(2)(a) of the Scotland Act 2012 (c.11).
(**b**) S.I. 2010/1627; the relevant amending instruments are S.I. 2018/287, 942.

reflected in any provision of these Regulations or by Commission Decision (EU) 2017/848 laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment, and read—

(a) as if they applied in relation to the United Kingdom as they apply in relation to a member State;

(b) with the omission of any requirement to provide any information or other matter to the European Commission (however expressed), or any rights of access to or use of any information;

(c) subject to the modifications specified in Schedule 3.".

(3) In regulation 5(1), after "must" insert ", in accordance with the requirements of Commission Decision (EU) 2017/848,".

(4) In regulation 6(1)(c), after "with" insert "the requirements of".

(5) In regulation 8(2) and (3), for "implementing", in both places where it occurs, substitute "giving effect to the requirements of".

(6) In regulation 14, after paragraph (13) insert—

"(14) The competent authority must publish a report describing the progress made in implementing the programme of measures within 3 years of any update to that programme."
.

(7) In regulation 15—

(a) in paragraphs (4)(b), (6) and (7), omit "other" in each place where it occurs;

(b) for paragraph (9) substitute—

"(9) The competent authority must—

(a) prepare a report setting out the justification for any such cases identified; and

(b) publish that report as soon as reasonably practicable in a form accessible to the public.";

(c) for paragraph (11)(a) substitute—

"(a) the competent authority must—

(i) prepare a report setting out the necessary justification; and

(ii) publish that report as soon as reasonably practicable in a form accessible to the public;".

(8) In regulation 16, for "any other EU instrument" substitute "by any provision of retained EU law other than these Regulations".

(9) Omit regulation 17.

(10) In regulation 18—

(a) in paragraph (3)—

(i) after "The competent authority" insert ", when consulting under paragraph (1), and the Secretary of State, when consulting under paragraph (2),";

(ii) in sub-paragraph (a), for "its proposal" substitute "the proposal";

(b) in paragraph (4)—

(i) after "The competent authority" insert "or the Secretary of State, as the case may be,";

(ii) after "they" insert "respectively";

(c) in paragraph (5), after "consultation" insert "under paragraph (1)";

(d) in paragraph (6), after "consultation" insert "under paragraph (1) or (2)";

(e) in paragraph (7), for the words before sub-paragraph (a) substitute—

"After taking any decision in relation to a proposal following a consultation on that proposal, the competent authority or the Secretary of State, as the case may be, must publish a report in respect of that decision, which must—";

(f) in paragraph (8), after "OSPAR Commission" insert "(the Commission established by Article 10 of the Convention for the Protection of the Marine Environment of the North-East Atlantic)".

(11) In regulation 19—

(a) in paragraph (1), for "implementing" substitute "giving effect to the requirements of";

(b) in paragraph (8)(a), after "giving effect to the" insert "requirements of the".

(12) In regulation 20(1), after "of the" insert "requirements of the".

(13) In Schedule 1—

(a) in Part 1, in paragraph 5—

(i) omit sub-paragraph (a);

(ii) for sub-paragraph (b) substitute—

"(b) functions under section 58 of the Scotland Act 1998 (international obligations);";

(iii) in sub-paragraph (d)—

(aa) omit ", or paragraph (5) of Schedule 3 to,";

(bb) for "(Community obligations)" substitute "(retained EU obligations)";

(b) in Part 2, omit the definition of "regional cooperation".

(14) After Schedule 2 insert Schedule 3, as set out in Schedule 1.

Amendment of the Marine Licensing (Exempted Activities) Order 2011

4.—(1) The Marine Licensing (Exempted Activities) Order 2011(**a**) is amended as follows.

(2) In article 37(2)—

(a) in sub-paragraph (a), for "(other than Gibraltar) which is not a member State" substitute "other than the United Kingdom";

(b) in sub-paragraph (b), for "a member State" substitute "the United Kingdom".

PART 4

Amendment of retained direct EU legislation

Amendment of Commission Decision (EU) 2017/848

5.—(1) Commission Decision (EU) 2017/848 laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment is amended in accordance with paragraph (2) and regulations 6 to 12.

(2) Except where otherwise indicated in regulations 6 to 12, for references to "Member States" substitute "the Secretary of State, in consultation with the devolved policy authorities,".

Amendment of Article 1

6.—(1) Article 1 is amended as follows.

(2) The first paragraph is renumbered paragraph 1.

(**a**) S.I. 2011/409; to which there is an amendment not relevant to these Regulations.

(3) In point (b), for "Member States" substitute "the competent authorities".

(4) In point (c), omit "Union, ".

(5) After point (d) insert—

"2. Regulation 7(3) of the Marine Strategy Regulations 2010(**a**) applies for the purposes of any function conferred by this Decision as it applies for the purposes of the adoption or revision of any element of the marine strategy.".

Amendment of Article 2

7.—(1) Article 2 is amended as follows.

(2) In the heading, at the end insert "and interpretation".

(3) The first paragraph is renumbered paragraph 1.

(4) In the first paragraph, for "laid down in Article 3 of Directive 2008/56/EC shall apply" substitute "in regulation 3 (meaning of the "marine strategy area" and "marine waters") of, and Part 2 of Schedule 1 to, the Marine Strategy Regulations 2010 apply".

(5) The second paragraph is renumbered paragraph 2.

(6) In the second paragraph, after point (5) insert—

"(6) "regional sea convention" means any of the international conventions or international agreements together with their governing bodies established for the purpose of protecting the marine environment of the marine regions referred to in Article 4, such as the Convention on the Protection of the Marine Environment of the Baltic Sea, the Convention for the Protection of the Marine Environment of the North-east Atlantic and the Convention for the Marine Environment and the Coastal Region of the Mediterranean Sea.

(7) "regional cooperation" means cooperation and coordination of activities between the United Kingdom and, whenever possible, other countries sharing the same marine region or subregion, for the purpose of developing and implementing marine strategies.

(8) "competent authority" has the meaning given by regulation 2(1) of the Marine Strategy Regulations 2010.

(9) "devolved policy authority" has the meaning given by regulation 2(1) of the Marine Strategy Regulations 2010.".

(7) After the second paragraph insert—

"3. For the purposes of any reference to Directive 2008/56/EC, or to any Article or Annex of that Directive, that Directive, or the Article or Annex, is to be read subject to the modifications specified in Annex 2 and as if—

(a) references to "Member State" or "Member States" (except in Articles 20 to 22) included a reference to the United Kingdom; and

(b) references to "Community legislation" or "existing Community legislation" were, in relation to the United Kingdom, references to retained EU law.".

Amendment of Article 3

8.—(1) Article 3 is amended as follows.

(2) For "the Annex", in each place where it occurs, substitute "Annex 1".

(3) In paragraph 1—

(a) in the first subparagraph—

(i) for "Member States", in the first place where it occurs, substitute "The competent authorities";

(**a**) S.I. 2010/1627.

(ii) for the final sentence substitute—

"In such cases, the Secretary of State shall provide a justification for that opinion in any report provided pursuant to regulation 18(7) of the Marine Strategy Regulations 2010.";

(b) in the second subparagraph—

(i) for "a Member State" substitute "the Secretary of State";

(ii) omit "other".

(4) In paragraph 2, for "each Member State" substitute "the Secretary of State, in consultation with the devolved policy authorities,".

(5) In paragraph 4—

(a) omit "Union, ";

(b) for "Member States" substitute "the competent authorities".

Amendment of Article 4

9.—(1) Article 4 is amended as follows.

(2) In the heading, omit "Union,".

(3) In paragraph 1—

(a) in the words before point (a)—

(i) for "are" substitute "is";

(ii) omit "Union,";

(b) in point (b), for "Union legislation" substitute "retained EU law".

(4) In paragraph 2—

(a) for "have" substitute "has";

(b) omit "Union,";

(c) for "they" substitute "the Secretary of State, in consultation with the devolved policy authorities,".

(5) In paragraph 3—

(a) omit "by Member States";

(b) for "that Member State" substitute "the Secretary of State, in consultation with the devolved policy authorities,";

(c) for "Member States", in the second place where it occurs, substitute "the competent authority".

(6) In paragraph 4—

(a) omit "by Member States";

(b) for "Article 17(2)(a) of Directive 2008/56/EC" substitute "regulations 10(2) and 11(4) of the Marine Strategy Regulations 2010".

Amendment of Article 5

10.—(1) Article 5 is amended as follows.

(2) In paragraph 1—

(a) omit "Union,";

(b) for "Article 17(2)(a) of Directive 2008/56/EC" substitute "regulations 10(2) and 11(4) of the Marine Strategy Regulations 2010".

(3) In paragraph 2—

(a) for "are" substitute "is";

(b) omit "Union,";

(c) omit from ", on the condition that" to the end.

Amendment of Article 6

11.—(1) Article 6 is amended as follows.

(2) For the words from "Each Member State" to "Article 17(3) of Directive 2008/56/EC" substitute, "The Secretary of State shall specify, as part of the report made pursuant to regulation 18(7) of the Marine Strategy Regulations 2010".

(3) Omit "Union, ".

Amendment of the Annex and insertion of Annex 2

12.—(1) The Annex is renumbered Annex 1.

(2) The Annex is amended as follows—

(a) in the words before Part 1 of the Annex, for "Member States", in both places where it occurs, substitute "the Secretary of State";

(b) Part 1 of the Annex is amended as set out in Schedule 2;

(c) Part 2 of the Annex is amended as set out in Schedule 3.

(3) After the Annex insert Annex 2, as set out in Schedule 4.

Name
Parliamentary Under Secretary of State
Department for Food and Rural Affairs

Date

SCHEDULE 1

Regulation 3(14)

NEW SCHEDULE 3 TO THE MARINE STRATEGY REGULATIONS 2010

"SCHEDULE 3

Regulation 2(5)(a)

Modification of Marine Strategy Framework Directive

1. Omit the following provisions—

(a) in Article 4(2), the final subparagraph;

(b) in Article 5(3), from "In these cases" to the end;

(c) Article 7;

(d) Article 9(2);

(e) Article 10(2);

(f) Article 11(3);

(g) Article 12;

(h) Article 13(9);

(i) Article 15;

(j) Article 16;

(k) Article 18;

(l) Article 23;

(m) Article 24;

(n) Article 26;

(o) in Annex 1, the final sentence in the paragraph after point (11);

(p) Annex 2.

2. In Article 3(9), for "third countries" substitute "other countries".

3. In Article 5(2), omit "for which Member States concerned endeavour to follow a common approach".

4. In Article 6(2)—

(a) in the first subparagraph, for "third countries" substitute "other countries";

(b) in the third subparagraph—

(i) after "Member States", in the first place where it occurs, insert "and other countries";

(ii) omit "in order to allow Member States".

5. In Article 8(2), after "in particular" insert "any enactment giving effect to".

6. In Article 9(3), omit—

(a) "in accordance with the regulatory procedure with scrutiny referred to in Article 25(3)";

(b) the final sentence.

7. In Article 10(1), omit ", Community".

8. In Article 11—

(a) in paragraph 1, omit "including the Habitats and Birds Directives";

(b) in paragraph 4, omit "in accordance with the regulatory procedure with scrutiny referred to in Article 25(3)".

9. In Article 13—

(a) in paragraph 2, for the words from "in particular Directive 2000/60/EC" to "forthcoming legislation on environmental quality standards in the field of water policy" substitute "(in particular in relation to water quality, including urban waste-water treatment and bathing water quality)";

(b) in paragraph 3, omit "referred to in Article 7";

(c) in paragraph 4—

(i) for "special areas of conservation pursuant to the Habitats Directive, special protection areas pursuant to the Birds Directive" substitute "special areas of conservation or special protection areas pursuant to retained EU law";

(ii) for "Community or Members States concerned in the framework of international or regional agreements to which they are parties" substitute "United Kingdom in the framework of international or regional agreements to which it is a party";

(d) in paragraph 5, omit—

(i) "Community or";

(ii) ", individually or jointly,";

(iii) "competent authority or";

(e) in paragraph 10, omit "Subject to Article 16".

10. In Article 14—

(a) in paragraph 1, in the second subparagraph, omit "and shall substantiate its views to the Commission";

(b) in paragraph 4, omit the second subparagraph.

11. In Article 17—

(a) in paragraph 3—

(i) omit "to the Commission,";

(ii) omit "and to any other Member State concerned";

(iii) for "Article 19(2)" substitute "regulation 18(7) of the Marine Strategy Regulations 2010";

(b) omit paragraph 4.

12. In Article 19(3)—

(a) in the first subparagraph, for "Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information" substitute "the retained EU law which transposed Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information";

(b) omit the second and third subparagraphs.

13. In Annex 3—

(a) in the notes below Table 1, in Note 1 and Note 3, for "in accordance with Article 9(3)" substitute "in Commission Decision (EU) 2017/848 laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment";

(b) in the notes below Table 2, in Note 3, for "in accordance with Article 9(3)" substitute "in Commission Decision (EU) 2017/848 laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment".

14. In Annex 4, in point (11), for "the Community and its Member States have committed themselves" substitute "the United Kingdom has committed itself".

15. In Annex 5, in point (9), for "at Community level" substitute "at regional or subregional level"."

SCHEDULE 2

Regulation 12(2)(b)

AMENDMENT OF PART 1 OF THE ANNEX TO COMMISSION DECISION (EU) 2017/848

1. Under the heading "Descriptor 3"—

(a) under the sub-heading "Criteria, including criteria elements, and methodological standards"—

(i) in the third column of the table, in point (a) under "Use of criteria", for "agreed at Union level" substitute "jointly agreed by the competent authorities";

(ii) in footnote (3) to that table, for "Article 17(2)(a) of Directive 2008/56/EC" substitute "Regulations 10(2) and 11(4) of the Marine Strategy Regulations 2010";

(b) under the sub-heading "Specifications and standardised methods for monitoring and assessment"—

(i) in paragraph 1—

(aa) in the words before point (a), for "Council Regulation (EC) No 199/2008" substitute "Regulation (EU) 2017/1004 of the European Parliament and of the Council of 17 May 2017 on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy", and omit footnote (4);

(bb) in point (b), for "by Council under Article 43(3) of the Treaty on the Functioning of the European Union" substitute "in relation to the United Kingdom and its exclusive economic zone";

(cc) omit point (c);

(dd) omit point (e);

(ii) for paragraph 2 substitute—

"2. Regulation (EU) 2017/1004 establishes a framework for the collection, management and use of data in the fisheries sector which shall be used for monitoring in Descriptor 3.".

2. Under the heading "Descriptor 5"—

(a) before "Directive 2000/60/EC", in each place where it occurs (other than the second occurrence in paragraph 6, under the sub-heading "Specifications and standardised methods for monitoring and assessment"), insert "any enactment which gives effect to";

(b) under the sub-heading "Criteria, including criteria elements, and methodological standards", in the third column of the table, in point (c) under "Use of criteria", omit "where possible at Union level, but at least";

(c) under the sub-heading "Specifications and standardised methods for monitoring and assessment"—

(i) in paragraph 6—

(aa) for "Commission Decision 2013/480/EU" substitute "Commission Decision 2018/229 establishing, pursuant to Directive 2000/60/EC of the Parliament and of the Council, the values of the Member State monitoring system classifications as a result of the intercalibration exercise", and omit footnote (6);

(bb) before "national" insert "the relevant";

(ii) after paragraph 7 insert—

"8.—(1) This paragraph 8 has effect for the purposes of the reference in paragraph 6 to Article 8 of, and Annex 5 to, Directive 2000/60/EC.

(2) Article 8 of that Directive is to be read as if—

(a) in paragraph 1—

(i) for "Member States" there were substituted "the United Kingdom";

(ii) in the final indent, the reference to "Community legislation" were a reference to retained EU law;

(b) in paragraph 2, in the second sentence, the reference to Annex 5 of Directive 2000/60/EC were a reference to that Annex as modified by paragraph 8(3) below;

(c) in paragraph 3, the second sentence were omitted.

(3) Annex 5 of that Directive is to be read as if—

(a) any reference to "Community legislation" were a reference to retained EU law;

(b) references in tables 1.2.1 to 1.2.5 to Directive 91/414/EC, wherever they occur, were references to Regulation (EC) 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market;

(c) references in tables 1.2.1 to 1.2.5 to Directive 98/8/EC, wherever they occur, were references to Regulation (EC) 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products;

(d) in section 1.3.1, in the unnumbered paragraph headed "selection of monitoring points", the fourth indent (referring to "the Information Exchange Decision 77/795/EEC") were omitted;

(e) in section 1.3.5, the reference to "the Drinking Water Directive" were a reference to retained EU law which transposed Directive 98/83/EC on the quality of water intended for human consumption;

(f) in section 1.4.1—

(i) in point (iii), for the words from "shall be established" to the end there were substituted "are as set out in Commission Decision 2018/229 establishing, pursuant to Directive 2000/60/EC of the Parliament and of the Council, the values of the Member State monitoring system classifications as a result of the intercalibration exercise";

(ii) points (iv) to (ix) were omitted;

(g) in section 1.4.3, for the words "Annex IX, Article 16 and under other relevant Community legislation" there were substituted "Annex 1 to Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy and under other relevant retained EU law";

(h) in section 2.3.2, for "other relevant Community legislation in accordance with Article 17" there were substituted "retained EU law which transposed Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration(**a**)";

(i) in section 2.4.5—

(i) "Without prejudice to the Directives concerned" were omitted;

(ii) for "Article 17" there were substituted "retained EU law which transposed Directive 2006/118/EC";

(j) any reference to a "Member State" or "Member States" were a reference to the United Kingdom;

(k) any reference to any Article or Annex of Directive 2000/60/EC were read in accordance with paragraph 8(4) below.

(4) For the purposes of paragraph 8(3)(k), any reference to any Article or Annex of Directive 2000/60/EC is to be read as if—

(a) any reference to a "Member State" or "Member States" were a reference to the United Kingdom;

(b) any reference to "Community legislation" were a reference to retained EU law;

(c) any reference to Article 8 were a reference to that Article as modified by paragraph 8(2) above;

(d) any reference to Article 13 were a reference to that Article except in so far as it gives rise to any obligation under Article 15;

(e) in Article 4—

(i) in paragraph 1—

(aa) in point (a)(iv), for "Article 16(1) and (8)" there were substituted "retained EU law which transposed Directive 2008/105/EC";

(**a**) OJ No L 372, 27.12.2006, p 19, as last amended by Directive 2014/80/EU (OJ No L 182, 21.6.2014, p 52).

(bb) in point (b)(iii), in the second subparagraph, for "paragraphs 2, 4 and 5 of Article 17" there were substituted "retained EU law which transposed Directive 2006/118/EC";

(ii) in paragraph 8, the reference to "other Community environmental legislation" were a reference to retained EU law relating to the environment;

(iii) in paragraph 9, the reference to "existing Community legislation" were a reference to retained EU law which was in force before 23rd October 2000;

(f) in Article 7(2)—

(i) for "at Community level under Article 16" there were substituted "by retained EU law which transposed Directive 2008/105/EC";

(ii) for "Directive 80/778/EEC as amended by Directive 98/83/EC" there were substituted "retained EU law which transposed Directive 98/83/EC";

(g) in Article 11—

(i) in paragraph 3(a), for the words from "required to implement" to the end there were substituted "under retained EU law for the protection of water";

(ii) in paragraph 3(j), in the fourth indent, for the words from "Directive" to the end there were substituted "Chapter 3 of Part 1 of the Energy Act 2008(**a**) and other retained EU law which transposed Directive 2009/31/EC on the geological storage of carbon dioxide";

(iii) in paragraph 3(k)—

(aa) "in accordance with action taken pursuant to Article 16," were omitted;

(bb) for "agreed pursuant to Article 16(2)" there were substituted "in Annex 10";

(iv) in paragraph 6, the reference to "existing legislation" were a reference to retained EU law which was in force before 23rd October 2000;

(h) in Annex 2—

(i) in section 1.1, point (vi) were omitted;

(ii) in section 1.4—

(aa) after "gathered under", in both places where it occurs, there were inserted "retained EU law which transposed";

(bb) in the second paragraph, in point (ii), the reference to "Articles 9 and 15 of Directive 96/61/EC" were a reference to retained EU law which transposed Articles 5(3), 14 and 24 of Directive 2010/75/EC of the European Parliament and of the Council on industrial emissions(**b**);

(cc) in the third paragraph, in point (iii), the reference to "Directive 98/8/EC" were a reference to Regulation (EC) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products.".

3. Under the heading "Descriptor 6", under the sub-heading "Specifications and standardised methods for monitoring and assessment", in paragraph 1(c), before "Directive 2000/60/EC" insert "any enactment which gives effect to".

4. Under the heading "Descriptor 7", under the sub-heading "Specifications and standardised methods for monitoring and assessment", in paragraph 1(c), before "Directive 2000/60/EC" insert "any enactment which gives effect to".

5. Under the heading "Descriptor 8"—

(**a**) 2008 c.32.
(**b**) OJ No L 334, 17.12.2010, p 17, as last corrected by a corrigendum (OJ No L 158, 19.6.2012, p 25).

(a) under the sub-heading "Criteria, including criteria elements, and methodological standards", in the following places in the first row of the table, before "Directive 2000/60/EC" insert "any enactment which gives effect to"—

(i) in the first column, in point (1)(a);

(ii) in the second column, in points (a) and (b);

(iii) in the third column, in the first indent under "Scale of assessment";

(b) under the sub-heading "Specifications and standardised methods for monitoring and assessment"—

(i) in paragraph 2(a)—

(aa) before "Directive 2000/60/EC" insert "any enactment which gives effect to";

(bb) before "that Directive" insert "any enactment which gives effect to";

(ii) in paragraph 2(d), omit the second sentence;

(iii) in paragraph 3, for "at Union level" substitute "through regional or subregional cooperation".

6. Under the heading "Descriptor 9"—

(a) in the heading, for "Union legislation" substitute "retained EU law";

(b) under the sub-heading "Specifications and standardised methods for monitoring and assessment"—

(i) in paragraph 1(d), for "Member State" substitute "United Kingdom";

(ii) in paragraph 3, for "Commission Regulation (EU) No 589/2014" substitute "Commission Regulation (EU) 2017/644 of 5 April 2017 laying down methods of sampling and analysis for the control of levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs in certain foodstuffs", and omit footnote (11).

7. Under the heading "Descriptor 10", in the table—

(a) in the second column, in both places where it occurs, omit "through cooperation at Union level";

(b) in the third column, for "agreed at Union level", in both places where it occurs, substitute "jointly agreed by the competent authorities".

8. Under the heading "Descriptor 11", in the table—

(a) in the second column, in both places where it occurs, omit "through cooperation at Union level";

(b) in the third column, for "agreed at Union level" substitute "jointly agreed by the competent authorities".

SCHEDULE 3

Regulation 12(2)(c)

AMENDMENT OF PART 2 OF THE ANNEX TO COMMISSION DECISION (EU) 2017/848

1. Under the heading "Species groups of birds, mammals, reptiles, fish and cephalopods (relating to Descriptor 1)", under the sub-heading "Criteria, including criteria elements, and methodological standards", in the table—

(a) in the first column, in the first row, omit from ", pursuant to" to "Decision (EU) 2016/1251" and footnote (15);

(b) in the first column, in the second row, omit "Union legislation" and the brackets around the words in parenthesis which follow;

(c) in the second column, in the second and fourth rows, for "by the relevant Member States under" substitute "under any enactment which gives effect to";

(d) in the third column, in the second row, in point (b) under "Use of criteria", before "that Directive" insert "any enactment which gives effect to";

(e) in the third column, in the second row, for "at Union level", in both places where it occurs, substitute "by the Secretary of State, in consultation with the devolved policy authorities".

2. Under the heading "Specifications and standardised methods for monitoring and assessment relating to theme 'Species groups of marine birds, mammals, reptiles, fish and cephalopods'", in paragraph 4—

(a) in the words before point (a), before "Directive 92/43/EEC" insert "any enactment giving effect to";

(b) in points (a) and (b), before "Directive" insert "any enactment giving effect to".

3. Under the heading "Benthic habitats (relating to Descriptors 1 and 6)"—

(a) under the sub-heading "Criteria, including criteria elements, and methodological standards", in the table—

(i) in the second column, in the first and second rows, in each place where it occurs, omit ", through cooperation at Union level,";

(ii) in the third column, in the first row, omit "agreed at Union level";

(b) under the sub-heading "Specifications and standardised methods for monitoring and assessment relating to theme 'Benthic habitats'", in paragraphs 1 and 3, before "Directive 92/43/EEC" insert "any enactment giving effect to".

SCHEDULE 4

Regulation 12(3)

NEW ANNEX 2 TO COMMISSION DECISION (EU) 2017/848

"ANNEX 2

Article 2(3)

Modification of Marine Strategy Framework Directive

1. Omit the following provisions—

(a) in Article 4(2), the final subparagraph;

(b) in Article 5(3), from "In these cases" to the end;

(c) Article 9(2);

(d) Article 10(2);

(e) Article 11(3);

(f) Article 13(9);

(g) in Annex 1, the final sentence in the paragraph after point (11).

2. In Article 3(9), for "third countries" substitute "other countries".

3. In Article 5(2), omit "for which Member States concerned endeavour to follow a common approach".

4. In Article 6(2)—

(a) in the first subparagraph, for "third countries" substitute "other countries";

(b) in the third subparagraph—

(i) after “Member States”, in the first place where it occurs, insert “and other countries”;

(ii) omit “in order to allow Member States” to the end.

5. In Article 8(2), after “in particular” insert “any enactment giving effect to”.

6. In Article 9(3), omit—

(a) “in accordance with the regulatory procedure with scrutiny referred to in Article 25(3)”;

(b) the final sentence.

7. In Article 10(1), omit “, Community”.

8. In Article 11—

(a) in paragraph 1, omit “including the Habitats and Birds Directives”;

(b) in paragraph 4, omit “in accordance with the regulatory procedure with scrutiny referred to in Article 25(3)”.

9. In Article 13—

(a) in paragraph 2, for the words from “in particular Directive 2000/60/EC” to “forthcoming legislation on environmental quality standards in the field of water policy” substitute “(in particular in relation to water quality, including urban waste-water treatment and bathing water quality)”;

(b) in paragraph 3, omit “referred to in Article 7”;

(c) in paragraph 4—

(i) for “special areas of conservation pursuant to the Habitats Directive, special protection areas pursuant to the Birds Directive” substitute “special areas of conservation or special protection areas pursuant to retained EU law”;

(ii) for “Community or Members States concerned in the framework of international or regional agreements to which they are parties” substitute “United Kingdom in the framework of international or regional agreements to which it is a party”;

(d) in paragraph 5, omit—

(i) “Community or”;

(ii) “, individually or jointly,”;

(iii) “competent authority or”;

(e) in paragraph 10, omit “Subject to Article 16”.

10. In Article 17—

(a) in paragraph 3—

(i) omit “to the Commission,”;

(ii) omit “and to any other Member State concerned”;

(iii) for “Article 19(2)” substitute “regulation 18(7) of the Marine Strategy Regulations 2010”;

(b) omit paragraph 4.

11. In Annex 3—

(a) in the notes below Table 1, in Note 1 and Note 3, for “in accordance with Article 9(3)” substitute “in Commission Decision (EU) 2017/848 laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment”;

(b) in the notes below Table 2, in Note 3, for “in accordance with Article 9(3)” substitute “in Commission Decision (EU) 2017/848 laying down criteria and methodological

standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment".

12. In Annex 4, in point (11), for "the Community and its Member States have committed themselves" substitute "the United Kingdom has committed itself".

13. In Annex 5, in point (9), for "at Community level" substitute "at regional or subregional level"."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(b), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of the marine environment and, in particular, marine strategy. Part 2 amends primary legislation (the Marine and Coastal Access Act 2009 (c. 23)), Part 3 amends subordinate legislation (the Marine Strategy Regulations 2010 (S.I. 2010/1627) and the Marine Licensing (Exempted Activities) Order 2011 (S.I. 2011/409)), and Part 4 amends other legislation (Commission Decision (EU) 2017/848).

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

EXPLANATORY MEMORANDUM TO

THE MARINE ENVIRONMENT (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Environment, Food & Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument is made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to ensure that UK and EU legislation relating to the marine environment, in particular marine strategy, will continue to be operable after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 The Marine Strategy Framework Directive (the MSFD) requires the UK to put in place the necessary measures to achieve or maintain good environmental status in the marine environment by 2020.

The Marine Strategy Regulations 2010 were made under section 2(2) of the European Communities Act 1972 and transpose the requirements of the MSFD into UK law.

Commission Decision (EU) 2017/848 sets out the criteria and methodological standards to be used for the purposes of determining good environmental status, and specifications and standardised methods for monitoring and assessment.

The Marine and Coastal Access Act 2009 (the MCAA) established provisions for the management and protection of the marine and environment. The relevant provisions are in Part 3 (Marine Planning) which sets out requirements for a UK Marine Policy Statement and marine plans, Part 4 (Marine Licensing) which sets out the marine licensing regime, Part 5 (Nature Conservation) which sets out a power to create Marine Conservation Zones and a duty to contribute to a UK network of marine sites, and Part 8 (Enforcement) which sets out enforcement powers for enforcing requirements across licensing, nature conservation and fishing.

The Marine Licensing (Exempted Activities) Order 2011 was made in exercise of powers under section 74 of the MCAA and sets out exemptions to otherwise licensable activities.

Why is it being changed?

2.3 The changes made by the instrument are necessary to ensure that the current legislation continues to operate effectively after we leave the EU. The changes include the replacement of references to "Member States" with references to the UK or to an appropriate UK body, the replacement of references to "Community legislation" or "EU law" with references to "retained EU law", and the replacement of requirements to notify or report to the Commission with requirements to report

publicly. The changes also ensure that cross references to the MSFD, and other EU legislation, will continue to work after exit.

What will it now do?

2.4 The instrument will ensure that the legislation described above (2.2) will operate effectively in the UK after we leave the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees.

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument varies and is dependent on the application of the legislation that is being amended, as follows:

- The application of regulation 2 varies and is dependent on the application of the provision that is being amended[1].
- Regulations 3, 5, 6, 7, 8, 9, 10, 11 and 12 apply to the marine strategy area. This area includes territorial seas, including coastal waters as defined by the Water Framework Directive (Directive 2000/60/EC), and offshore waters out to the limits of the UK's renewable energy zone. The marine strategy area also includes areas of the UK's Continental Shelf beyond the renewable energy zone, but for these areas the instrument only applies to the seabed and not the water column above it.
- Regulation 4 applies wherever the Secretary of State is the licensing authority under Part 4 of the MCAA. The UK marine licensing area covers all UK marine waters apart from Scottish inshore waters, where a separate regime applies. In addition certain activities are licensable wherever carried out if they are carried out by British vessels, vehicles, aircraft, marine structures or floating containers or if the vessels etc have been loaded in the UK. The appropriate licensing authority is defined in section 113 of the MCAA. Licensing in Welsh inshore and offshore[2] waters, Northern Ireland inshore waters and Scottish offshore waters has been devolved except for the reserved matters specified in section 113. Other than where responsibility has been devolved, the Secretary of State is the licensing authority. The Secretary of State has then delegated licensing (and enforcement) functions to the Marine Management Organisation by means of the Marine Licensing (Delegated Functions) Order 2011.

[1] The Explanatory Notes to the MCAA, Section 323: Extent (paragraphs 830 to 842), comment on the application of the relevant Parts of the MCAA.
[2] Following the commencement of section 46 of the Wales Act 2017 on 1 April 2018, the Welsh Ministers are the appropriate licensing authority for the Welsh offshore region.

5. European Convention on Human Rights

5.1 Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement regarding Human Rights:

'In my view the provisions of the Marine Environment (Amendment) (EU Exit) Regulations [2018] are compatible with the Convention rights'.

6. Legislative Context

6.1 The legislative context for this instrument is summarised in paragraph 2.2. A summary of the types of amendment made to the current legislation is set out in paragraph 2.3, with other types of amendments summarised below.

6.2 The amendments made to the MCAA include:

- the amendment of section 60(8) to reflect amendments to devolution legislation under Part 3 of Schedule 3 to the European Union (Withdrawal) Act 2018
- the removal of section 141(6), which is spent, and the related removal of the definition of "third country vessel" (which would require amendment, as set out below, if retained)
- the amendment of section 244(1) to provide that EU Member State (and Gibraltar) vessels will be treated as "third country vessels" for the purposes of the enforcement of nature conservation legislation under sections 237 and 243 after the UK leaves the EU; there will be no longer be any basis for treating such vessels differently.

6.3 The amendments made to the Marine Strategy Regulations 2010 include:

- the inclusion of a new interpretive provision in new regulation 2(6), so that for the purposes of the Regulations the requirements of the MSFD mean the requirements of the MSFD in so far as they are not reflected in the Regulations or Commission Decision (EU) 2017/848, and as read with the necessary modifications.
- the inclusion of a reference to Commission Decision (EU) 2017/848 in regulation 5(1), to clarify the connection between the Regulations and the Decision (and further the inclusion of new Article 1(2) of the Decision, to clarify that regulation 7(3) of the Regulations applies to the Decision).
- the removal of regulation 17 on Commission notifications and reports; the notification deadlines for regulations 17(1)(a) to (e) have passed and the notifications under regulation 17(1)(g) and (h) are no longer relevant; the notifications under regulation 17(1)(f) will be made as public reports pursuant to the public participation provisions in regulation 18; the notifications to OSPAR under regulation 17(3) will be made pursuant to the public participation provisions in regulation 18, by virtue of regulation 18(8); and the reporting requirements under regulation 17(2) are moved to new regulation 14(13).
- the amendment of regulation 18 consequential to the amendment of Regulation provisions relating to Commission notifications and reports, including regulation 17
- the amendment of regulation 19 (Directions to, and assistance from, public authorities); the Department does not consider that this constitutes the amendment of "a power to legislate" for the purposes of paragraph 1(2)(d) of Part 1 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Marine Strategy Regulations 2010 are made under section 2(2) of the European Communities Act 1972 and section 2(2)

regulations are unable to "confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal". The Department therefore considers that only directions of a non-legislative character can be made under regulation 19.

- the amendment of paragraph 5 of Part 1 of Schedule 1 to reflect amendments to devolution legislation under Part 3 of Schedule 3 to the European Union (Withdrawal) Act 2018.
- the inclusion of a schedule of MSFD modifications, to ensure all cross references to the MSFD in the Regulations are read with the appropriate modifications; the modifications are similar to the amendments summarised in paragraph 2.2, and also provide for the removal of references to provision made pursuant to the procedure in Article 25(3) MSFD (provision will be made in accordance with the instrument described in paragraph 6.6).

6.4 The amendments made to the Marine Licensing (Exempted Activities) Order 2011 comprise the amendment of article 37(2) to provide that EU Member State (and Gibraltar) vessels will be treated as "third country vessels" for the purposes of the exemption after the UK leaves the EU; there will be no longer be any basis for treating such vessels differently.

6.5 The amendments made to Commission Decision (EU) 2017/848 include:

- the replacement of references to "Member States" with references to the appropriate UK authority(ies) specified in the relevant provision of the Marine Strategy Regulations 2010.
- the removal of references to "Union cooperation"; after the UK leaves the EU such cooperation will take place at regional or subregional level (through OSPAR mechanics), as currently provided in the Decision.
- the replacement of requirements to agree at Union level with requirements for the appropriate UK authority(ies) to agree, or with requirements to agree through regional or subregional cooperation.
- the amendment or modification of references to non-marine EU legislation, to reflect the amendments made by other instruments introduced by the Department (and other Government Departments) under section 8 of the European Union (Withdrawal) Act 2018.
- the inclusion of a schedule of MSFD modifications, to ensure all cross references to the MSFD in the Decision are read with the appropriate modifications; the modifications are similar to the amendments summarised in paragraph 2.2, and also provide for the removal of references to provision made pursuant to the procedure in Article 25(3) MSFD (provision will be made in accordance with the instrument described in paragraph 6.6).

6.6 In addition to this instrument the Department will also introduce an instrument which transfers functions of the European Commission under the MSFD to the appropriate UK authority where appropriate, and an instrument which amends Parts 1 (The Marine Management Organisation) and 8 (Enforcement (fishing)) of the MCAA.

7. Policy background

What is being done and why?

7.1 The amendments to the MCAA, the Marine Strategy Regulations 2010, the Marine Licensing (Exempted Activities) Order 2011 and Commission Decision (EU) 2017/848 (set out in paragraphs 2.3 and 6) are being made to correct operability deficiencies which, if not corrected, would mean that the UK would be unable to maintain the current levels of marine environmental protection. The changes made by the instrument are necessary to ensure that the current legislation continues to operate effectively after we leave the EU.

7.2 In addition, the amendments to the Marine Strategy Regulations 2010 and Commission Decision (EU) 2017/848 are being made on a UK-wide basis in order to maintain the existing UK wide framework for marine strategy. This will ensure continuity and consistency of marine environmental monitoring and standards throughout UK waters. This will ensure continuity and consistency of marine environmental monitoring and standards throughout UK waters. The amendments will mean the UK will continue to work cooperatively with other countries within the same marine region or sub-region, to develop our marine strategy. This coordination is being achieved through the Regional Seas Conventions, which for the UK is the OSPAR Convention.

7.3 Failure to update and operationalise the legislation underpinning the monitoring, standards, and reporting framework on the environmental status of our seas, creates a risk of reputational harm in the UK from stakeholders, as well as on the international environmental stage, and could potentially leave us open to judicial review.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the power in paragraph 21 of Schedule 7 to that Act to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision re-stating any retained EU law in a clearer or more accessible way). In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 This instrument has not been subject to formal consultation.

10.2 The Devolved Administrations (Scottish Government, DAERA and Welsh Government) have been consulted on the amendments contained in the instrument, and they are content with the approach being taken.

10.3 The Department has conducted informal consultation with Natural England, the Marine Management Organisation, the Joint Nature Conservation Committee and the Centre for Environment, Fisheries and Aquaculture Science.

10.4 The Department has also engaged informally with stakeholders including the Wildlife Trusts, Crown Estate, Client Earth, Marine Conservation Society, Royal Society for the Protection of Birds, Association of British Ports, Energy UK, Sea-bed Users and Development Group, and Wildlife and Countryside Link.

11. Guidance

11.1 No guidance is required since the instrument makes the minimum changes necessary to ensure the continuity of existing marine environmental protection post EU Exit.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the SI maintains existing regulatory standards.

12.4 The legislation included in this instrument will still apply when we leave the EU. This will provide the maximum possible certainty and continuity to businesses, workers and consumers across the UK so that they can have confidence that they will not be subject to unexpected changes on the day we leave the EU.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Defra will continue to review legislation to ensure that all relevant EU marine environment legislation is captured. If further EU legislation is identified it will be submitted as separate legislation.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Martin Adams at the Department for Environment, Food and Rural Affairs Telephone: 02080 261474 or email: Martin.Adams@DEFRA.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Gemma Harper, Deputy Director for Marine at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment and Rural Affairs, at Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Marine Environment (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because this instrument addresses only technical deficiencies in retained EU legislation and EU derived UK legislation that will arise from withdrawal; it does not change the substantive policy.

2. Appropriateness statement

2.1 Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Marine Environment (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate".

2.2 This is the case because: the instrument makes only the necessary technical drafting changes to retained EU legislation and EU derived domestic legislation required to maintain continuity and operability of marine environmental protection following the UK's withdrawal from the EU.

3. Good reasons

3.1 The Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.2 These are: to ensure that the current legislation continues to operate effectively after we leave the EU, so that the UK can maintain current levels of marine environmental protection. The instrument makes the minimum changes necessary to ensure that cross references to the MSFD, and other EU and EU derived UK legislation, will continue to work after exit.

4. Equalities

4.1 The Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement:

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

4.2 Parliamentary Under Secretary of State for the Environment and Rural Affairs, Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Thérèse Coffey MP have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Marine Environment (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 20 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	4 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 3 December 2018
Date sifting period ends in UK Parliament	5 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Paper xx
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 of the European Union (Withdrawal) Act 2018.

These Regulations make changes to the following legislation:-

- The Marine Strategy Framework Directive ("the MSFD");
- The Marine Strategy Regulations 2010;
- Commission Decision (EU) 2017/848;
- The Marine and Coastal Access Act 2009 ("the MCCA"); and
- The Marine Licensing (Exempted Activities) Order 2011.

As these regulations amend primary legislation i.e. the MCCA, the Welsh Government have laid a statutory instrument consent memorandum under Standing Order 30A.2.

These changes are necessary to ensure that the above legislation continues to operate effectively after the UK leaves the EU. The changes include the replacement of references to “Member States” with references to the UK or to an appropriate UK body, the replacement of references to “Community legislation” or “EU law” with references to “retained EU law”, and the replacement of requirements to notify or report to the Commission with requirements to report publicly. The changes also ensure that cross references to the MSFD, and other EU legislation, will continue to work after exit.

Legal Advisers agree with the statement laid by the Welsh Government dated 22 November 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

29 November 2018

Dear Mick,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of The Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018, as required by Standing Order 30A (SO30A).

I am also writing to inform you that I am not minded to table a motion for a debate about this SI in this instance. I have reached this decision on the basis that this SI is restricted to making corrections to the deficiencies in law that will arise as a result of the UK leaving the EU. The provisions of the SI are technical in nature, and there is no divergence in policy between the Welsh Government and the UK Government in this case.

SO30A provides that any Member may table a motion for a debate on this SI. Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time and I will not myself be seeking to initiate such a debate.

Yours sincerely,

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Gohebiaeth.Ken.Skates@llyw.cymru
Correspondence.Ken.Skates@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018**

DATE **29 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018

The Law which is being amended:

- The Merchant Shipping (Prevention of Air Pollution on Ships) Regulations 2008
- Commission Implementing Decision (EU) 2015/253
- Regulation (EC) 782/2003
- The Merchant Shipping (Anti-Fouling Systems) Regulations 2009
- Commission Regulation (EC) 536/2008
    - Transport and Works Act 1992; and
    - Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The proposed amendments will have no impact on the Assembly's legislative competence and/or the Welsh Ministers' executive competence.

Pursuant to Schedule 2 to the National Assembly for Wales (Transfer of Functions) Order 1999, the order, rule and regulation-making functions of the Secretary of State under sections 1, 3 , 6 , 7(4) , 8 , 10 and 15 of the Transport and Works Act 1992 are exercisable only with the agreement of the Welsh Ministers, in so far as the provisions relate to Wales. Generally any amendment to the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 would be in reliance on some of these powers, which would mean that the agreement of the Welsh Ministers would be sought in so far as the amendments relate to Wales.

As such, the agreement of the Welsh Ministers has been sought by the UK Government and given.

The purpose of the amendments
The purpose of the amendments is to correct deficiencies in legislation governing environmental impact assessments for certain transport purposes and to ensure that environmental protection provisions relating to air pollution (specifically the sulphur content of marine fuels) and anti-fouling systems are legally operable when the United Kingdom withdraws from the European Union.

The SI also updates references to Directive 1999/32/EC, which was repealed and replaced (without substantive amendment) by Directive (EU) 2016/802, in the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 and updates an out-of-date reference to the EEA agreement in the Transport and Works Act 1992

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://beta.parliament.uk/statutory-instruments/fopeBO0Y

Why consent was given
There is no policy divergence between the Welsh Government and the UK Government on the policy for the correction, nor is the substance of the correction politically sensitive. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Agreeing to this approach ensures that there is a coherent approach wherever possible in preparing the statute book to function properly after the UK has left the EU. This approach will promote the clarity and accessibility of legislation across the UK. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("the Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.

2. *The Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018* was laid before Parliament on 27 November 2018 and is now being laid before the Assembly. The order can be found at: https://beta.parliament.uk/statutory-instruments/fopeBO0Y

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to correct deficiencies in legislation governing environmental impact assessments for certain transport purposes arising from the UK leaving the European Union arising from the UK leaving the European Union. It updates some out date references, including an out-of-date reference to the EEA agreement in the Transport and Works Act 1992. It also seeks to ensure that environmental protection provisions relating to air pollution (specifically the sulphur content of marine fuels) and anti-fouling systems are legally operable when the United Kingdom withdraws from the European Union. and update an out-of-date reference to the EEA agreement in the Transport and Works Act 1992

4. This SI makes technical corrections to the following legislation:

    - The Merchant Shipping (Prevention of Air Pollution on Ships) Regulations 2008
    - Commission Implementing Decision (EU) 2015/253
    - Regulation (EC) 782/2003
    - The Merchant Shipping (Anti-Fouling Systems) Regulations 2009
    - Commission Regulation (EC) 536/2008
        - Transport and Works Act 1992; and
        - Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

Relevant provision to be made by the SI

5. The primary legislation that is within the legislative competence of the Assembly that is amended by the draft SI is the Transport and Works Act 1992.

6. The relevant provisions in the SI are regulations 2 and 4, which update an out-of-date reference to the EEA and make technical amendments to accurately reflect the UK's status outside of the EU.

7. It is the view of the Welsh Government that the provisions described in above fall within the legislative competence of the National Assembly for Wales in so far as they relate to tramways, guided transport systems and the regulation of works which may obstruct or endanger navigation is reserved other than works relating to, or for constructing, reserved trust ports or harbours not wholly in Wales.

Why it is appropriate for the SI to make this provision

8. There is no divergence between the Welsh Government and the UK Government on the policy for the amendment. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. This approach promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Ken Skates AM
Cabinet Secretary for Economy and Transport
29 November 2018

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2018 No. 0000

EXITING THE EUROPEAN UNION

CANALS AND INLAND WATERWAYS, ENGLAND AND WALES

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

MARINE POLLUTION

TRANSPORT AND WORKS, ENGLAND AND WALES

The Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018

Made - - - - 2018

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**a**) and section 8(1) of the European Union (Withdrawal) Act 2018(**b**).

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to maritime transport(**c**) and the environment(**d**).

(**a**) 1972 c. 68. Section 2 was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(**b**) 2018 c. 16.
(**c**) S.I. 1994/757.
(**d**) S.I. 2008/301.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018.

(2) Parts 1 and 2 come into force 21 days after making.

(3) Parts 3, 4 and 5 come into force on exit day.

PART 2

Amendment of legislation made under the European Communities Act 1972

Amendment of the Transport and Works Act 1992

2.—(1) Part 1 of the Transport and Works Act 1992(**a**) is amended as follows.

(2) For section 6A(3)(**b**) (cases where other Member States are affected) substitute—

"(3) "Member State", in relation to any time, includes a State which is at that time a party to the EEA agreement.".

Amendment of the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

3.—(1) The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008(**c**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) omit the definition of "the 1999 Directive"(**d**);

(b) after the definition of "the 1995 Regulations" insert—

""the 2016 Directive" means Directive (EU) 2016/802 of the European Parliament and of the Council of 11th May 2016 relating to a reduction in the sulphur content of certain liquid fuels(**e**);".

(3) In regulation 32(3A)(b)(**f**) (offences) for "articles 4c2, 4c3 or 4d of the 1999 Directive" substitute "paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive".

(4) In Schedule 2A (sulphur oxides)(**g**)—

(a) in paragraph 1 (interpretation), in the definition of "emission abatement method"(**h**), for "1999 Directive" substitute "2016 Directive";

(b) in paragraph 2(**i**) (control of sulphur oxide emissions: general provisions), in each place it occurs, for "Article 4c of the 1999 Directive" substitute "Article 8 of the 2016 Directive";

(**a**) 1992 c. 42.
(**b**) As inserted by S.I. 1998/2226, and subsequently amended by S.I. 2000/3199.
(**c**) S.I. 2008/2924, as amended by S.I. 2010/895, S.I. 2010/3035, S.I. 2011/3056, S.I. 2014/3076, S.I. 2014/3306 and S.I. 2016/1025.
(**d**) Definition inserted by S.I. 2014/3076.
(**e**) O.J. No. L 132, 21.05.2016, p. 58.
(**f**) Regulation 32(3A) was inserted by S.I. 2010/895 and subsequently substituted by S.I. 2014/3076.
(**g**) Schedule 2A was inserted by S.I. 2010/895.
(**h**) Definition substituted by S.I. 2014/3076.
(**i**) Paragraph 2 was amended by S.I. 2014/3076.

(c) in paragraph 3(2)(d)(ii)(**a**) (maximum sulphur content of marine fuel used by passenger ships) for "articles 4c2, 4c3 and 4d of the 1999 Directive" substitute "paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive";

(d) in paragraph 4(2)(e)(ii)(**b**) (maximum content of marine fuel used by ships at berth) for "articles 4c2, 4c3 and 4d of the 1999 Directive" substitute "paragraphs 2 and 4 of Article 8, and Article 9, of the 2016 Directive";

(e) in paragraph 10(3)(**c**) (analysis) for "articles 3a, 4, 4a and 4b of the 1999 Directive" substitute "Articles 4, 5, 6 and 7 of the 2016 Directive".

PART 3

Amendment of primary legislation for EU Exit purposes

Amendment of the Transport and Works Act 1992

4.—(1) Part 1 of the Transport and Works Act 1992(**d**) is amended as follows.

(2) In section 6A(**e**) (cases where other Member States are affected)—

(a) in the heading omit "other";

(b) in subsections (1) and (2) for "another", in each place it occurs, substitute "a";

(c) in subsection (2)(b) for "that other" substitute "a".

(3) In section 13C(3)(**f**) (EIA orders: monitoring measures and remedial action) for "implementing" substitute "which implemented".

(4) In section 14(3AB)(**g**) (publicity for making or refusal of orders), in paragraph (a)(i), for "another" substitute "a".

PART 4

Amendment of subordinate legislation for EU Exit purposes

Amendment of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

5.—(1) The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(**h**) are amended as follows.

(2) In rule 4 (interpretation and notices), after paragraph (4) insert—

"(5) For the purposes of these Rules, references to Annex III of the Directive are to be read as if—

(a) in point 2(c)(v), the reference to Member States were a reference to the Secretary of State;

(b) in point 2(c)(vi), the reference to Union legislation were a reference to retained EU law.".

(**a**) Paragraph 3(2)(d) was substituted by S.I. 2014/3076.
(**b**) Paragraph 4(2)(e) was substituted by S.I. 2014/3076.
(**c**) Paragraph 10(3) was substituted by S.I. 2014/3076.
(**d**) 1992 c. 42.
(**e**) As inserted by S.I. 1998/2226, and subsequently amended by S.I. 2000/3199.
(**f**) As inserted by S.I. 2017/1070.
(**g**) As inserted by S.I. 2017/1070.
(**h**) S.I. 2006/1466, as amended by S.I. 2008/969, S.I. 2010/439, S.I. 2010/1551, S.I. 2011/556, S.I. 2011/1829, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/1659, S.I. 2012/2590, S.I. 2013/755, S.I. 2013/1888, S.I. 2014/469, S.I. 2015/627, S.I. 2015/1682 and S.I. 2017/1070.

(3) In rule 7 (the requirement for environmental statement and screening decisions)—

(a) in paragraphs (5) and (11)(b)—

(i) for "European Union legislation" substitute "retained EU law";

(ii) for "implementing" substitute "which implemented";

(b) in paragraph (10) omit "for the purposes of the Directive";

(c) in paragraph (11)(c) before "are relevant" insert "the Secretary of State determines";

(d) in paragraph (14) before "in Annex III" insert "set out".

(4) In rule 7A(2)(b) (environmental impact assessment) after "protected under" insert "any law of any part of the United Kingdom which implemented".

(5) In rule 11(2)(c) (environmental statements: provision of information) for "European Union legislation" substitute "retained EU law".

(6) In rule 16 (developments likely to have significant effects on the environment of another part of the United Kingdom or certain other states)—

(a) in paragraphs (1)(b), (1)(c) and (4) for "another" substitute "a";

(b) in paragraph 7(a) for "the authorities referred to in Article 6(1) of the Directive" substitute "any authority which the Member State has indicated it wishes to be consulted by reason of the authority's specific environmental responsibilities or local or regional competencies";

(c) in paragraph (7)(d) omit "other".

(7) In Schedule 1 (information to be included in environmental statements)—

(a) in paragraph 5(2) for the second sentence substitute—

"This description should take into account the environmental protection objectives which are relevant to the project.";

(b) in paragraph 8—

(i) for "European Union legislation such as" substitute "retained EU law such as any law of any part of the United Kingdom which implemented";

(ii) before "domestic legislation" insert "other";

(iii) after "requirements of" insert "any law of any part of the United Kingdom which implemented".

(8) In Schedule 7 (proposals for orders under section 7)—

(a) in paragraph 3 for "within the meaning of the Directive," substitute "(as defined in Article 1(2)(a) of the Directive)";

(b) in paragraph 7(b)—

(i) for "European Union legislation" substitute "retained EU law";

(ii) for "implementing" substitute "which implemented";

(c) in paragraph 30, in sub-paragraphs (1)(a), (1)(b) and (2)(c), for "another" substitute "a".

Amendment of the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008

6.—(1) The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008(**a**) are amended as follows.

(2) In regulation 2(**b**) (interpretation) for the definition of "Certifying Authority" substitute—

(**a**) S.I. 2008/2924, as amended by S.I. 2010/895, S.I. 2010/3035, S.I. 2011/3056, S.I. 2014/3076, S.I. 2014/3306 and S.I. 2016/1025.

(**b**) Regulation 2 was substituted by S.I. 2011/3056.

""Certifying Authority" means the Secretary of State or any person authorised by the Secretary of State in accordance with regulation 4 (certifying authorities) of the Merchant Shipping (Survey and Certification) Regulations 2015(**a**);".

(3) In regulation 32(3A)(b)(**b**) (offences) omit "other than the United Kingdom".

(4) In Schedule 2 (engines excluded from regulation 21), in paragraph 1(c), before "the European Economic Area" insert "the United Kingdom or".

(5) In Schedule 2A(**c**) (sulphur oxides)—

(a) in paragraph 3(2)(d)(ii)(**d**) (maximum sulphur content of marine fuel used by passenger ships) omit "other than the United Kingdom";

(b) in paragraph 3(6) for the definition of "regular service" substitute—

""regular service" means a series of crossings operated so as to serve traffic between the same two or more ports where each port is either in the United Kingdom or within the European Union, or a series of voyages from and to the same port in the United Kingdom or within the European Union without intermediate calls, either—

(a) according to a published timetable, or

(b) with crossings so regular that they constitute a recognisable schedule.";

(c) in paragraph 4(2)(e)(ii)(**e**) (maximum content of marine fuel used by ships at berth) omit "other than the United Kingdom";

(d) in paragraph 6 (trials of emission abatement technologies)—

(i) for sub-paragraph (4) substitute—

"(4) The Secretary of State must, at least six months before an intended trial begins, give notice of that trial in writing to any port State concerned.";

(ii) in sub-paragraph (5) omit "(a)(ii)".

Amendment of the Merchant Shipping (Anti-Fouling Systems) Regulations 2009

7.—(1) The Merchant Shipping (Anti-Fouling Systems) Regulations 2009(**f**) are amended as follows.

(2) In regulation 2(**g**) (interpretation) for the definition of "Certifying Authority" substitute—

""Certifying Authority" means the Secretary of State or any person authorised by the Secretary of State in accordance with regulation 4 (certifying authorities) of the Merchant Shipping (Survey and Certification) Regulations 2015;".

(3) In regulation 3(1)(b) (application) for "another" substitute "an".

(4) In regulation 4 (surveyors and the issue of certificates)—

(a) in paragraph (1)—

(i) in the opening words for "ships flying the flag of a Member State" substitute "United Kingdom ships";

(ii) in sub-paragraph (a) for "the administration of the Member State" substitute "the Secretary of State or the administration of a Member State";

(iii) in sub-paragraph (b) for "a surveyor nominated for the purpose by one of those administrations, or by a recognised organisation acting on behalf of the administration" substitute "a surveyor nominated for the purpose by the Secretary of

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(**a**) S.I. 2015/508, to which there are amendments not relevant to these Regulations.
(**b**) Regulation 32(3A) was substituted by S.I. 2014/3076.
(**c**) Schedule 2A was inserted by S.I. 2010/895.
(**d**) Paragraph 3(2)(d) was substituted by S.I. 2014/3076.
(**e**) Paragraph 4(2)(e) was substituted by S.I. 2014/3076.
(**f**) S.I. 2009/2796, amended by S.I. 2011/3056 and S.I. 2013/3306.
(**g**) Definition substituted by S.I. 2011/3056.

State or the administration of a Member State, or by a recognised organisation acting on behalf of the Secretary of State or the administration of a Member State";

(b) in paragraph (2) after "carried out by" insert "the Secretary of State or".

PART 5

Amendment of direct EU legislation

Amendment of Regulation (EC) 782/2003

8.—(1) Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14th April 2003 on the prohibition of organotin compounds on ships is amended as follows.

(2) In Article 2 (definitions)—

(a) in paragraph 6 for the definition of 'recognised organisation' substitute—

"'recognised organisation' means an organisation recognised in accordance with Regulation (EC) 391/2009 of the European Parliament and of the Council of 23rd April 2009 on common rules and standards for ship inspection and survey organisations;";

(b) in paragraph 7—

(i) after "when it is issued by" insert "a Certifying Authority or";

(ii) for "its behalf" substitute "behalf of the Secretary of State or the administration of any Member State";

(c) in paragraph 9—

(i) after "issued by" insert "a Certifying Authority or";

(ii) after "on behalf of" insert "the Secretary of State or";

(d) at the end of paragraph 10 insert—

";

11. 'United Kingdom ship' has the same meaning as in section 85(2) of the Merchant Shipping Act 1995(**a**);

12. 'Certifying Authority' means the Secretary of State or any person authorised by the Secretary of State in accordance with regulation 4 (certifying authorities) of the Merchant Shipping (Survey and Certification) Regulations 2015".

(3) In Article 3 (scope)—

(a) before point (a) of paragraph 1, insert—

"(za) United Kingdom ships,";

(b) in point (b) of paragraph 1 after "the authority of" insert "the United Kingdom or";

(c) in point (c) of paragraph 1 after "offshore terminal of" insert "the United Kingdom or".

(4) In Article 5 (prohibition of the bearing of organotin compounds which act as biocides), for "Ships" substitute "United Kingdom ships and ships".

(5) In Article 6 (survey and certification)—

(a) in paragraph 1—

(i) for "ships flying the flag of a Member State" substitute "United Kingdom ships";

(ii) after point (b) of paragraph 1 omit the unnumbered paragraph;

(iii) omit point (c);

(**a**) 1995 c. 21.

(b) in paragraph 2 for "Member States", in each place it occurs, substitute "a Certifying Authority";

(c) omit paragraph 3.

(6) In Article 7 (Port State control)—

(a) in the first unnumbered paragraph for "Member States", in each place it occurs, substitute "the Secretary of State or persons appointed by the Secretary of State";

(b) omit the second unnumbered paragraph.

(7) For Article 8 (adaptations) substitute—

"Article 8

Adaptations

1. Subject to paragraph 2, the Secretary of State may make regulations to amend references in this Regulation to—

(a) the AFS-Convention;

(b) the AFS-Certificate;

(c) the AFS-Declaration;

(d) the AFS-Statement of Compliance;

(e) the European AFS-Statement of Compliance;

(f) the Annexes to this Regulation, including relevant International Maritime Organisation guidelines in relation to Article 11 of the AFS-Convention.

2. The power in paragraph 1 may only be exercised where the Secretary of State considers it necessary in order to—

(a) take account of developments at international level and in particular in the International Maritime Organisation; or

(b) improve the effectiveness of this Regulation.

3. Any power to make regulations under paragraph 1 is exercisable by statutory instrument.

4. Regulations made under paragraph 1 may—

(a) make different provision for different purposes, cases or areas;

(b) make consequential, incidental, supplementary, transitional or transitory or saving provisions.

5. A statutory instrument containing regulations made under paragraph 1 is subject to annulment in pursuance of a resolution of either House of Parliament.".

(8) Omit Article 9 (committee) and Article 10 (evaluation).

(9) In Article 11 (entry into force) omit the second sentence.

(10) In Annex 1 (surveys and certification requirements for anti-fouling systems on ships flying the flag of a Member State)—

(a) in the heading for "ships flying the flag of a Member State" substitute "United Kingdom ships";

(b) in paragraph 1 (surveys)—

(i) for point 3 substitute—

"1.3 Surveys shall be carried out by officers duly authorised by the Secretary of State or the administration of a Member State, or of a party to the AFS-Convention, or by a surveyor nominated for the purpose by the Secretary of State or the administration of a Member State, or by a recognised organisation acting on behalf of the Secretary of State or the administration of a Member State.";

(ii) in point 4 for "Member States" substitute "a Certifying Authority";

(c) in paragraph 2 (certification)—

(i) for point 1 substitute—

"2.1 After completion of a survey referred to in point 1.1(a) or (b), a Certifying Authority shall issue an AFS-Certificate.";

(ii) in point 2 for "A Member State" substitute "A Certifying Authority";

(iii) in point 3 for "Member States" substitute "The Secretary of State";

(iv) in point 4 for "Member States" substitute "A Certifying Authority".

Amendment of Commission Regulation (EC) 536/2008

9.—(1) Commission Regulation (EC) No 536/2008 of 13th June 2008 giving effect to Article 6(3) and Article 7 of Regulation (EC) No 782/2003 of the European Parliament and of the Council on the prohibition of organotin compounds on ships and amending that Regulation is amended as follows.

(2) In Article 3 for "Member States", in each place it occurs, substitute "the Secretary of State or persons appointed by the Secretary of State".

(3) In Article 4 for "Member States" substitute "the Secretary of State or persons appointed by the Secretary of State".

(4) In Article 6 omit the second sentence.

Amendment of Commission Implementing Decision (EU) 2015/253

10.—(1) Commission Implementing Decision (EU) 2015/253 of 16th February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels is amended as follows.

(2) In Article 1 (subject matter) for "Directive 1999/32/EC" substitute "Directive (EU) 2016/802".

(3) In Article 2 (definitions)—

(a) in paragraph 4—

(i) for "the competent authority of a Member State" substitute "the Secretary of State or persons appointed by the Secretary of State";

(ii) for "Directive 1999/32/EC" substitute "Directive (EU) 2016/802";

(b) after paragraph 4 insert—

"(4A) 'United Kingdom ship' has the same meaning as in section 85(2) of the Merchant Shipping Act 1995(**a**).";

(c) omit paragraph 5.

(4) In Article 3 (frequency of sampling of marine fuels being used on board ships)—

(a) in paragraph 1—

(i) for "Member States" substitute "The Secretary of State or persons appointed by the Secretary of State";

(ii) for "relevant Member State" substitute "United Kingdom";

(b) in the first unnumbered paragraph—

(i) for "a Member State" substitute "the United Kingdom";

(ii) omit the words "as reported through SafeSeaNet";

(c) for paragraph 2 substitute—

(**a**) 1995 c. 21.

"2. As from 1 January 2016, the sulphur content of the marine fuel being used on board shall also be checked by sampling or analysis or both of at least 30 per cent of the inspected ships referred to in paragraph 1.

The Secretary of State or persons appointed by the Secretary of State may comply with the frequencies specified in this paragraph by selecting ships on the basis of national risk-based targeting mechanisms and of specific alerts on individual ships.";

(d) in paragraph 3(b)—

(i) for "relevant Member State" substitute "United Kingdom";

(ii) omit the unnumbered paragraph;

(e) in paragraph 4—

(i) for "a Member State" substitute "the Secretary of State";

(ii) for "the Union" substitute "a";

(f) omit paragraph 5.

(5) In Article 4 (frequency of sampling of marine fuels while being delivered to ships)—

(a) in paragraph 1—

(i) for "Article 6(1a)(b) of Directive 1999/32/EC" substitute "Article 13(2) of Directive (EU) 2016/802";

(ii) for "Member States" substitute "the Secretary of State or persons appointed by the Secretary of State";

(iii) for "that Member State" substitute "the United Kingdom";

(iv) omit the words "on the basis of the reporting in the Union information system or in the annual report referred to in Article 7";

(b) omit paragraph 2.

(6) In paragraph 1 of Article 5 (sampling methods for the verification of the sulphur content of the marine fuel being used on board) for "Member States" substitute "the Secretary of State or persons appointed by the Secretary of State".

(7) In Article 6 (on-board spot sampling), in each place it occurs, for "Member States" substitute "The Secretary of State or persons appointed by the Secretary of State".

(8) In Article 7 (information to be included in the annual report)—

(a) for the first unnumbered paragraph substitute—

"The Secretary of State must publish an annual report on compliance with sulphur standards for marine fuels. The report must include at least the following information:";

(b) for paragraph (c) substitute—

"(c) claims of non-availability of marine fuels as referred to in Article 6(8) of Directive (EU) 2016/802, including—

(i) the ship details;

(ii) bunkering port;

(iii) if the non-availability occurred in the United Kingdom or a Member State, where the non-availability occurred;

(iv) number of claims made by the same ship; and

(v) type of bunker unavailable;";

(c) in paragraph (e) for "relevant Member State" substitute "United Kingdom";

(d) in paragraph (f) for "Directive 1999/32/EC of the ships flying the flag of the Member State" substitute "Directive (EU) 2016/802 of United Kingdom ships".

(9) Omit Article 8 (format of the report).

Signed by authority of the Secretary of State for Transport

Name
Parliamentary Under Secretary of State
Date Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

The provision made by Part 2 of these Regulations is made under section 2(2) of the European Communities Act 1972 (c. 68) in order to update references to Directive 1999/32/EC, which was repealed and replaced (without substantive amendment) by Directive (EU) 2016/802 (O.J. No L 132, 21.05.2016, p. 58), and update an out-of-date reference to the EEA agreement in the Transport and Works Act 1992 (c. 42).

The remaining Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) and 8(2)(g)) arising from the withdrawal of the United Kingdom from the European Union. Part 3 amends primary legislation, Part 4 amends secondary legislation and Part 5 amends retained EU Regulations and Decisions. The amendments are made to legislation governing environmental impact assessments for certain transport purposes and legislation on the sulphur content of marine fuels and prohibited anti-fouling systems.

An Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen. An Explanatory Memorandum has been published alongside these Regulations and is available with these Regulations on www.legislation.gov.uk.

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EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING AND OTHER TRANSPORT (ENVIRONMENTAL PROTECTION) (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument ensures that environmental protection provisions relating to air pollution (specifically the sulphur content of marine fuels) and anti-fouling systems are legally operable when the United Kingdom withdraws from the European Union. It also corrects minor deficiencies in transport legislation governing environmental impact assessment for transport and works.

Explanations

What did any relevant EU law do before exit day?

2.2 Environmental impact assessment is a process well-established in domestic legislation and planning practice, which requires that proposals which are likely to have a significant effect on the environment by virtue of (for example) their nature, size or location are subject to an assessment of those effects before development consent for the project is granted.

2.3 This instrument amends the following transport-related legislation, which implements Directive 2011/92/EU on environmental impact assessments, as amended by Directive 2014/52/EU:

- provisions of Part 1 of the Transport and Works Act 1992; and
- the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

2.4 The above legislation put in place the requirements for environmental impact assessments relating to applications for Transport and Works Act Orders.

2.5 The Merchant Shipping (Prevention of Air Pollution on Ships) Regulations 2008 ("the 2008 Regulations") implement, in part, Directive 1999/32/EC (subsequently repealed and replaced by Directive (EU) 2016/802) relating to a reduction in the sulphur content of certain liquid fuels. They apply a limit to the sulphur content of marine fuel which may be used by UK ships and in UK waters and put in place requirements relating to emissions abatement technologies.

2.6 Commission Implementing Decision (EU) 2015/253 ("the 2015 Sulphur Decision") laid down rules concerning the sampling and reporting of the sulphur content of marine fuels under Council Directive 1999/32/EC. Its provisions set out the frequency with which marine fuels should be sampled by Member State authorities, the methods to be used to verify the sulphur content of fuel, procedural requirements for carrying out sampling and reporting formalities.

2.7 Regulation (EC) 782/2003 ("the 2003 AFS Regulation") prohibits the application of organotin compounds to inhibit the growth of organisms on ships' hulls and sets out an enforcement regime. It is implemented, to the extent necessary, by the Merchant Shipping (Anti-Fouling Systems) Regulations 2009 ("the 2009 Regulations"). Together, these instruments prohibit the application of prohibited anti-fouling systems to the hulls of ships and put in place a survey and certification regime and enforcement provisions.

2.8 Commission Regulation (EC) 536/2008 ("the 2008 AFS Regulation") governs the relationship between the 2003 AFS Regulation and the International Convention on the Control of Anti-Fouling Systems on Ships ("the AFS Convention") which, at the time the 2003 and 2008 AFS Regulations were enacted, had not yet come into force. It clarifies that, when the AFS Convention comes into force (as it did in September 2008), compliance with the 2008 AFS Regulation could be demonstrated through compliance with the AFS Convention.

Why is it being changed?

2.9 The legislation on environmental impact assessments contains a number of references to Member States which will be inoperable when the United Kingdom is no longer a Member State. It also refers to provisions of EU Directives which will contain similar deficiencies.

2.10 The 2008 Regulations and 2015 Sulphur Decision contain a number of references to Member States which will be inoperable when the United Kingdom is no longer a Member State.

2.11 The 2003 AFS Regulation is stated to apply to ships flying the flag of an EU Member State; as such, without amendment, the Regulation would cease to apply to UK-flagged ships. It also contains a number of references to Member States, for example in relation to the appointment of inspectors empowered to enforce the prohibition. It also gives the European Commission the power to update the Regulation in line with the AFS Convention, and contains obligations to provide reports to the European Commission. The 2009 Regulations and 2008 AFS Regulation similarly contain a number of references to Member States and reporting obligations.

What will it now do?

2.12 The effect of all amendments made by this instrument is to ensure that the status quo continues to operate once the United Kingdom withdraws from the European Union. The amendments ensure that existing obligations continue to apply, that necessary functions of the European Commission can now be undertaken by the Secretary of State, and that redundant requirements are extinguished.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument varies between provisions.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018). Regulations 2, 4 and 5 apply in England and Wales only. All other provisions apply in England and Wales, Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of regulations 3 and 6 to 10 is the United Kingdom and United Kingdom ships wherever they may be. The territorial application of regulations 2, 4 and 5 is England and Wales only.

5. European Convention on Human Rights

5.1 Nusrat Ghani, Parliamentary Under Secretary of State for Transport, has made the following statement regarding Human Rights:

5.2 "In my view the provisions of the Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations are made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018.

6.2 The European Union (Withdrawal) Act 2018 makes provision for repealing the European Communities Act 1972 and will preserve EU law as it stands at the moment of withdrawal, converting this into UK law. It enables the creation of a new body of domestic legislation by converting the text of directly applicable EU legislation into domestic instruments, as well as saving EU-derived domestic legislation which were made to implement the UK's obligations as an EU Member State.

6.3 The European Union (Withdrawal) Act 2018 also contains powers to make secondary legislation to enable Ministers and the devolved administrations to fix deficiencies in retained EU law, to ensure that the UK's legal system continues to function properly outside of the EU. The European Union (Withdrawal) Act 2018 does not preserve EU directives. Changes made under section 8 of that Act are therefore made to relevant legislation which implements an EU directive in the UK.

6.4 This instrument corrects a number of legal deficiencies in transport legislation relating to environmental protection. Those deficiencies are found both in EU-derived domestic legislation and in direct EU legislation which will become retained EU law upon EU Exit. It makes only those changes necessary to preserve the legal status quo.

6.5 This instrument also relies on powers under section 2(2) of the European Communities Act 1972 in order to update references to Council Directive 1999/32/EC, which was repealed and replaced on 21st May 2016 by consolidated Directive (EU) 2016/802 (O.J. No. L 132, 21.05.2016, p. 58) and an out of date reference to the Agreement on the European Economic Area. These provisions are contained in Part 2 of the instrument.

7. Policy background

What is being done and why?

7.1 This instrument is designed to ensure that the existing regulatory framework for transport environmental protection remains operable in UK law when the UK withdraws from the European Union. It does this by amendment to primary legislation, existing statutory instruments and retained EU Regulations and Decisions.

7.2 Regulations 2, 4 and 5 amend the following existing transport legislation relating to environmental impact assessments:

- Part 1 of the Transport and Works Act 1992; and
- The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I. 2006/1466).

7.3 These amendments ensure that the UK continues to take a coordinated and streamlined approach to environmental impact assessments where an assessment is required under more than one aspect of EU law. For example, where the obligation arises under both transport legislation and protection of habitats legislation, information can be used for both assessments rather than having to be collected twice. The amendments also ensure that where a UK project is likely to have significant environmental effects on an EU Member State, the Secretary of State will continue to consult that country before deciding whether to grant permission for that project.

7.4 In relation to maritime environmental provisions, this draft instrument amends the following legislation in relation to the sulphur content of marine fuels:

- The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (S.I. 2008/2924) ("the 2008 Regulations"); and
- Commission Implementing Decision (EU) 2015/253 of 16th February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels (O.J. No. L 41, 17.02.2015, p. 55) ("the 2015 Sulphur Decision").

7.5 In relation to anti-fouling systems, the draft instrument amends the following legislation:

- The Merchant Shipping (Anti-Fouling Systems) Regulations 2009 (S.I. 2009/2796) ("the 2009 Regulations");
- Regulation (EC) 782/2003 of the European Parliament and of the Council of 14th April 2003 on the prohibition of organotin compounds on ships (O.J. No. L 115, 09.05.2003, p. 1) ("the 2003 AFS Regulation"); and
- Commission Regulation (EC) 536/2008 of 13th June 2008 giving effect to Article 6(3) and Article 7 of the Regulation (EC) No 782/2003 of the European Parliament and of the Council on the prohibition of organotin compounds on ships (O.J. No. L 156, 14.06.2008, p. 10) ("the 2008 AFS Regulation").

7.6 This instrument makes amendments necessary to ensure that the existing regulatory framework for maritime environmental protection is retained, and operates effectively, following the UK's exit from the European Union. In addition to ensuring that the same regulatory requirements continue to apply to UK-registered ships, the

amendments also ensure that UK regulators are able to enforce these standards against foreign vessels in UK waters, including EU vessels. The amendments:

- replace references to Member States with the Secretary of State or the United Kingdom in order to ensure that regulatory requirements continue to apply within the UK when it is no longer a Member State;
- insert, omit or amend definitions to ensure compatibility or consistency with other legislation;
- omit or amend wording to reflect that the United Kingdom will no longer be in the European Union or the European Economic Area;
- ensure that the UK continues to recognise emissions abatement methods approved by EU Member States;
- ensure that specified marine diesel engines in recreational or pleasure craft will continue to benefit from an exemption from certain regulatory requirements;
- remove what will become redundant requirements on the UK to make reports to the Commission;
- remove what will become redundant references to EU databases (SafeSeaNet) which we will no longer have access to, whilst ensuring that their role is replicated domestically; and
- transfer to the Secretary of State, Commission powers to amend references to provisions of international law governing the use of anti-fouling systems.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

8.2 Alongside the European Union (Withdrawal) Act 2018 powers the instrument is also being made under section 2(2) of the European Communities Act 1972. These provisions, contained in Part 2 of the instrument, update references to Council Directive 1999/32/EC, which was repealed and replaced on 21st May 2016 by Directive (EU) 2016/802 (O.J. No. L 132, 21.05.2016, p. 58) and an out of date reference to the Agreement on the European Economic Area.

9. Consolidation

9.1 There are currently no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 No formal consultation has been carried out, as the instrument maintains the regulatory status quo and ensures that those to whom the amended instruments apply are able to continue to carry on activities within the same regime once the UK withdraws from the European Union.

10.2 Regulations 2, 4 and 5, which amend the Transport and Works Act 1992 and the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, operate in areas which are devolved to Wales (rail transport, canals and inland waterways and planning). The Welsh Government has been consulted and is content for this instrument to be made.

11. Guidance

11.1 The Department for Transport is not producing any specific guidance on the amendments provide for in this instrument as there are no new requirements for industry which require explanation.

12. Impact

12.1 The impact on business, charities or voluntary bodies in respect of the changes made by these Regulations are limited to minor familiarisation costs.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant impact, as the instrument relates to the maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses. The basis for the final decision on what action to take to assist small businesses is that the impact on business, charities or voluntary bodies in respect of the changes made by these Regulations are limited to minor familiarisation costs as this instrument maintains the current regulatory position.

14. Monitoring & review

14.1 To the extent that this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

14.2 Regulation 2, which is made under section 2(2) of the European Communities Act 1972, amends primary legislation and as such section 28 of the Small Business Enterprise and Employment Act 2015 is not engaged.

14.3 Regulation 3, which is made under section 2(2) of the European Communities Act 1972, amends an instrument which contains its own review provision and so in accordance with paragraph 14(c) of the 'Statutory Guidance under s.31 of the Small Business, Enterprise and Employment Act' no additional review provision is included in these Regulations. The amendments introduced by regulation 3 will be reviewed as part of the review of the instrument which it amends.

15. Contact

15.1 Ian Timpson at the Department for Transport (telephone: 020 7944 4446 or email: Ian.Timpson@dft.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Tom Newman-Taylor at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Nusrat Ghani, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 No sifting statement is required as this instrument is subject to approval by each House of Parliament, by virtue of paragraph 1 of Schedule 7 to the European Union (Withdrawal) Act 2018.

2. Appropriateness statement

2.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Merchant Shipping and Other Transport (Environmental Protection) (EU Exit) (Amendment) Regulations 2018 do no more than is appropriate."

2.2 This is the case because it makes technical changes which do no more than necessary to ensure that transport-related environmental protection legislation is able to operate effectively following the United Kingdom's withdrawal from the European Union.

3. Good reasons

3.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this draft instrument, and I have concluded they are a reasonable course of action".

3.2 These are that the provisions do no more than is necessary to correct legal deficiencies. Without these corrections, substantial parts of transport-related environmental protection legislation would be inoperable or inapplicable following the United Kingdom's withdrawal from the European Union.

4. Equalities

4.1 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement:

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

4.2 The Parliamentary Under Secretary of State for Transport, Nusrat Ghani, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Nusrat Ghani, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

6. Criminal offences

6.1 This draft instrument does not create any criminal offences.

7. Legislative sub-delegation

7.1 This draft instrument does not create any sub-delegated powers.

8. Urgency

8.1 This draft instrument is not being made urgently.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Merchant Shipping and Other Transport (Environmental Protection) (Amendment) (EU Exit) Regulations 2018

Laid in UK Parliament: 27 November 2018

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C	Paper x
SICM under SO 30A (because amends primary legislation)	Paper x
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8 (1) of the European Union (Withdrawal) Act 2018.

The Regulations amend domestic legislation and retained EU law relating to certain transport aspects of environmental impact assessment legislation. They also amend some minor deficiencies. The legislation makes various references to Member States of the EU and to provisions of EU law. Those references will become inoperable when the UK exists the European Union. Accordingly, references to Member States will become references to the Secretary of State.

Legal Advisers make the following comment in relation to the Welsh Government's statement dated 29 November 2018 regarding the effect of these Regulations: The statement does not explain that references to Member States will become references to the Secretary of State.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment Etc.) (EU Exit) Regulations 2018**

DATE **26 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment Etc.) (EU Exit) Regulations 2018

The law which is being amended
Domestic legislation that extends to the whole of the UK:
The following instruments are being amended:

- The Agriculture and Horticulture Development Board Order 2008; and
- The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014.

The Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014 are being revoked.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
Agriculture is a devolved matter.

This instrument does not transfer functions. Any necessary transfer of functions will be dealt with by a separate instrument.

The purpose of the amendments
This instrument addresses failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. It deals with corrections that are technical in nature and do not make any significant policy changes, instead corrections adjust these domestic (UK) secondary legislation to incorporate new (agreed) terms to ensure the existing EU programmes will continue to be funded for the remainder of the 2014 to 2020 programme, if there is no deal. This SI is the first UK correcting Statutory Instrument included as part of the wider package to correcting the CAP.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-common-agricultural-policy-and-agriculture-and-horticulture-development-board-amendment-etc-eu-exit-regulations-2018

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Common Agricultural Policy and Agriculture and Horticulture Development Board (Amendment Etc.) (EU Exit) Regulations 2018

Laid in the UK Parliament: 21 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	4 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 3 December 2018
Date sifting period ends in UK Parliament	6 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations amend three separate domestic regulations (two relating to England only), and revoke one, relating to the implementation of the European Union Common Agricultural Policy ("**CAP**"), and also amends one Order concerning the Agriculture and Horticulture Development Board, in order to ensure continued operability of the legislation following the UK's departure from the European Union. Insofar as these Regulations concern Wales, the Regulations:

- amend the Agriculture and Horticulture Development Board Order 2008, to make technical changes and also to remove the AHDB red meat levy on animals imported from the rest of the world for short

term slaughter. This is to ensure equal treatment between the EU and the rest of the world following EU Exit;

- amend the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 to make a number of technical changes such as amending references to European funds that the UK will not be able to access after EU Exit, removing the rights of representatives of the European Commission to enter premises, and other minor amendments; and
- revoke the Common Agricultural Policy (Competent Authority and Coordinating Body) Regulations 2014, which will be redundant following EU Exit.

The explanatory memorandum to these Regulations note that the Regulations are necessary to ensure that CAP scheme recipients continue to be paid following EU Exit.

Legal Advisers agree with the statement laid by the Welsh Government dated 26 November 2018 regarding the effect of these Regulations.
The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018**

DATE **27 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018

The retained EU Law which is being amended

Repeals and savings of relevant directly effective treaty rights preserved under section 4(1) of the European Union (Withdrawal) Act 2018.

EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community.

References in retained EU Law to the official languages and working languages of the European Atomic Energy Community.

Regulation (EEC, Euratom) No 1182/71 of the Council of 3rd June 1971 determining rules applicable to periods, dates and time limits.

Revocation of miscellaneous direct retained EU legislation, as set out in the Schedule

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
This SI will have no effect on the Assembly's legislative competence or the Welsh Ministers' executive competence.

The purpose of the amendments
The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to the functioning of the institutions of the European Union

The SI and accompanying Explanatory Memorandum, setting out the effect of each

amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-european-institutions-and-consular-protection-amendment-etc-eu-exit-regulations-2018

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

The European Institutions and Consular Protection (Amendment etc.) (EU Exit) Regulations 2018

Laid in the UK Parliament: 26 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	11 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	12 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 of the European Union (Withdrawal) Act 2018.

The SI has been drafted on the basis of a no deal scenario where the UK ceases to remain part of any of the EU's institutions and bodies. If a withdrawal agreement is agreed whereby the UK negotiates to remain party of some of those institutions and bodies, then parts of this instrument may be delayed or revoked.

This instrument revokes, amends or makes savings in respect of Directly Effective Treaty Rights (DETRs") arising from Articles of the Treaty on the Functioning of the European Union and its Protocols ("TFEU"). It also makes amendments or revocations in respect of retained direct EU law

("RDEUL") which relates to the functioning of institutions and bodies of the European Union and the applications of its rules in EU legislation.
This instrument also addresses two Articles which are not directly related to the institutions of the EU but relate to consular protection in non-EU countries. These provide that if an EU citizen is in a country outside of the EU, where their country does not have consular or diplomatic representation, then that EU citizen is entitled to protection by the diplomatic or consular authorities of any Member State, on the same condition as the nationals of that State.

This instrument also addresses protocols relating to the Court of Justice of the European Union and the privileges and immunities of the European Union.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 27 November 2018 regarding the effect of these Regulations:
Paragraph 10.1 of the Explanatory Memorandum states that as per the Intergovernmental Agreement on the European Union (Withdrawal) Act 2018 ("EUWA"), the Welsh Government were consulted with regard to these Regulations. Consent from the Welsh Government to the UK government was given in a letter by Mark Drakeford AM dated 22 November 2018. Notwithstanding the requirement to consult, the Welsh Government's statement does not identify which legislative powers of the Assembly or executive powers of the Welsh Ministers are affected by this instrument. In fact, the instrument appears to relate to non-devolved areas. Legal advisors recommend that clarification is sought on which devolved powers are affected.

While the Welsh Government's statement indicates that there is no divergence between the Welsh Government and UK Government on the policy for the correction, the statement fails to highlight to what degree devolved areas are affected by this instrument, and the extent to which consent was needed from the Welsh Government. The statement only says that consent was given for reasons of efficiency, expediency and due to the technical nature of the amendments.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment) (EU Exit) Regulations 2018**

DATE **27 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment) (EU Exit) Regulations 2018

The law which is being amended

- Regulation (EC) No. 999/2001
- Commission Decision 2007/453
- Commission Decision 2009/719
- Regulation (EC) No. 1069/2009

- Commission Regulation (EU) No. 142/2011
- The EEA Agreement

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Transmissible Spongiform Encephalopathies and Animal By-Products are areas of devolved responsibility.

This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales.

Functions transferred to the Secretary of State with consent would constitute functions of a Minister of the Crown for the purpose of Schedule 7B to the Government of Wales Act 2006. This may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

The purpose of the amendments

The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment) (EU Exit) Regulations 2018 will ensure that five pieces of direct EU legislation will be fully operable when the UK leaves the EU. It relates to animal disease prevention which is a

devolved matter and is implemented and enforced by similar EU-derived domestic legislation in each constituent nation of the UK.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-transmissible-spongiform-encephalopathies-and-animal-by-products-amendment-etc-eu-exit-regulations-2018

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 22 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	4 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	10 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations ensure that the following 5 pieces of direct EU legislation will be fully operable when the UK leaves the EU and relate to animal disease prevention; specifically concerning the control and eradication of transmissible spongiform encephalopathies and to the use, disposal, placing on the market and import of animal by products:

- Regulation (EC) No. 999/2001
- Commission Decision 2007/453
- Commission Decision 2009/719
- Regulation (EC) No. 1069/2009
- Commission Regulations (EU) No. 142/2011

Transmissible spongiform encephalopathies and animal by products are areas of devolved responsibility and implemented in the UK via secondary legislation in each constituent nation of the UK. The Regulations do not enact any new policy.

Legal Advisers agree with the statement laid by the Welsh Government dated 27 November 2018 regarding the effect of these Regulations.
The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018**

DATE **27 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

The law which is being amended
The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

- Regulation (EC) No. 116/2006
- Commission Implementing Decision 2011/850/EC –
- Commission Decision 2015/6674/EU
- Directive (Directive 2004/42/EC).
- Commission Implementing Decision 2012/115/EU
- Directive (2010/75/EU).
- Directive (2010/75/EU).

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The protection of air quality falls within competence

The purpose of the amendments
This instrument makes minor and technical amendments to the existing legislation described above to ensure the legislation is operable after EU Exit. The changes in this instrument include necessary fixes such as: amending cross references to EU legislation; amending references to the EU, EU institutions and EU administrative processes to domestic equivalents; updating legal references to refer to relevant domestic legislation; and adjusting the requirements for government reporting as is appropriate

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-air-quality-amendment-of-domestic-regulations-eu-exit-regulations-2018

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to,

and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2018

Laid in the UK Parliament: 22 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	4 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	10 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8 (1) of and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

The Regulations amend domestic legislation that implements EU air quality legislation to ensure it continues to be operable after the withdrawal of the UK from the EU.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 27 November 2018 regarding the effect of these Regulations:

1.The statement incorrectly summarises the legislation which is being amended by the Regulations. The legislation amended is as follows:-

- The Air Quality Standards Regulations 2010;

- The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012; and
- The National Emission Ceilings Regulations 2018.

2. Whilst both the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 and the National Emission Ceiling Regulations 2018 apply to the UK, only regulations 3 (a), 23, 24, 25(4) and 32 of the Air Quality Standards Regulations 2010 apply to Wales. Only regulation 32 is amended by these Regulations. This is not clear from the Welsh Government statement.

3. In addition it is not clear from the statement the impact the Regulations have on the Assembly's legislative competence and/or the Welsh Minister's executive competence.
The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

As it is unclear from the Welsh Government's statement dated 27 November 2018 the impact the Regulations may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to assess whether any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018**

DATE **27 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

The law which is being amended
The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

- Directive 2008/50/EC
- Directive 2004/107/EC
- Directive 2004/42/EC

Domestic Legislation

- The Air Quality Standards Regulations 2010
- Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012
- the National Emission Ceilings Regulations 2018

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The protection of air quality falls within competence.

The purpose of the amendments
This SI (negative procedure) will ensure that it continues to operate effectively following withdrawal of the United Kingdom from the European Union (EU). This includes addressing deficiencies, such as references to EU authorities (e.g. the Commission) being replaced with domestic equivalents

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-air-quality-miscellaneous-amendment-and-revocation-of-retained-direct-eu-legislation-eu-exit-regulations-2018

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

Laid in the UK Parliament: 22 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	4 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	10 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

The Regulations amend retained direct EU legislation relating to air quality, to ensure that it continues to operate effectively following withdrawal of the United Kingdom for the European Union. This includes addressing deficiencies, such as references to EU authorities (e.g. the Commission) being replaced with domestic equivalents.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 27 November 2018 regarding the effect of these Regulations:

1. The reference within the statement to the law which is amended by the Regulations is incorrect. The Regulations amend and revoke the following retained direct EU legislation:-

- Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register
- Decision 2004/279/EC concerning guidance for implementation of Directive 2002/3/EC of the European Parliament and of the Council relating to ozone in ambient air
- Decision 2011/850/EU laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality
- Decision 2012/115/EU laying down rules concerning the transitional national plans referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2012/134/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the manufacture of glass
- Decision 2012/135/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for iron and steel production 2
- Decision 2012/249/EU concerning the determination of start-up and shut-down periods for the purposes of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2013/84/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the tanning of hides and skins
- Decision 2013/163/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the production of cement, lime and magnesium oxide
- Decision 2013/732/EU establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the production of chlor-alkali
- Decision 2014/687/EU establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of pulp, paper and board
- Decision 2014/738/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the refining of mineral oil and gas

- Decision 2014/768/EU establishing the type, format and frequency of information to be made available by the Member States on integrated emissions management techniques applied in mineral oil and gas refineries, pursuant to Directive 2010/75/EU of the European Parliament and of the Council
- Decision 2015/6674/EU establishing a common format for the submission of Member State reports on the implementation of Directive 2004/42/EC of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products
- Decision 2015/2119/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of wood-based panels
- Decision 2016/902/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for common waste water and waste gas treatment/management systems in the chemical sector
- Decision 2016/1032/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the non-ferrous metals industries
- Decision 2017/302/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the intensive rearing of poultry or pigs
- Decision 2017/1442/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants
- Decision 2017/2117/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of large volume organic chemicals
- Decision 2018/1135/EU establishing the type, format and frequency of information to be made available by the Member States for the purposes of reporting on the implementation of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2018/1147/EU establishing best available techniques (BAT) conclusions for waste treatment, under Directive 2010/75/EU of the European Parliament and of the Council 3
- Decision 2018/1522 laying down a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants
- Annex 20 to EEA agreement

2. In addition it is not clear from the statement the impact the Regulations have on the Assembly's legislative competence and/or the Welsh Minister's executive competence.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

As it is unclear from the Welsh Government's statement dated 27 November 2018 the impact the Regulations may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to assess whether any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The CRC Energy Efficiency Scheme (Amendment) (EU Exit) Regulations 2018**

DATE **27 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The CRC Energy Efficiency Scheme (Amendment) (EU Exit) Regulations 2018

The 2018 Regulations contain provisions which fall within devolved competence; these provisions amend the following legislation.

Domestic Legislation

- CRC Energy Efficiency Scheme Order 2013

The SIs impact in relation to Wales:
In terms of the SIs impact in Wales, it makes minor technical amendments to an emissions trading scheme in respect of greenhouse gases.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The SIs (where relevant) to Wales are within devolved competence, however, in these exceptional circumstances when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principal is that it appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments.

The purpose of the amendments
The European Union Withdrawal Act 2018 ('EUWA') will allow EU-derived legislation to be fixed to ensure it operates properly and effectively once the UK has left the EU.

These amendments address deficiencies arising from the exit of the UK from the EU. This instrument amends provisions which will for example, become inappropriate or redundant.

After exit, without amendment the relevant EU law would not operate properly to such an extent that powers to continue carrying out statutory functions could be put in doubt.

This instrument amends the relevant legislation to ensure that existing protections and regulatory frameworks are maintained and continue to work in the same way once the UK

has left the EU.

The SI and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-crc-energy-efficiency-scheme-amendment-eu-exit-regulations-2018

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

The CRC Energy Efficiency Scheme (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 22 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	4 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	10 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government under section 8(1) of the European Union (Withdrawal) Act 2018.

These Regulations make amendments to legislation relating to the Carbon Reduction Commitment (CRC) legislation and, in particular, provide for the continuation, across the United Kingdom, after exit day of exemptions applicable immediately before exit day.

Legal Advisers agree with the statement laid by the Welsh Government dated 27 November 2018 regarding the effect of these Regulations.
The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Justification Decision Powers (EU Exit) Regulations 2018**
DATE	**28 November 2018**
BY	**Julie James AM, Leader of the House and Chief Whip**

The Justification Decision Powers (EU Exit) Regulations 2018

The [retained EU] Law which is being amended
The Justification of Practices Involving Ionising Radiation Regulations 2004

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
The SI (where relevant) to Wales are within devolved competence, however, in these exceptional circumstances when we are required to consider and correct an unprecedented volume of legislation within a tight timeframe and with finite resources, the Welsh Government's general principal is that it appropriate that we ask the UK Government to legislate on our behalf in a large number of statutory instruments.

The purpose of the amendments
The Justification decision powers (EU Exit) Regulations 2018 provides the Secretary of State and Devolved Administrations with a replacement power to make justification decisions in the form of regulations in respect of classes and types of practices involving ionising radiation for the purposes of the Justification of Practices Involving Ionising Radiation Regulations 2004.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://beta.parliament.uk/statutory-instruments/v4pTq3gi

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Justification Decision Powers (EU Exit) Regulations 2018

Laid in the UK Parliament: 23 November 2018

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 3 December 2018
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to of the European Union (Withdrawal) Act 2018.

These regulations provides the Secretary of State and the Devolved Administrations with a replacement power to make justification decisions in the form of regulations in respect of classes and types of practices involving ionising radiation for the purposes of the Justification of Practices Involving Ionising Radiation Regulations 2004. The powers to make regulations for this purpose will no longer be available once the European Communities Act 1972 is repealed. The Regulations do not enact any new policy.

Legal Advisers agree with the statement laid by the Welsh Government dated 28 November 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**The Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residues Limits) (Amendment etc.) (EU Exit) Regulations 2018**
DATE	**28 November 2018**
BY	**Julie James AM, Leader of the House and Chief Whip**

The Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residues Limits) (Amendment etc.) (EU Exit) Regulations 2018

The law which is being amended

A list of the EU Regulations being amended

- Commission Regulation (EC) No 2017/880
- Commission Implementing Regulation (EU) No 2017/12
- Commission Regulation (EC) No 2018/782
- Regulation (EC) No 470/2009
- Regulation (EC) No 37/2010

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The National Assembly for Wales has legislative competence in relation to Food Safety. Functions in relation to Regulation 470/2009, Commission Implementing Regulation 2017/12 and Commission Regulation 2018/782 have been conferred on the Secretary of State alone.

Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government**.**

The purpose of the amendments

The 2018 Regulations (negative procedure) ensure that the veterinary medicines framework continues to operate effectively once we leave the EU, and that we can continue to operate

a residues surveillance programme covering the same objectives. The changes made by the instrument are necessary to ensure that retained EU legislation and the domestic legislation enforcing it continue to operate effectively.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-veterinary-medicines-and-animals-and-animal-products-examination-of-residues-and-maximum-residues-limits-amendment-etc-eu-exit-regulations-2018

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residues Limits) (Amendment etc.) (EU Exit) Regulations 2018

Laid in the UK Parliament: 26 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	11 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	12 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations help to ensure that the veterinary medicines framework continues to operate effectively once we leave the EU, and that the UK can continue to operate a residues surveillance programme covering the same objectives. The changes made by the Regulations are being made to ensure that retained EU legislation and the domestic legislation enforcing it continue to operate effectively.

Legal Advisers agree with the statement laid by the Welsh Government dated 28 November 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Trade in Animals and Related Products (Amendment etc.) (EU Exit) Regulations 2018**

DATE **29 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Trade in Animals and Related Products (Amendment etc.) (EU Exit) Regulations 2018

The law which is being amended

Domestic legislation

- Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974 (UK)
- Artificial Insemination of Pigs (EEC) Regulations 1992 (UK)
- Animals (Post-Import Control) Order 1995 (England, Scotland and Wales)
- Bovine Embryo (Collection, Production and Transfer) Regulations 1995 (UK)
- Non-Commercial Movement of Pet Animals Order 2011 (England and Wales)

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The amendments are to be made by the Secretary of State in relation to UK or GB wide legislation in relation to which the Welsh Ministers have executive functions and the subject matter of the legislation, namely the movement of animals and preventive health measures that apply to the movement of animals in relation to Wales is within the legislative competence of the National Assembly.

The purpose of the amendments

The Trade in Animals and Related Products (Amendment etc.) (EU Exit) Regulations 2018 make corrections that allow national and domestic legislation to be operable once the UK leaves the EU by replacing references where necessary for example omitting the definition of "intra-Area trade"" and defining "national trade" as "trade within Great Britain" and by appropriately referencing retained EU law, using powers under the Withdrawal Act. The instrument makes no policy changes.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-trade-in-animals-and-related-products-amendment-eu-exit-regulations-2018

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. This is in line with the principles for correcting agreed by the Cabinet Sub-Committee on European Transition in May.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Trade in Animals and Related Products (Amendment etc.) (EU Exit) Regulations 2018

Laid in the UK Parliament: 27 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	11 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	13 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations make a series of technical and corrective amendments to seven EU-derived domestic statutory instruments (two applying to England only) relating to the import of live animals, products of animal origin, germplasm (semen, ova and embryos) and the non-commercial movement of pet animals and equines.

The explanatory memorandum to the Regulations confirms that the amendments deal with deficiencies in retained EU law arising out of the UK's departure from the European Union, and are being made to avoid any legislative hindrances to trade in these agricultural matters with the EU following the UK's exit. The Regulations do not enact any new policy.

Legal Advisers agree with the statement laid by the Welsh Government dated 29 November 2018 regarding the effect of these Regulations.
The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Protocol 1 to the EEA Agreement (Amendment) (EU Exit) Regulations 2018**

DATE **30 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Protocol 1 to the EEA Agreement (Amendment) (EU Exit) Regulations 2018

The retained EU Law which is being amended
Protocol 1 to the EEA Agreement

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence
This SI has no impact on the Assembly's legislative competence nor on the Welsh Ministers' executive competence

The purpose of the amendments
The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to Protocol 1 to the EEA Agreement, a mechanism by which EU law is currently applied to, and in, the EEA EFTA states.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-protocol-1-to-the-eea-agreement-amendment-eu-exit-regulations-2018

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Protocol 1 to the EEA Agreement (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 29 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	11 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	18 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of the European Union (Withdrawal) Act 2018.

This instrument makes limited technical legal amendments to Protocol 1 to the EEA Agreement, a mechanism by which EU law is currently applied to and in the EEA EFTA states. On exit day, Protocol 1 will migrate onto the domestic statute book and become part of the new body of domestic law known as 'retained direct EU legislation' ("RDEUL").

To make sure that Protocol 1 functions properly after exit, this instrument makes a number of amendments to it to make clear that Protocol 1 only applies to the EU law, incorporated into the EEA Annexes, that forms part of RDEUL; that any obligation owed to or any right conferred on EU Member States, their public entities, undertakings or individuals, is also owed to or conferred on EEA EFTA states, their competent authorities,

public entities, undertakings or individuals; and that certain redundant provisions are removed.

The amendments to Protocol 1 clarify that Protocol 1, as it forms part of domestic law, only applies to the EU law, incorporated into the EEA Annexes, which forms part of RDEUL. This means that Protocol 1 will no longer impose obligations on or within EEA EFTA states, the Commission, EEA Surveillance Authority or Joint Committee given that RDEUL cannot enforce obligations on any third party outside of the UK.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 30 November 2018 regarding the effect of these Regulations:
Paragraph 10.2 of the Explanatory Memorandum states that as per the Intergovernmental Agreement on the European Union (Withdrawal) Act 2018 ("EUWA"), the Welsh Government was consulted with regard to these Regulations. Consent from the Welsh Government to the UK Government was given in a letter by Mark Drakeford AM dated 27 November 2018. Notwithstanding the requirement to consult, the Welsh Government's statement does not identify which legislative powers of the Assembly or executive powers of the Welsh Ministers are affected by this instrument. In fact, the instrument appears to relate to non-devolved areas. Legal Advisors recommend that clarification is sought on which devolved powers are affected.

While the Welsh Government's statement indicates that there is no divergence between the Welsh Government and UK Government on the policy for the correction, the statement fails to highlight to what degree devolved areas are affected by this instrument, and the extent to which consent was needed from the Welsh Government. The statement only says that consent was given for reasons of efficiency, expediency and due to the technical nature of the amendments.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Common Fisheries Policy (Amendment etc) (EU Exit) Regulations 2018**

DATE **30 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Common Fisheries Policy (Amendment etc) (EU Exit) Regulations 2018

The 2018 Regulations amend and revoke EU directly applicable legislation within the field of the Common Fisheries Policy.

European Directly Applicable Instruments amended by the 2018 Regulations

1. Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy
2. Council Regulation (EC) No 1224/2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy
3. Commission Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy
4. Council Regulation (EC) No 1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish
5. Commission Regulation (EU) No 724/2010 laying down detailed rules for the implementation of real-time closures of certain fisheries in the North Sea and Skagerrak
6. Commission Implementing Regulation (EU) 2017/218 on the Union fishing fleet register
7. Regulation (EU) 2017/2403 of the European Parliament and of the Council on the sustainable management of external fishing fleets
8. Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing
9. Commission Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing
10. Council Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing
11. Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community

system to prevent, deter and eliminate illegal, unreported and unregulated fishing
12. Regulation (EU) No 1026/2012 of the European Parliament and of the Council on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing
13. Council Regulation (EC) No 1100/2007 establishing measures for the recovery of the stock of European Eel
14. Council Regulation (EC) No 1954/2003 on the management of the fishing effort relating to certain Community fishing areas and resources
15. Regulation (EU) 2017/1004 of the European Parliament and of the Council on the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy
16. Commission Implementing Decision (EU) 2016/1251 adopting a multiannual Union programme for the collection, management and use of data in the fisheries and aquaculture sectors for the period 2017-2019
17. Regulation (EC) No 218/2009 of the European Parliament and of the Council on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic
18. Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products
19. Council Regulation (EEC) No 2136/89 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products
20. Council Regulation (EEC) No 1536/92 laying down common marketing standards for preserved tuna and bonito
21. Commission Implementing Regulation (EU) No 1418/2013 concerning production and marketing plans pursuant to Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products
22. Commission Implementing Regulation (EU) No 1419/2013 concerning the recognition of producer organisations and inter-branch organisations, the extension of the rules of producer organisations and inter-branch organisations and the publication of trigger prices as provided for by Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products
23. Council Regulation (EC) No 734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears
24. Regulation (EU) 2016/2336 of the European Parliament and of the Council establishing specific conditions for fishing for deep sea stocks in the north-east Atlantic and provisions for fishing in international waters of the north-east Atlantic
25. Regulation (EU) 2017/1130 of the European Parliament and of the Council defining characteristics for fishing vessels
26. Commission Decision 95/84/EC concerning the implementation of the Annex to Council Regulation (EEC) No 2930/86 defining the characteristics of fishing vessels
27. Commission Regulation (EEC) No 954/87 on sampling of catches for the purpose of determining the percentage of target species and protected species when fishing with small-meshed nets

28. Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund
29. Commission Delegated Regulation (EU) 2015/288 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the period of time and the dates for the inadmissibility of applications
30. Commission Delegated Regulation (EU) 2015/531 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council by identifying the costs eligible for support from the European Maritime and Fisheries Fund in order to improve hygiene, health, safety and working conditions of fishermen, protect and restore marine biodiversity and ecosystems, mitigate climate change and increase the energy efficiency of fishing vessels.
31. Commission Implementing Decision C(2015) 8628 on approving the operational programme “European Maritime and Fisheries Fund – Operational Programme for the United Kingdom” for support from the European Maritime and Fisheries Fund in the United Kingdom

Revocations set out in the 2018 Regulations

1. Commission Regulation (EEC) No 2166/83 establishing a licencing system for certain fisheries in an area north of Scotland (Shetland area).
2. Council Regulation (EC) No 847/96 introducing additional conditions for year-to-year management of TACs and quotas.
3. Council Regulation (EC) No 882/2003 establishing a tuna tracking and verification system.
4. Council Regulation (EC) No 1415/2004 fixing the maximum annual fishing effort for certain fishing areas and fisheries.
5. Commission Regulation (EC) No 2103/2004 concerning the transmission of data on certain fisheries in western waters and the Baltic Sea.
6. Council Regulation (EC) No 768/2005 establishing a Community Fisheries Control Agency.
7. Council Regulation (EC) No 764/2006 on the conclusion of the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco.
8. Council Regulation (EC) No 509/2007 establishing a multiannual plan for the sustainable exploitation of the stock of sole in the Western Channel.
9. Commission Regulation (EC) No 665/2008 laying down detailed rules for the application of Council Regulation (EC) No 199/2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy.
10. Commission Regulation (EC) No 1078/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006.
11. Commission Regulation (EU) No 201/2010 laying down detailed rules for the implementation of Council Regulation (EC) No 1006/208 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters.
12. Council Regulation (EU) No 779/2011 concerning the allocation of the fishing opportunities under the Protocol between the European Union and the Kingdom of Morocco.

13. Regulation (EU) No 1343/2011 of the European Parliament and of the Council on certain provisions for fishing in the General Fisheries Commission for the Mediterranean Agreement area.
14. Council Regulation (EU) No 1270/2013 on the allocation of fishing opportunities under the Protocol between the European Union and the Kingdom of Morocco.
15. Commission Implementing Decision 2014/372/EU setting out the annual breakdown by Member State of the global resources of the European Maritime and Fisheries Fund available in the framework of shared management for the period 2014-2020.
16. Commission Implementing Decision 2014/464/EU identifying the priorities of the Union for enforcement and control policy in the framework of the European Maritime and Fisheries Fund.
17. Commission Implementing Regulation (EU) 763/2014 laying down rules for applying Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the technical characteristics of information and publicity measures and instructions for creating the Union emblem.
18. Commission Implementing Regulation (EU) No 771/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the model for operational programmes, the structure of the plans for compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions, the model for the transmission of financial data, the content of the ex ante evaluation reports and the minimum requirements for the evaluation plan to be submitted under the European Maritime and Fisheries Fund.
19. Commission Implementing Regulation (EU) No 902/2014 amending Council Regulation (EC) 1415/2004 as regards the adaptation for the United Kingdom of the maximum annual fishing effort in certain fishing areas.
20. Commission Delegated Regulation (EU) No 1014/2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the content and construction of a common monitoring and evaluation system for the operations funded under the European Maritime and Fisheries Fund.
21. Commission Delegated Regulation (EU) No 1046/2014 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regards to the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions.
22. Commission Implementing Regulation (EU) No 1242/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the presentation of relevant cumulative data on operations.
23. Commission Implementing Regulation (EU) No 1243/2014 laying down rules pursuant to Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund with regard to the information to be sent by Member States, as well as on data needs and synergies between potential data sources.

24. Commission Implementing Regulation (EU) No 1362/2014 laying down rules on a simplified procedure for the approval of certain amendments to operational programmes financed under the European Maritime and Fisheries Fund and rules concerning the format and presentation of the annual reports on the implementation of those programmes.
25. Commission Delegated Regulation (EU) 2015/852 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council as regards the cases of non-compliance and the cases of serious non-compliance with the rules of the Common Fisheries Policy that may lead to an interruption of a payment deadline or suspension of payments under the European Maritime and Fisheries Fund.
26. Commission Delegated Regulation (EU) 2015/1930 supplementing Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund as regards the criteria for establishing the level of financial corrections and for applying flat rate financial corrections.
27. Commission Delegated Regulation (EU) 2015/2252 amending Delegated Regulation (EU) 2015/288 as regards the period of inadmissibility of applications for support from the European Maritime and Fisheries Fund.
28. Commission Implementing Decision (EU) 2016/1701 laying down rules on the format for the submission of work plans for data collection in the fisheries and aquaculture sectors.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The National Assembly for Wales possesses legislative competence for fisheries management in relation to Wales (which includes the territorial sea out to 12nm). Welsh Ministers have executive competence for fisheries management across Wales, the Welsh zone and Welsh fishing boats beyond that Zone.

For the majority of functions under the 2018 Regulations, the Welsh Ministers will become the 'fisheries administration' for Wales, the Welsh zone and Welsh fishing boats beyond the Welsh zone.

However, the 2018 Regulations transfer limited functions solely to the Secretary of State, in areas where it has been considered necessary for maintaining a UK-wide system such as the UK Fishing Fleet Register, the UK Fishing Vessels Register and a UK Register for Illegal, Unreported and Unregulated fishing.

Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

The purpose of the amendments

This negative procedure SI addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

The 2018 Regulations makes a number of corrections to retained EU law, which are necessary to preserve the underpinning legislation in regards to the Common Fisheries

Policy (CFP). It will ensure rules contained within the suite of CFP EU legislation can continue to work across the UK once the UK leaves the EU.

The 2018 Regulations make the minimum necessary technical fixes to address deficiencies within the CFP, and are necessary to ensure that the rules contained in the CFP continue to operate effectively, so that fishing within UK waters continues to be regulated in a sustainable manner. These regulations impose the rules of the CFP on UK vessels wherever they are, subject to different rules stemming from international agreements, and all vessels within UK waters.

No substantive changes are made to the effect of the CFP and no change to the way in which fishers conduct their activities is expected. The majority of the functions which are currently carried out by EU bodies will be carried out by the fisheries administrations, which for Wales, the Welsh zone and Welsh fishing boats beyond this zone is the Welsh Ministers.

The 2018 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-common-fisheries-policy-amendment-etc-eu-exit-regulations-2018

Why consent was given
Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Common Fisheries Policy (Amendment etc) (EU Exit) Regulations 2018

Laid in the UK Parliament: 27 November 2018

Sifting	
Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	11 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known
Date sifting period ends in UK Parliament	13 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required
Scrutiny procedure	
Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The EU's Common Fisheries Policy (CFP) regulates fishing activities and the enforcement of those activities in UK waters. The CFP comprises approximately 100 EU Regulations which impose a common approach to the sustainable management of fisheries across the EU and its waters. The Regulations have direct effect in UK law.

These Regulations make technical amendments to address deficiencies within CFP legislation.

Legal Advisers agree with the statement laid by the Welsh Government dated 30 November 2018 regarding the effect of these Regulations.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Submission and Publication of the Law Commission's Final Report on Planning Law in Wales**
DATE	**3 December 2018**
BY	**Lesley Griffiths AM, Cabinet Secretary for Energy, Planning and Rural Affairs**

Consolidating, modernising and simplifying Welsh planning legislation is essential to ensure the law underpinning the planning system is made to work for the specific needs of Wales, allowing all stakeholders operating and using the system to clearly access and understand the law directly affecting them.

The Law Commission for England and Wales was commissioned by the Welsh Government to undertake a detailed review of this substantial and complex area of law, with the aim of simplifying and consolidating the legislation. In order to inform their review, the Law Commission undertook two public consultation exercises. Views were sought on their scoping paper (June 2016), which set out their provisional views, and on their substantial consultation paper (November 2017) setting out their detailed proposals.

Today, I have received the Law Commission's final report which, following detailed consideration of the issues and extensive consultation, sets out comprehensive recommendations for my consideration. I am pleased to lay before the Assembly today a copy of their report 'Planning Law in Wales: Final Report', which has also been published by the Law Commission on their website:

https://www.lawcom.gov.uk/project/planning-law-in-wales/

I wish to express my thanks to the Law Commission for undertaking this significant review, which will provide an important evidence base for us to start the process of simplifying and consolidating planning legislation.

Detailed consideration will now be given to each recommendation, with a view of producing a Government response to the final report. In accordance with the protocol agreed between the Welsh Government and the Law Commission on 2 July 2015, an interim Government response will be provided within 6 months of its submission and publication, with a detailed response to be provided within 12 months. In formulating this response I will be working closely with my Ministerial colleagues where they have policy responsibilities or interests in some of the recommended changes.

Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

Rt Hon Carwyn Jones AM
First Minister of Wales
Welsh Government
Cardiff Bay
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Your ref:
Our ref: EJ/CE

4 December 2018

Dear Carwyn

At the Chairs' Forum meeting, on 28 November 2018, we discussed the role of the Assembly and its committees in scrutinising Brexit-related legislation. Chairs raised an emerging concern about the role of the Assembly in the process of legislating for Brexit.

Chairs reported that the Welsh Government has sought delegated powers for Welsh Ministers in a number of Brexit-related UK Bills, rather than bringing forward its own Bills for scrutiny by the Assembly. In terms of the subordinate legislation needed to correct the statute book ahead of leaving the European Union, I understand that you have agreed to a significant proportion of this legislation being made by UK Ministers, using concurrent powers on behalf of Welsh Ministers.

Whilst I, and the Chairs' Forum, understand that you have made these decisions on the grounds of efficiency for the governments involved in the process, the concern expressed by Chairs is that this comes at a cost of the Assembly's role and therefore Members' ability to effectively represent the interests of the people of Wales in the process of legislating for Brexit.

In representing the views expressed to me by Chairs, and acting in the interests of the Assembly's position in the Brexit process, I have concerns that the cumulative effect of these Welsh Government decisions is an inadvertent bypassing of the Assembly's role.

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Elin Jones AM, Presiding Officer
National Assembly for Wales

I am sure that you would agree that the scrutiny of legislation that falls within the competence of the Assembly or Welsh Ministers, particularly relating to important areas of policy affecting citizens, benefits from far greater Wales-specific scrutiny when considered by the Assembly.

The limited opportunity for scrutiny offered by legislative consent conventions and associated procedures is incomparable with the Assembly's full legislative scrutiny processes.

Further, legislative scrutiny by the Assembly offers a more accessible and transparent process for Welsh stakeholders and the public, and also ensures the law is made in both of our official languages.

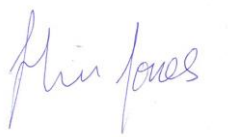
Just as you have striven to ensure a role for the Welsh Government in the Brexit process, I must ensure that the Assembly, and its Members, are enabled to play the full role they were elected to perform.

I understand that Assembly committees are planning to undertake further work in this area and I am sure that they will continue to raise issues with you and the Welsh Ministers.

In the meantime, I ask that you consider the concerns that have been raised and I would be grateful for your thoughts on how you might ensure that the Welsh Government does all it can to enable the Assembly to play its full part in legislating for Brexit.

I have copied this letter to Chairs of the Assembly's committees, the Leader of the House, and the Cabinet Secretary for Finance (in light of his role in the Brexit process).

Yours sincerely



Elin Jones AM
Llywydd

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Rt Hon Carwyn Jones AM
First Minister of Wales

13 November 2018

Dear Carwyn,

Composite and Joint Statutory Instruments

I am writing in relation to an issue which was first raised by you with the Constitutional and Legislative Affairs Committee of the Fourth Assembly (the Fourth Assembly Committee), namely the making of composite and joint statutory instruments which laid are before the National Assembly for Wales and the Houses of Parliament.

In your letter of 1 November 2011 to the Chair of the Fourth Assembly Committee you stated "the UK Parliament will not scrutinise general statutory instruments in languages other than in English." This line of argument has been used in response to many of our subsequent reports, most recently by the Cabinet Secretary for Energy, Planning and Rural Affairs (letter enclosed).

You will be aware that we have continued to report to the National Assembly, in line with Standing Orders, where such composite or joint statutory instruments are not laid in both the English and Welsh languages. In January, I wrote to Mr Charles Walker MP, the Chair of the House of Commons Procedure Committee to seek clarification on whether there are any barriers to bilingual joint or composite instruments being laid in the House of Commons.

In doing so, I highlighted the fact that we were aware of composite statutory instruments laid before both the National Assembly and the UK Parliament in English only but which nevertheless included some Welsh language text – for example, The Conservation of Habitats and Species Regulations 2017 (SI 2017 No.1012). I also drew attention to the European Qualifications (Health and Social Care Professions) Regulations 2016 (SI 2016 No.1030), made by the UK Government that uses Henry VIII powers to amend a bilingual

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Act of the Assembly which, as a consequence, contains many pages of Welsh language text.

On 25 October I received a reply from Mr Walker, in which he states:

> "House of Commons officials have considered the matter in detail and advise me that there is no bar in the standing orders, resolutions or practice of the House to prohibit the laying of general statutory instruments before the House of Commons in a bilingual form."

Mr Walker suggests it would be, in the first instance, the responsibility of the drafting department to vouch for the accuracy of any drafting in a language other than English which is to have statutory effect.

I would be grateful for your observations and views on the implications this will have for preparation of future joint and composite statutory instruments, by 28 November 2018.

My letter to Mr Walker and his reply are enclosed.

This letter is copied to Jeremy Miles AM, Counsel General for Wales.

Yours sincerely,

Mick Antoniw
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

Enclosed – Letter from the Cabinet Secretary for Environment, Planning and Rural Affairs, 16 October 2018; Letter to the Chair of the House of Commons Procedure Committee, 15 January 2018; Letter from the Chair of the House of Commons Procedure Committee, 25 October 2018

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

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16 October 2018

Dear Mick

Thank you for your letter of 8 October regarding the Food and Rural Affairs (Miscellaneous Revocations) Regulations. It is with apologies that a statement was not included within the Explanatory Memorandum in relation to why the Statutory Instrument was not made bilingually. As you note it is the Welsh Government's general practice to include this information in the Explanatory Memorandum; this was merely an unintentional oversight on this occasion. I will ensure officials are aware the Committee expects to see this information in the Explanatory Memorandum.

These Regulations were made on a composite basis; and were drafted by the UK Government. Composite statutory instruments are not made bilingually, as Parliament will not consider statutory instruments drafted in any language other than English. It was therefore not considered reasonable or practical to provide this instrument in the Welsh language.

Regards

Lesley

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

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National Assembly for Wales
Constitutional and Legislative Affairs Committee

Charles Walker MP
Chair of the Procedure Committee
House of Commons

15 January 2018

Dear Charles

Composite and Joint Statutory Instruments

We often scrutinise as part of our formal role, composite and joint statutory instruments that have been laid before the National Assembly, as well as the House of Commons and House of Lords.

Such statutory instruments will impact on communities across Wales and they can relate to important areas such as the environment, health, social care and water supply and road traffic enforcement.

On every statutory instrument laid before the National Assembly, we are obliged by the requirements of our Standing Orders to report if such instruments are not laid in both the English and Welsh languages. Composite and joint instruments are always laid by the Welsh Ministers in English only and therefore we report to the National Assembly on that basis.

In a letter to our predecessor committee in November 2011, the First Minister said that composite instruments are laid only in English because the UK Parliament will not scrutinise general statutory instruments in languages other than English.

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Recent examples of composite statutory instruments that we have scrutinised and that are not made bilingually, include:

- The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution (Amendment) Order 2017 (SI 2017 No. 959)

  The Explanatory Memorandum that accompanied the Order stated that, "as a Composite Order, the Instrument will not be bilingual and this position has been confirmed previously by the First Minister, to the Constitutional and Legislative Affairs Committee."

- The Water Abstraction (Transitional Provisions) Regulations 2017 (SI 2017 No. 1047)

  The Explanatory Memoranda that accompanied this statutory instrument indicated that as it applies to both England and Wales, and is subject to approval by the National Assembly and by Parliament, it is therefore not considered reasonably practicable for it to be made bilingually.

We are also aware of composite statutory instruments laid before both the National Assembly and the UK Parliament in English only but which nevertheless do include some Welsh language text. For example, The Conservation of Habitats and Species Regulations 2017 (SI 2017 1012) and The Environmental Permitting (England and Wales) (Amendment) Regulations 2018 (not yet made).

In addition, we have become aware of a statutory instrument—the European Qualifications (Health and Social Care Professions) Regulations 2016 (SI 2016 No. 1030)—made by the UK Government that uses Henry VIII powers to amend a bilingual Act of the Assembly and as consequence contains many pages of Welsh language text.

Some of these instruments are therefore examples of the UK Parliament scrutinising statutory instruments that contain the Welsh language.

In the circumstances I would be grateful if you could confirm whether there are any barriers to bilingual joint or composite statutory instruments being laid in the House of Commons.

This is of course important in the context of the UK's exit from the EU and the scrutiny of subordinate legislation made by UK Ministers arising from the EU (Withdrawal) Bill, whether acting alone in devolved areas under Clause 7 powers or jointly with the Welsh Ministers in devolved areas under Schedule 2 powers.

I am sending similar letters to the Chairs of the Statutory Instruments Committee (House of Commons), the Secondary Legislation Scrutiny Committee (House of Lords) and the Joint Committee on Statutory Instruments.

I look forward to hearing from you soon.

Yours sincerely

Mick Antoniw
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

Procedure Committee
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From Charles Walker OBE MP, Chair of the Committee

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
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25th October 2018

Composite and Joint Statutory Instruments

Thank you for your letter of 15 January. I must first of all apologise for the long time it has taken to reply to you.

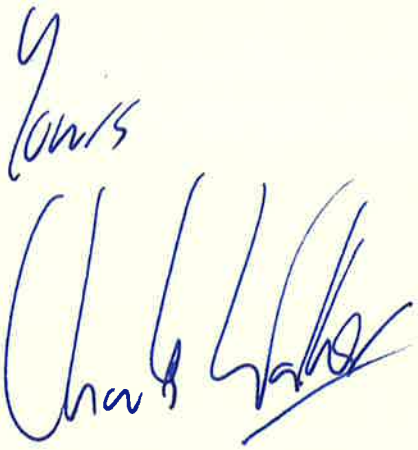
I am not party to the advice which formed the basis of the then First Minister's assertion to your predecessor Committee to the effect that the UK Parliament "will not scrutinise general statutory instruments in languages other than English.". I understand that the Welsh Government maintains this position and has recently reasserted it.

House of Commons officials have considered the matter in detail and advise me that there is no bar in the standing orders, resolutions or practice of the House to prohibit the laying of general statutory instruments before the House of Commons in a bilingual form. Where there is a statutory requirement to lay material before the House in both languages, or where the Welsh is required in part of the material, it seems odd to assert, as the Welsh Government seems to, that the House of Commons will not scrutinise such material: the principal purpose of requiring such material to be laid is surely to allow it to be examined by parliamentarians as well as to make it available to the general public.

It would in the first instance be the responsibility of the drafting Department to vouch for the accuracy of any drafting in a language other than English which is to have statutory effect.

I cannot of course speak for the current practices of committees of this House which undertake scrutiny of delegated legislation: the degree to which such instruments are examined in detail will depend on the composition of the committees and their staff. You will no doubt be aware of the case where the Joint Committee on Statutory Instruments reported a defect in the Registration of Marriages (Amendment) Regulations 1997 on the grounds of material discrepancies between the English and Welsh forms of the Regulations: the discrepancy was discovered as a result of a close reading of both texts by a Welsh-speaking member of the Committee.

Should the Welsh Government require clarification as to the practices of the House of Commons regarding the laying of papers in languages other than English, and of committees in scrutinising bilingual instruments, I am sure that the officials of the House of Commons Service would be happy to assist.



Charles Walker OBE MP

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair
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28 November 2018

Dear Mick

I am writing in response to your letter of 13 November 2018 regarding composite and joint statutory instruments which are laid before the National Assembly for Wales and the Houses of Parliament but are not laid in both English and Welsh. As requested, I set out our position and some observations below.

There is an important distinction to make between two types of legislation:

1. Legislation which consists of two distinct texts in English and Welsh, where both texts have equal status in law.

2. Legislation that consists of a single English text, but within which provisions contain amendments to texts of legislation in the first category above; i.e. to an instrument, Act or Measure which has both English and Welsh versions, and thus contains some Welsh language text.

Both categories have been described by some as “bilingual” however, the Welsh Government considers only the first category to be bilingual. I believe the National Assembly shares this view, as your committee reports on joint and composite statutory instruments not being made bilingually, as required by the Assembly’s Standing Orders.

The Welsh Government acknowledges that in the UK Parliament the use of Welsh text where necessary, in otherwise monolingual English language primary and secondary law, is very well established. Your letter, and that of Mr Charles Walker, provide just a few examples of such cases.

However, we have always understood it was not possible to lay a statutory instrument before Parliament when the **primary** language was not English – i.e. it would not be

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possible to lay the Welsh version of a bilingual statutory instrument. Thus, if a joint or composite statutory instrument was drafted bilingually, the Welsh text could not be laid and would not then be scrutinised.

It is this understanding which led to the statement in my letter of November 2011 and is the basis of the Welsh Government's usual response to your committee's reports about monolingual joint and composite statutory instruments.

I note that in a discussion about this matter on 9 March 2015, your predecessor committee heard it had been advised by the Clerk of the House of Commons that the translation of a statutory instrument could be laid, potentially as a Command Paper, but it would not technically be part of the legislation. This appeared to confirm our understanding.

Mr Walker's letter refers to the possibility of laying bilingual legislation in the Houses of Commons, however it is not clear what definition of "bilingual" is being applied or the status that would be accorded to the document.

Whilst it may be initially attractive to consider laying the Welsh text of a statutory instrument as a Command Paper, this would accord it similar status to an explanatory memorandum or impact assessment rather than the equal status accorded to it by the Government of Wales Act. I am advised this could call into question the legal status of the Welsh text of the instrument, should the Houses of Parliament approve or annul only the English-language text of the statutory instrument.

The Welsh Government considers joint and composite instruments to be the correct approach in certain circumstances, for example where we are required by law to make an instrument in this manner, we do not have the vires to make full provision because of the way powers have been devolved or we wish to ensure consistency in approach and timing where there are significant cross-border operational overlaps. However, we recognise that in taking this approach we are striking a difficult balance between the accessibility of the law in terms of the Welsh language with the accessibility of the law in terms of having all the relevant provisions across territorial boundaries in a single instrument. Therefore, in many cases a number of provisions of a joint and composite statutory instrument only apply in England, or indeed Scotland or Northern Ireland. If such instruments were to be bilingual, the drafting department would be required to translate legislation into a language which is not relevant to the territory in which it applies.

I hope these observations assist with your consideration of this issue. I am copying this letter to the Counsel General.

Yours sincerely

CARWYN JONES

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport

Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Mick Antoniw AC
Chair
Constitution and Legislative Affairs Committee

6 December 2018

Dear Mick,

I am writing in response to the Constitution and Legislative Affairs Committee's report, *Scrutiny of regulations made under the Trade Bill*, published on 8 October. Although the report focuses specifically on the Trade Bill, which relates to my portfolio responsibilities, it raises wider issues relating to Brexit-related legislation. In responding to the report, I set out the Welsh Government's view in relation to these broader points.

Recommendations one to five and seven in the report relate to the committee's view that regulations made under clause 1 of the Trade Bill should be subject to the sifting mechanism included in the European Union (Withdrawal) Act 2018 (the 2018 Act). Our response to these recommendations is addressed below.

The sifting mechanism introduced under the 2018 Act was a solution identified to address a very particular set of circumstances. The Welsh Government has no objection in principle to an enhanced role for legislatures when circumstances warrant it. However, we do not see that clause 1 of the Trade Bill meets the threshold.

The Welsh Government's view is that sifting is appropriate in relation to subordinate legislation flowing from Brexit primary legislation in cases where the power:

a) is very broad in scope;
b) can be exercised concurrently or jointly by UK and Welsh Ministers;
c) can be used to amend primary legislation; and
d) is subject to the executive's choice of procedure at the point of laying.

In such cases, the Welsh Government is content for Standing Order 27.9B to apply, rather than the requirement placed on UK Ministers by paragraph 3(7) of Schedule 7 to the 2018 Act referred to in recommendation 3, for the reasons outlined in the Business Committee

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report, *Proposed Amendments to Standing Orders 21, 27, 30B and 30C - Implementation of European Union (Withdrawal) Act 2018*, published on 3 October.

In relation to point a, the Welsh Government recognises the power to make regulations under clause 1 of the Trade Bill is wide in the sense that it could be used to implement both major and minor changes to the Agreement on Government Procurement (GPA).

However, we do not consider the clause 1 power, focused on GPA commitments as it is, is sufficiently broad enough to warrant a sifting mechanism. The power can only be used to implement commitments the UK has already signed up to and cannot be used to alter those commitments. The only scope for discretion is in how the commitments are implemented. Given the public procurement focus of the commitments, it is difficult to envisage a circumstance in which the manner of implementation, rather than the commitment itself, would be of major concern.

In relation to point b, the clause 1 power could be exercised concurrently or jointly.

In relation to point c, we see nothing in clause 1 to suggest that the power could be used to amend the Government of Wales Act 2006 or other primary legislation, other than to the extent that retained direct EU legislation can be said to be primary legislation (and therefore the amendments suggested by the committee in recommendation six are not necessary).

And, finally, in relation to point d, the clause 1 power is subject to the negative procedure – there is no choice of procedure for UK or Welsh Ministers.

Therefore, it is our view the clause 1 power does not meet the criteria and a sifting mechanism is not appropriate.

We welcome and support recommendation eight, relating to the application of the Intergovernmental Agreement (IGA) principles to the Trade Bill. Our expectation is that negotiations on all Brexit legislation, including the Trade Bill, should be conducted in line with the principles set out in the IGA.

We also support recommendation nine, which relates to the extension to the Welsh Ministers of the duty to lay reports under clause 5. We are happy to lay such reports before the National Assembly in the same way UK Ministers will lay reports before the UK Parliament.

I thank the committee for its consideration of these matters and its report. I trust the response is helpful to your scrutiny of the Trade Bill and look forward to continuing to work with the committee.

Yours sincerely

Ken Skates AC/AM
Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth
Cabinet Secretary for Economy and Transport

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Llywodraeth Cymru
Welsh Government

Mick Antoniw
Committee Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

5 December 2018

Dear Mick

Further to my appearance at Committee on 5 November, I am writing to respond further to the Committee's questions regarding the UK Agriculture Bill.

I was clear during the scrutiny session I would I not recommend the National Assembly for Wales gives its consent to the Bill until outstanding issues are resolved, in particular, the red meat levy and WTO clauses.

I am pleased to be able to inform the Committee the red meat levy issue has now been resolved to my satisfaction. A Government-supported amendment now forms part of the Bill. I am content the amendment accurately reflects the mechanisms for levy collection in Wales and provides an appropriate means to resolve the long-standing issue of repatriation of red meat levy.

On the issue of WTO rules, I have had positive discussions recently with the Secretary of State for Environment, Food and Rural Affairs. Officials are also making good progress in finding a solution. I hope to be able to agree an approach which meets the principles of the Inter-Governmental Agreement and respects the devolution settlement. It may not be necessary to amend the Bill itself to achieve this. It could be possible to reach a satisfactory outcome through an agreement between Governments as to how the existing provision should operate. I am hopeful we will be able to reach agreement with the UK Government on this remaining issue. I will then be able to recommend the Assembly gives its consent in due course.

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The Committee asked me to consider the need for a sunset clause for the Welsh provisions in the Bill. I will, of course, continue to reflect on this as Parliament and the Assembly continue to scrutinise the Bill. However, my intention is still for the powers to be transitional and for them to be superseded by a Wales Agriculture Bill, using the most suitable legal mechanism for doing so at the appropriate time.

As requested, I attach the joint statement issued by the Welsh Government and the UK Government on 12 September on progress with developing frameworks for agricultural support. As agriculture is a devolved area, the key point is each administration of the UK will have the opportunity to develop policy to suit their own unique circumstances once the UK has left the EU. Work will continue with the appropriate governance put in place at the appropriate time. The Ministerial Quadrilateral forum last met in Cardiff on 19 November and considered progress on the development of frameworks from across the portfolio. The four Administrations have agreed to progress work on strengthening the governance arrangements and structures ahead of the UK's departure from the EU, including revising the current Ministerial Quadrilateral forum.

Finally, I noted the Committee's concern regarding the Delegated Powers and Regulatory Reform Committee's report on the UK Agriculture Bill. I would like to reassure the Committee I am carefully considering the report with the UK Government and will respond to the points raised, as is traditional, as the Bill passes through the House of Lords.

Regards

Lesley

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Agricultural Framework Progress Update: September 2018

A joint statement by the UK Government and the Welsh Government

As agriculture is a devolved area, each administration of the UK will have the opportunity to develop policy to suit their own unique circumstances once the UK has left the EU. Both the UK Government and the Welsh Government have consulted separately on new agriculture policies to replace the Common Agriculture Policy (CAP) in England and Wales, respectively.

The UK Government published a 'Framework Analysis' policy paper in March 2018. This paper set out 153 areas where EU law currently intersects with devolved competence. This is where the UK Government and devolved administrations would need to work together to determine whether we would need UK or GB wide common approaches in future. It will be guided by the principles agreed at JMC (EN) in October 2017. The paper also identified a list of 24 policy areas to be subject to more detailed discussion to explore whether a legislative common framework arrangement might be needed, in whole or in part. The list included "agricultural support".

As we leave the EU and the CAP, we want our farmers and those with an interest in agriculture to be clear that we have been and will continue to work closely together. We want to achieve better outcomes for our farming industry, and to facilitate an open and transparent dialogue as our proposals develop.

The Agriculture Bill provides both administrations with new powers to bring replacement schemes into effect, as well as extending some provisions to Northern Ireland.[i] However, the Bill does not contain a legislative framework for these powers. This reflects the fact that the UK Government and Welsh Government are of the view, based on discussions to date, that the vast majority of policy areas can be suitably managed through non-legislative, inter-governmental coordination.

As part of this process, we are proposing to develop an administrative framework for coordinating agricultural support spending and changes to marketing standards. The aim of this is to ensure effective co-ordination and dialogue between the administrations on how any changes to legislation in one part of the UK may affect other parts. This framework will tie in closely with planned common UK frameworks being developed for other policy areas. There are other areas identified within "Agricultural Support" that we are expecting to work on while the Agriculture Bill passes through the UK Parliament. These include market intervention and data collection and sharing. Other agriculture-related frameworks within the 24 identified, on organic farming, the environmental release of GMOs, zootech and fertiliser regulations are also being discussed. Our joint aim is to reach agreement on all of these areas in order for frameworks to be in place by the end of the Implementation Period (December 2020).

We are also discussing arrangements for cross-border holdings, which is of particular interest to the numerous farmers along the English/Welsh border. We are aware that farmers with holdings that straddle borders and those with holdings located in another administration will want to ensure their businesses can operate as smoothly as possible. Our intention here is to reduce bureaucracy and to provide clarity for these businesses.

It is still the ambition of the UK Government and the Welsh Government to work towards a UK-wide approach where that is necessary. We fully expect our close collaboration to continue with the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA) and the Scottish Government over the next 18 months to agree and

implement administrative frameworks to set out future working and coordination on agriculture. As part of that process, we welcome the views of Parliament, the devolved legislatures and wider stakeholders on these proposals.

[i] Given the absence of local Ministers in Northern Ireland to take decisions about future agricultural policy, UK Government Ministers have sought to ensure as far as possible that the status quo can be maintained until a new policy direction can be established. There is a need to take care not to prejudge or constrain the ability of an incoming Minister, NI Executive and NI Assembly to decide what is appropriate for the Northern Ireland agri-food sector. The overarching principles that have been applied when considering the extension of clauses to NI are:

- to ensure the continuation of a legal basis to provide the current suite of agricultural support payments (and options) post EU exit;
- to ensure that the NI Executive has maximum flexibility to develop future agricultural policy consistent with the principles agreed by JMC(EN), including ensuring the functioning of the UK Internal Market; and
- that the Agriculture Bill does not constrain the ability of the NI Executive to continue current schemes and options available under the Rural Development Programme and Common Market Organisation provided for by existing and retained EU legislation, for as long as NI Ministers consider this appropriate.

Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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Your ref:
Our ref: EJ/AD

6 December 2018

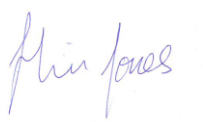
Dear Mick

Assembly reform: Electoral Commission financing and accountability

I would like to draw your attention, as Chair of Constitutional and Legislative Affairs Committee, to my letter to all Assembly Members of 12 November, specifically the proposals which the Commission is considering to make the Electoral Commission accountable to the Assembly, and financed by the Assembly Commission, in relation to devolved elections in Wales (i.e. local government and Assembly elections).

The Commission is exploring the opportunity of the Senedd and Elections (Wales) Bill which is due to be introduced in the new year to introduce these proposals. If you would like to meet with me to discuss the proposal and the approach to legislating on this matter, I would be happy to do so.

Yours sincerely



Elin Jones AM
Llywydd

Elin Jones AC, Llywydd
Cynulliad Cenedlaethol Cymru
Elin Jones AM, Presiding Officer
National Assembly for Wales

To: All Assembly Members

12 November 2018

Dear Member

Assembly Reform update

On 10 October, Assembly Members voted to allow the Assembly Commission to introduce a Bill, early in 2019, to change the name of the Assembly, lower the voting age for Assembly elections to 16, amend the law on disqualification and make other changes to the Assembly's electoral and internal arrangements.

I am writing to update you on two matters discussed at the Commission meeting on 5 November 2018:

- Proposals for the financing and accountability of the Electoral Commission; and
- Changes to the Assembly's name and the way Members are described.

Proposals for the financing and accountability of the Electoral Commission

As a result of the devolution of powers in the Wales Act 2017, the Electoral Commission has approached both me and the Welsh Government to propose that legislation is brought forward to make the Electoral Commission accountable to the Assembly, and financed by the Assembly Commission, in relation to devolved elections in Wales (i.e. local government and Assembly elections).

At the meeting on 5 November, Commissioners recognised the potential merit of the Electoral Commission being accountable to the Assembly for its work in Wales and noted the Welsh Government's support for the Electoral Commission's proposal. Similar proposals are being considered by the Scottish Executive.

Commissioners agreed to take soundings from their groups on the principle of the Electoral Commission being accountable to, and financed by, the Assembly.

The issue will be discussed further in the next Commission meeting, exploring how we consider the opportunity of the Senedd and Elections (Wales) Bill to introduce these proposals.

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Elin Jones AM, Presiding Officer
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Changes to the Assembly's name and the way Members are described

Commissioners discussed the feedback provided by Members and political groups in response to my letter of 16 October as to the future titles or descriptors for Members and the name of the institution.

Commissioners discussed the options and agreed that I would determine the name and descriptors for inclusion in the Bill on introduction, as Member in Charge of the Bill.

You will be aware that to be passed, the Bill will require the support of at least 40 Members. I therefore intend to include in the Bill on introduction the name for the institution and the descriptors for Members that reflect the majority view of political groups in the Assembly at this time.

I have decided therefore that the name change introduced in the Bill should be the monolingual name "Senedd" and that Members will be referred to as "Aelodau'r Senedd / Members of the Senedd".

The short title of the Bill on introduction will be the Senedd and Elections (Wales) Bill.

The Bill will be subject to the Assembly's usual legislative scrutiny procedure. The Commission will consider carefully any recommendations made by Assembly committees at Stage 1, and any amendments which are brought forward, and which could attract the required political consensus.

Next steps

The Senedd and Elections (Wales) Bill will be introduced early in the new year. In the meantime, my officials are arranging drop-in sessions for Assembly Members or support staff who would like to discuss the Bill or any other aspect of the Commission's Assembly reform work. The sessions will take place in the Cwrt during Plenary. The dates and times will be shared with Members shortly.

Yours sincerely

Elin Jones AM
Llywydd

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Agenda Item 12

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