

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 7 January 2019

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

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1 Introduction, apologies, substitutions and declarations of interest

2 Legislative Consent Memorandum on the Healthcare (International Arrangements) Bill: Evidence session

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Vaughan Gething AM, Minister for Health and Social Services

CLA(5)–01–19 – Legal Advice Note

CLA(5)–01–19 – Briefing

CLA(5)–01–19 – Research Service Briefing

[Legislative Consent Memorandum](#)

CLA(5)–01–19 – Paper 1 – Letter from Cabinet Secretary for Health and Social Services to Lord O’Shaughnessy Parliamentary Secretary of State for Health and Social Care, 23 October 2018

CLA(5)–01–19 – Paper 2 – Letter from Cabinet Secretary for Health and Social Services to Lord O’Shaughnessy Parliamentary Secretary of State for Health and Social Care, 25 October 2018

CLA(5)–01–19 – Paper 3 – Letter from Lord O’Shaughnessy Parliamentary Secretary of State for Health and Social Care to Cabinet Secretary for Health and Social Services, 26 October 2018

CLA(5)–01–19 – Paper 4 – Letter from Cabinet Secretary for Health and Social Services to Lord O’Shaughnessy Parliamentary Secretary of State for Health and Social Care, 15 November 2018



CLA(5)–01–19 – Paper 5 – Letter from Cabinet Secretary for Health and Social Services to Lord O’Shaughnessy Parliamentary Secretary of State for Health and Social Care, 4 December 2018

CLA(5)–01–19 – Paper 6 – Letter from Lord O’Shaughnessy Parliamentary Secretary of State for Health and Social Care to Cabinet Secretary for Health and Social Services, 14 December 2018

CLA(5)–01–19 – Paper 7 – Letter from Cabinet Secretary for Health and Social Services to Lord O’Shaughnessy Parliamentary Secretary of State for Health and Social Care, 19 December 2018

CLA(5)–01–19 – Paper 8 – Letter from Lord O’Shaughnessy Parliamentary Secretary of State for Health and Social Care to Cabinet Secretary for Health and Social Services, 19 December 2018

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8 Papers to note

**8.1 Letter from the Cabinet Secretary for Education: Additional Learning Needs
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CLA(5)–01–19 – Paper 59 – Letter from the Cabinet Secretary for Education

8.2 Letter from the Leader of the House: Regulations made under the EU (Withdrawal) Act 2018

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CLA(5)–01–19 – Paper 61 – Letter to the Leader of the House, 15 November 2018

8.3 Letter from the First Minister: WS–30C(5)17 – The Animal Welfare (Amendment)(EU Exit) Regulations 2018

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10 Statutory Instruments requiring Consent: Brexit and Written statements under Standing Order 30C: Review

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By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Vaughan Gething AC/AM
Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau
Cymdeithasol
Cabinet Secretary for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA - L/VG/0662/18

Lord James O'Shaughnessy
Parliamentary Under Secretary of State for Health (Lords)
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU
Undleeb.Iqbal@dh.gsi.gov.uk

23 October 2018

Dear James,

I have received the UK draft proposal for a Healthcare (International Arrangements) Bill, and note that you intend for the first reading in the House of Commons to be on Thursday, 25 October.

Provision of health services is a devolved matter, and I am therefore surprised and disappointed to only be informed this week that you are looking to introduce this Bill. There has been limited engagement on the content of any legislative fixes, and no engagement on the wording of a healthcare specific piece of legislation.

As I am sure you will be aware I will be unable to agree to any legislation which has implications for the powers devolved to the Welsh Ministers, without thorough engagement leading to legislative reassurance. The proposed legislation is therefore unacceptable in its current form.

We can discuss this issue further in our telephone conversation on Wednesday.

I am copying this letter to the First Minister of Wales, the Secretary of State for Wales and the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. I am also copying this to the Scottish Government's Cabinet Secretary for Health and Sport and the Permanent Secretary at the Department of Health in Northern Ireland.

Yours sincerely,

Vaughan Gething AC/AM
Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau Cymdeithasol
Cabinet Secretary for Health and Social Services

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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.

Vaughan Gething AC/AM
Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau
Cymdeithasol
Cabinet Secretary for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref : MA-LVG/0662/18

Lord James O'Shaughnessy
Parliamentary Under Secretary of State for Health (Lords)
Department of Health and Social Care
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25 October 2018

Dear James,

I am writing further to our telephone conversation yesterday setting out the concerns I expressed in relation to your proposed Healthcare (International Agreements) Bill.

Firstly there is clear acceptance by the UK Government that the Bill legislates in areas of devolved competence through the expressed need for a Legislative Consent Motion from the National Assembly for Wales.

As drafted, it is highly unlikely that such consent would be forthcoming and I see it in all our interests that the Bill is amended so as to avoid that situation.

As I stated our key concerns are:

- The Bill does not include provision to seek the consent of Welsh Ministers to the making of regulations (under Clause 2(2)) which will implement the detail of new healthcare agreements even though these would place obligations on the Welsh NHS which would clearly be within devolved competence.
- The Bill includes a general provision (in Clause 5(3)) which will enable regulations to be made which can amend, repeal or revoke a Measure or Act of the National Assembly for Wales.

As drafted, these provisions are unacceptable.

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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.

If you accept the need to secure our consent to any regulations, then what is clearly required to ensure consent is forthcoming, is that you involve the Devolved Administrations in the negotiation of new agreements from the start and in any subsequent revisions to them.

I look forward to dialogue between our officials to address this, so that a Bill that reflects the role and competence of Wales on this matter and does not have wider implications for Welsh legislation can be achieved.

I am copying this letter to the First Minister of Wales, the Secretary of State for Wales and the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. I am also copying this to the Scottish Government's Cabinet Secretary for Health and Sport and the Permanent Secretary at the Department of Health in Northern Ireland.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive style with a large initial 'V' and a long, sweeping tail on the 'g'.

Vaughan Gething AC/AM

Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau Cymdeithasol
Cabinet Secretary for Health and Social Services



Vaughan Gething
Cabinet Secretary for Health
Welsh Government

26 October 2018

Dear Vaughan,

THE HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

Thank you for your time on Wednesday, further to our call as discussed I am writing with regard to the anticipated introduction of the Healthcare (International Arrangements) Bill. The Bill was considered at a PBL Committee meeting on 22 October 2018 and is expected to be introduced to the House of Commons on 26 October 2018.

I understand officials from my Department have been engaging with your officials on this piece of legislation for some time; however, I wanted to provide you with further information on the Bill and its underlying policy. Please find a copy of the Bill and an Annex outlining reciprocal healthcare and our European Union (EU) Exit plans enclosed in this letter.

This letter highlights the main provisions that relate to Wales or to devolved matters. I appreciated our discussions on Wednesday and hope you found them helpful. I have asked my officials to follow up immediately with yours, to follow up my commitment on the call. I would be grateful, once these discussions have progressed further, if you could write to confirm whether you agree with our devolution analysis and indicate if you will be content to begin the required legislative consent process in the Welsh Legislative Assembly.

This Bill confers powers on the Secretary of State for Health and Social Care to fund and arrange healthcare outside the UK, to give effect to reciprocal healthcare agreements between the UK and other countries, territories or international organisations such as the European Union (EU), and to make provision in relation to data processing which is necessary to underpin these arrangements and agreements.

The Bill is an important part of the Government's preparations for EU Exit and will ensure that, whatever the outcome of EU Exit, we can make appropriate arrangements to support UK residents to obtain healthcare when they move to or visit the EU, European Economic Area (EEA) and Switzerland. The Bill underscores our commitment to reaching an ambitious reciprocal healthcare agreement with the EU or where necessary making agreements with Member States and to exploring potential agreements with third countries.

Without such arrangements many UK citizens who currently live or work in the EU may still have good options for accessing healthcare but some could face additional healthcare costs. UK tourists and others visiting the EU, EEA and Switzerland would rely more on travel insurance and this might make travel difficult for the elderly and/or people with medical risk factors. It would not be as easy for the NHS to refer patients for treatment to the EU, EEA and Switzerland. There could also be costs to tourism, to the wider economy and to the NHS if UK citizens currently living overseas return to the UK to seek treatment here.

Given the range of potential scenarios associated with EU exit and the difficulty, for example, of predicting the final terms of numerous separate bilateral deals and the future economic partnership with the EU, the Bill powers being sought provide a straightforward and clear way to prepare for the range of eventualities. The powers in the Bill provide the necessary legal authority for the Secretary of State to give effect to and fund complex bilateral or international healthcare agreements, and provide for necessary data processing.

Devolved Competence

The UK is responsible for entering into international agreements, and will consult the devolved administrations as a matter of course before agreeing (or amending) anything that touches on a devolved policy area, such as healthcare.

The Bill powers deal with the domestic implementation of international agreements. They will enable the existing arrangements provided for under the EU Regulations, which benefit residents of England, Wales, Scotland and Northern Ireland, to be maintained, subject to EU agreement. They could also support implementation of other agreements with third countries in future for the benefit of all UK nationals.

Reciprocal healthcare as governed by EU Regulations pre-dates the devolution settlements and while international affairs is a reserved matter, domestic healthcare is devolved. As we take the Bill and regulations forward it will be important we do so in a way that is collaborative and respects the devolution settlement and conventions for working together. The UK Government is committed to working closely with the devolved administrations to deliver an approach that works for the whole of the UK.

The Bill has a strong international focus and is predominantly concerned with the welfare of UK nationals outside the UK including the making of payments abroad and data sharing to support that. It is recognised that in some parts of the Bill, powers may be used in ways which relate to domestic healthcare and consequently legislative consent motions will be sought to this extent only. These uses are summarised below:

- To fund and arrange healthcare abroad pre-authorised by the NHS, including NHS bodies in Scotland, Wales or Northern Ireland;
- to give effect to any healthcare agreement which concerns healthcare provided in the UK, the cost of which is met by another country, and
- to enable [Scottish Ministers/Welsh Ministers] to be designated as authorised persons for the purposes of data processing for the purposes of facilitating anything done under or by virtue of the Act in relation to the above (and therefore making a change to their functions).

I propose my officials discuss with officials in the Welsh government in more detail where Regulations might be required and how they might interact with the devolution settlement, for example, in giving effect to international healthcare agreements and any consequential amendments that might need to be made to retained EU legislation that is currently on our statute books. I would like to reassure you that, depending on the subject matter, we would expect an exchange of Ministerial letters before Regulations are laid.

Healthcare in the UK, including eligibility and charging of people from overseas, is a devolved competence and nothing in our proposals would change that. In practice, devolved administrations would need to ensure their cost recovery provisions align with any international agreement entered into by the UK, as you already do now.

I would like to reassure you that, as reciprocal healthcare arrangements are already conducted centrally on behalf of all parts of the UK by the Department of Health and Social Care, which

includes responsibility for all financial costs, there will be no additional costs to the Devolved Administrations associated with the Bill.

Next Steps

I understand my Department has been engaging with your officials and in addition to providing the draft Bill, has provided briefings on the policy intent of the Bill and our contingency plans. These conversations will of course be ongoing, and my officials would be extremely happy to provide further information should you require it.

As per our discussion on Wednesday, I want to again give you my categorical assurance that in no way do we intend for this Bill to impact the existing devolution settlement, and I am ready and willing to engage with you personally on the Bill as and when this would be helpful to you.

I am copying this letter to the Secretary of State for Wales.

A handwritten signature in black ink, appearing to read 'James O'Shaughnessy', is centered on the page. The signature is written in a cursive style with a large initial 'J'.

James O'Shaughnessy

Annex A - Reciprocal Healthcare Background

Current EU reciprocal healthcare arrangements enable UK citizens to access healthcare when they live, study, work, or travel in the EU/EEA/Switzerland (and vice-versa for those nationals when in the UK):

- The UK funds healthcare for the 190,000 UK state pensioners living abroad (principally in Ireland, Spain, France and Cyprus) registered for the scheme, and their dependent relatives.
- We fund emergency and needs-arising healthcare when UK residents visit the EU/EEA (e.g. on holiday, to study, etc.). People who are ordinarily resident in the UK qualify for the European Health Insurance Card (EHIC) and 250,000 medical claims are resolved each year.
- UK nationals who live and work in the EU can access healthcare when they pay the same local taxes and contributions as other EU nationals (and are not otherwise UK funded). However, we directly fund healthcare for over 10,000 employees of UK firms / bodies working in the EU/EEA ('posted workers') and 'frontier workers' who live in the UK but travel to work in the EU.
- We fund UK residents to travel overseas to receive planned treatment in other countries (e.g. for procedures unavailable in the UK or returning home to give birth). Around 1,500 UK residents choose this option, and the NHS benefits from EU-funded patients who pay for NHS services under this route.

The Department of Health and Social Care, on behalf of the United Kingdom Government, reimburses other EEA countries and Switzerland for the cost of providing treatment to people that the UK is responsible for under the EU social security regulations. This includes people from or resident in Scotland, Wales and Northern Ireland. In the same way, other EEA countries and Switzerland reimburse the UK for the cost of the NHS providing treatment to people they are responsible for under the regulations, including UK nationals insured in another EEA country or Switzerland.

These schemes are popular across the UK and have broad parliamentary support. It is good that people who live or have worked in the UK can retire and travel in the EU/EEA without having to worry about healthcare access and costs. EHIC is good for the travel economy, reducing the cost of insurance and making travel more viable for the elderly and high-risk groups. Co-operation on planned treatment promotes patient choice and enables the NHS to access treatments overseas.

As you will be aware, there is a financial component too because the current EU arrangements involve Member States reimbursing one another for healthcare costs. The UK spends £630m per annum on healthcare for current or former UK residents who are visiting or have retired to the EU. We recover £50m from EU Member States under the same rules – this amount is increasing as the NHS improves at identifying visitors from the EU. However, the overall balance will be one of net spend because many more UK state pensioners and tourists go to Europe, than the other way around.

Overall, because of the clear benefits to the public and wider society, it is important we seek to ensure reciprocal healthcare arrangements continue post EU Exit whether this happens through an agreement with the EU or through agreements with individual Member States.

The rationale for the Bill

This legislation is necessary because the UK has only limited domestic powers to fund and arrange healthcare overseas, and to share data for those purposes, activities that are currently facilitated by EU regulations.

The majority of UK / EU reciprocal healthcare has to date been enabled by EU regulations (883/2004 and 987/2009 and their predecessors). The regulations set out detailed rules for who is eligible and reimbursement, and provide the legal authority for overseas payments and recovery of costs. Once we leave the EU, the EU reciprocal healthcare arrangements will no longer apply in the UK in their current form and we will need new legislation to provide future arrangements.

The EU (Withdrawal Agreement) Bill will allow us to continue reciprocal healthcare during the Implementation Period, and afterwards for people covered by the Withdrawal Agreement. However, it is not intended to support long-term arrangements covering the general UK population, does not provide for the unlikely event the Withdrawal Agreement is not ratified, and nor does it enable healthcare arrangements with countries outside of the EU.

The Healthcare (International Arrangements) Bill is therefore intended to provide the Secretary of State with statutory powers to fund and arrange healthcare overseas, and to share necessary data to facilitate this, after we leave the EU. Specifically, the Bill provides the Secretary of State for Health and Social Care with powers to:

- Make, and arrange for payments to be made, in respect of the cost of healthcare provided outside the UK;
- Make regulations for and in connection with the provision of healthcare abroad;
- Give effect to healthcare agreements with other countries or territories (both EU and non-EU) or supranational bodies such as the EU; and
- Lawfully process data where necessary for purposes of implementing, operating or facilitating the operation of reciprocal healthcare arrangements or payments.

These powers prepare us for a number of possible outcomes of EU Exit. I have summarised below what role the Bill will play when (as we expect) there is an agreement with the EU later this year, along with how it would support contingency planning should agreement not be reached.

Agreement with the EU

During the Implementation Period all reciprocal healthcare rights will continue and there will be no changes to healthcare for pensioners, workers, the EHIC scheme, or planned treatment until at least 31 Dec 2020. The Withdrawal Agreement will then guarantee longer-term rights for UK nationals / EU citizens living or working in the EU / UK at the end of the Implementation Period, or in a number of other specified circumstances, such as those who have previously paid into EU Member States' social security systems. This will all be legislated for by the European Union (Withdrawal Agreement) Bill which will be brought before Parliament soon.

However, we also want a more comprehensive reciprocal healthcare agreement. The Future Relationship White Paper sets out proposals for a UK / EU 'mobility framework', available at www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union. As part of this we are proposing reciprocal healthcare cover for future UK state pensioners, our participation in EHIC scheme, and co-operation on planned treatment.

In a deal scenario, the Healthcare (International Arrangements) Bill would support us in implementing a future relationship with the EU from 2021. It would also support us in giving effect to bilateral agreements with Member States if there is a need for to have arrangements over and above whatever is agreed at EU level.

No agreement with the EU

We are committed to reaching an agreement with the EU but are also taking responsible steps to prepare for all eventualities, including the unlikely event there is no deal later this year.

Without reciprocal healthcare arrangements many UK citizens who currently live or work in the EU may still have good options for accessing healthcare, but some could face additional healthcare costs. UK tourists and others visiting Europe would rely more on travel insurance and this might make travel difficult for the elderly and/or people with medical risk factors. It would not be as easy for the NHS to refer patients for pre-planned treatment in EU member States. There could also be costs to tourism and the wider economy, and to the NHS if UK citizens currently living overseas return to the UK to seek treatment here. In a no deal, we want to avoid these impacts wherever possible.

The UK and Republic of Ireland, recognising our unique relationship and the importance of the Common Travel Area, are committed to continuing reciprocal healthcare arrangements on a bilateral basis after the UK's withdrawal from the EU. An agreement between our two countries will set out arrangements for ensuring that UK and Irish nationals who move to or visit the other country can access healthcare, along with ensuring continued day to day co-operation on planned treatment. Negotiations with Ireland are still ongoing but once agreed, the Bill will enable the UK to implement this reciprocal healthcare agreement. We are committed to upholding our commitments under the Good Friday Agreement.

Further to this, and in the event of a 'no deal' the UK would like to enter into reciprocal agreements with individual EU Member States to ensure there are no changes in people's healthcare rights and so that there is a strong basis for ongoing co-operation on health issues. These will be subject to negotiation and we are in the early stages of discussions with Member States. However, the UK is open to maintaining reciprocal healthcare rights including for pensioners, workers, tourists and other visitors and others along with the current administrative arrangements including reimbursement of healthcare costs, for a transitional period lasting no less than the Implementation Period (i.e. 31 Dec 2020).

Looking to the future

Regardless of the outcome of the Brexit negotiations, the powers in this Bill will also allow us to implement new agreements to support UK nationals to obtain healthcare if they live in, work in, or move to third countries should this be desirable as part of a future policy on trade and international co-operation on healthcare.

The UK already has highly valued agreements with Australia and New Zealand and many of our Crown Dependencies and Overseas Territories, and we may wish to strengthen these or seek new agreements with other countries in future.

Vaughan Gething AC/AM
Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau
Cymdeithasol
Cabinet Secretary for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA - LVG/ 0709 /18

Lord James O'Shaughnessy
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15 November 2018

Dear James,

Thank you for your letter of 26 October following up on our telephone discussion on 24 October and the introduction of the Healthcare (International Arrangements) Bill on 26 October. I also spoke to your colleague Steve Barclay MP, Minister of State for Health, on 13 November.

The Welsh Government will want to play a constructive role in relation to the passage of this Bill, but our two governments are not starting from the best position. Whilst it is the case that the issue of reciprocal healthcare in broad terms has been the subject of discussion between officials for some time, the detailed provisions in the Bill certainly have not been. While a draft of the Bill was sent to my officials on 19 October, there was no suggestion that introduction of the Bill was imminent; the first indication of that came in the communication from your office on 22 October.

We need a much more effective process of discussion and negotiation if smooth progress is to be made with the Bill. However, we are where we are. I note the reassurances you have provided in your letter – most notably that there will be no additional costs to the Devolved Administrations associated with the Bill and a categorical assurance that in no way do you intend the Bill to impact on the existing devolution settlement.

Your letter recognises that the Bill as introduced does in part relate to Wales or to devolved matters and asks if I would begin the required Legislative Consent Process. I can confirm that the process is underway in accordance with the Assembly's Standing Orders, but I cannot say at this stage whether the Welsh Government will be prepared to recommend to the Assembly that legislative consent should be given.

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Gohebiaeth.Vaughan.Gething@llyw.cymru
Correspondence.Vaughan.Gething@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 and correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The following issues of concern will need to be addressed:

Welsh Ministers' consent for regulations made under Clause 2 of the Bill

As discussed on the telephone, I believe that there should be provision, on the face of the Bill, requiring the consent of Welsh Ministers before regulations are made giving effect to healthcare agreements (and to any changes to those agreements in the future). This essentially is the crux of my concern, that the Bill may potentially have direct implications for the Welsh Government and the Welsh NHS, yet there is no provision for any involvement of Welsh Ministers in those decisions and commitments.

Consent of the National Assembly for Wales to regulations made under Clause 5 which have the effect of amending, repealing or revoking a Measure or Act of the National Assembly for Wales

During our telephone conversation I flagged up my concern about this provision in the Bill without any consent provision also included. As I am sure you are aware, the consent of the Assembly is needed where a UK statutory instrument amends primary legislation that is within the Assembly's devolved competence, irrespective of whether the primary legislation to be amended is a Measure or Act of the National Assembly for Wales or a UK Act such as the NHS (Wales) Act 2006. Any such statutory instrument would be subject to a Statutory Instrument Consent Motion in the Assembly (and it would be for the Welsh Government to decide whether to support such a motion). It would be appropriate for the Bill to recognise this, with the insertion of an amendment requiring the Assembly's consent for such instruments.

Secondly, as to the scope of the order-making power in clause 5, you will be aware that the EU (Withdrawal) Act 2018 powers are specifically constrained, in that the Government of Wales Act 2006 cannot be amended by statutory instrument made under that Act; consideration should be given to an equivalent limitation being established for the clause 5 powers in this Bill.

Costs

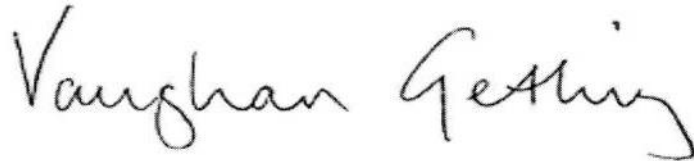
As I stated above, I note the reassurances you have provided that there will be no additional costs to the Devolved Administrations associated with the Bill. In this respect I look for confirmation from you that:

- the full costs of the exercise of the powers in Clause 1 will be met by the UK Government; and
- funding to cover the full costs to the Welsh NHS resulting from all healthcare agreements with EU Member States made under the Bill that go beyond existing provision, and from any healthcare agreements with countries outside of the EU (not currently subject to any reciprocal healthcare agreements), will be transferred to Wales from your Department, on the principle in the Statement of Funding Policy that additional costs resulting from policy decisions to another administration should be borne by the administration implementing the change.

While what we require in terms of changes on the face of the Bill relate principally to the need for Welsh Ministers' consent to any regulations made which are within devolved competence, I want to reiterate a point I made when we spoke. There is no reason why there should be any disagreement between us on the sort of international agreements which the UK might enter into to secure reciprocal health care rights and obligations. The way to ensure that we do not end up in any unforeseen conflicts over changes to the law within devolved competence as a result of agreements which have been concluded is to associate the devolved administrations fully with the process of negotiating such agreements – from the initial scoping of a negotiating mandate through to the conclusion of a draft agreement.

I look forward to hearing back from you on the issues set out in this letter so that we that we can make progress on the question of Legislative Consent. I am copying this letter to the First Minister of Wales, the Secretary of State for Wales and the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. I am also copying it to the Minister of State for Health, to the Scottish Government's Cabinet Secretary for Health and Sport, the Permanent Secretary at the Department of Health in Northern Ireland and the Head of Civil Service in Northern Ireland.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive style with a large initial 'V' and a long, sweeping tail on the 'g'.

Vaughan Gething AC/AM

Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau Cymdeithasol
Cabinet Secretary for Health and Social Services

Vaughan Gething AC/AM
Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau
Cymdeithasol
Cabinet Secretary for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA - L/VG/0709/18

Lord James O'Shaughnessy
Parliamentary Under Secretary of State for Health (Lords)
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU
lords@dh.gsi.gov.uk

4 December 2018

Dear James,

Following our exchange of correspondence, officials have been in discussions relating to the Healthcare (International Arrangements) Bill. These discussions have mainly focused on regulations made under Clause 2 of the Bill, including the definitions set out in Clause 5. I have been concerned about the lack of recognition on the face of the Bill of the devolved nature of certain aspects of the provisions.

I understand your officials have suggested that the Bill be amended to include a statutory duty to consult Welsh Ministers where regulations under Clause 2 relate to devolved matters. This would include regulations which amend, repeal or revoke a Measure or Act of the National Assembly for Wales. I would note that any statutory instrument which amends Welsh primary legislation would of course also be subject to a Statutory Instrument Consent Motion in the Assembly, and it would be for the Welsh Government to decide whether to recommend that consent be given. This amendment would be underpinned by a memorandum of understanding setting out more detail as to how and when consultation would take place.

I would be content to recommend consent to the Bill on this basis, should the memorandum provide satisfactory assurance. In order to provide this assurance the memorandum would need to state that:

- Welsh Government would be consulted on the negotiation of agreements, with a role from the initial scoping through to the conclusion of a draft agreement;
- Welsh Government would be consulted on the initial development and subsequent drafting of regulations under the Bill which implement these agreements, with the UK Government making every effort to proceed by consensus with the devolved administrations. (Complying with the terms of the memorandum in this respect will of

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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.

course make it easier for the Welsh Government to recommend that Assembly consent is given under the SICM process); and

- Welsh Government would be consulted where an agreement applied to or had implications for Wales, and on regulations giving effect to that agreement.

Should a memorandum be agreed which is acceptable to both UK Government and Welsh Government, I would be happy to provide a supplementary memorandum to the National Assembly for Wales to recommend that consent is given to the Legislative Consent Motion.

I would be grateful if you could provide the clarification sought in my previous correspondence on your commitment that there will be no additional costs to the devolved administrations associated with this Bill.

I look forward to hearing back from you on the issues set out in this letter so that we that we can make swift progress on amendment of the Bill and the development of a memorandum of understanding.

I am copying this letter to the First Minister of Wales, the Secretary of State for Wales and the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. I am also copying it to the Minister of State for Health, to the Scottish Government's Cabinet Secretary for Health and Sport, the Permanent Secretary at the Department of Health in Northern Ireland and the Head of the Northern Ireland Civil Service.

Yours sincerely,



Vaughan Gething AC/AM

Ysgrifennydd y Cabinet dros Iechyd a Gwasanaethau Cymdeithasol
Cabinet Secretary for Health and Social Services



Department
of Health &
Social Care

The Lord O'Shaughnessy
Parliamentary Under Secretary of State for Health
39 Victoria Street
London
SW1H 0EU

Vaughan Gething AM
Cabinet Secretary for Health and Social Services
5th Floor
Tŷ Hywel
Cardiff Bay
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14 December 2018

Dear Vaughan,

The Social Security Coordination (Reciprocal Healthcare) (EU Exit) Regulations 2019, The National Health Service (Cross-Border Healthcare) and (Miscellaneous Amendments) (EU Exit) Regulations 2019

I am writing with regard to our continued cooperation and collaboration with the Welsh Government on reciprocal healthcare legislation to facilitate a smooth transition as we leave the EU.

To this effect, I am writing to advise the UK Government intends to bring forward Regulations under the section 8 powers in the European Union (Withdrawal) Act 2018 to prevent, remedy or mitigate deficiencies in retained EU law relating to healthcare abroad in the unlikely event of a no deal EU Exit scenario.

The first of these regulations will make amendments to EU Regulations 883/04, 987/09, 1408/71, 574/72 and 859/03 (the retained EU regulations), which relate to reciprocal healthcare. The second of these make amendments to prevent, remedy or mitigate other deficiencies relating to the retained EU regime on healthcare abroad, such as correcting domestic provisions implementing the Cross-Border Health Directive and making consequential changes following from EU Exit, such as correcting references to EU rights.

I have provided further information on each of these proposed statutory instruments in the enclosed Annex, and officials within my Department would welcome further discussion on these proposed pieces of legislation.

In so far as the proposed statutory instruments make provisions that could be made by Welsh Ministers in the exercise of their powers under the European Union (Withdrawal) Act, I am further writing to ask for your agreement to the UK Government's proposed approach. This is in line with the UK Government's commitment that it will not normally use the powers set out in sections 8 or 9 of the European Union (Withdrawal) Act 2018 to make provision that could be made by a Devolved Administration without the agreement of the relevant Devolved Administration(s).


The UK is committed to working with the Devolved Administrations on reciprocal and cross border healthcare. Once the outcome of EU Exit is clear I would recommend we have further discussions about the longer-term arrangements we would wish to see. We envisage using the Healthcare (International Arrangements) Bill to legislate for longer-term arrangements, respecting the devolution settlement and alongside domestic legislation we are each responsible for on domestic eligibility and charging.

Subject to your views, we intend to lay this SI under the Withdrawal Act in late January, and in order to facilitate this, we would be grateful for a response soonest.

I look forward to your response, and reiterate the UK Government's intention to work closely with the Welsh Government to deliver an approach that works for all of the UK.

I am copying this letter to the Secretary of State for Wales.

Yours sincerely,



Lord O'Shaughnessy

Annex A: Policy underlying the Social Security Coordination (Reciprocal Healthcare) (EU Exit) Regulations 2019

The retained EU regulations currently provide the legal framework for reciprocal healthcare, including the UK's responsibilities to:

1. Reimburse healthcare costs for UK residents living, working, retired in or visiting the EU (under the S1, European Health Insurance Card and S2 schemes). The regulations assume we pay the Member State but also, in certain circumstances, provide for direct reimbursement of individuals.
2. Provide healthcare to EU nationals living, working, retired in or visiting the UK (with reimbursement from their home Member State).

If we do not legislate any further, the Withdrawal Act will automatically retain these regulations. They would not be coherent or workable without reciprocity by Member States, and in certain circumstances could leave the UK responsible for unilaterally funding healthcare for UK tourists and EU visitors after Exit Day if we did not have reciprocal agreements.

Therefore, pending the implementation of new, longer-term reciprocal care arrangements under the Healthcare (International Arrangements) Bill, we are taking the approach of extinguishing the retained EU regulations, subject to the savings provision below.

We intend to selectively 'save' certain aspects of the regulations to deal with historical liabilities, provide for people in the course of treatment, and (more ambitiously) as a means of implementing short-term bilateral arrangements and supporting certain groups of people with healthcare costs.

First, we will be saving those aspects of the regulations that allow us to deal with our liabilities prior to EU Exit, including paying in arrears for healthcare used by UK residents and expats before 29 March 2019 (and for claiming costs back from Member State for their own nationals).

Second, we will save the health-related aspects of the regulations, so that they will continue to support the provision of healthcare to UK citizens in selected 'listed' countries (as well as healthcare provided in the UK to those countries' citizens). Countries would be selected and listed by the relevant UKG Minister. We envisage listing countries who reach agreement with the UK to continue the status quo for each other's citizens. This will allow us to implement reciprocal agreements with countries who take up the UK offer to continue the current arrangements transitionally until 31 December 2020. The saving would be time-limited (until the end 2020) and would not apply to countries who do not enter into agreements with us.

Third, we recommend saving the EU regulations for key groups in a transitional situation on Exit Day, irrespective of any reciprocity in place. In view of the cost and uncertainties associated with this, the group has been narrowly drawn to cover only those where we have clear legal responsibilities, such as those who have obtained authorisation for pre-planned treatment ahead of Exit Day, though not yet obtained the treatment.

The National Health Service (Cross-Border Healthcare) and (Miscellaneous Amendments) (EU Exit) Regulations 2019

These regulations give effect to English policy with respect to the Cross-Border Healthcare Directive (CBHD) (Directive 2011/24), as well as revoke certain EU decisions and make necessary changes and corrections to domestic law on reciprocal healthcare generally that are required following from the UK's EU Exit.

Cross-border Healthcare Directive

In 2013, the UK Government and Devolved Administrations transposed the CBHD into our domestic legislation. Separate legislation covers England and Wales, Scotland, Northern Ireland and Gibraltar. Currently, the CBHD includes:

- Giving UK residents automatic rights to receive NHS reimbursement for certain healthcare they purchase in the EU/EEA (but not Switzerland), which becomes problematic in a no deal for the reasons below.
- Preventing the NHS from charging EU/EEA (not Swiss) visitors more than domestic residents, which in the long-run could prevent full cost-recovery for EU visitors such as the 150% tariff or the Immigration Health Surcharge.
- Information sharing duties including running a National Contact Point to respond to queries from patients from the EU/EEA (not Switzerland).

Keeping CBHD reimbursement rights on our statute book would make the NHS liable for manually reimbursing substantial healthcare costs incurred abroad by UK tourists. This could expose the NHS to significant operational and financial risk and would also be inappropriate as we could no longer be sure that EU Member States would apply the Directive's constraints on excess charging. Almost all of the 250,000 EHIC claims per annum could in principle become reimbursable by the NHS and Devolved Administrations if we do not get bilateral arrangements with Member States. For these reasons our position is that the UK should not continue CBHD reimbursement in a no deal scenario.

Accordingly, our policy is to revoke the CBHD legislation for England with a savings provision to allow the policy to operate for certain listed countries for a transitional period (until 31 Dec 2020). This is the same approach as that adopted for reciprocal healthcare and would involve listing the same countries (who agree to maintain the status quo). This would allow us to maintain CBHD transitionally (for countries where we have established reciprocity) although it would be suspended for other countries.

As the CBHD was implemented by separate legislation in relation to Scotland, you will wish to give similar consideration to fixing deficiencies in that legislation under the European Union (Withdrawal) Act 2018 in relation to Scotland.

Miscellaneous Amendments

In addition to fixing miscellaneous EU references, such as those to Regulation 883/04, European Health Insurance Card, and EU rights and obligations in certain healthcare legislation relating to England, these Regulations will:

- Omit section 10 of the Health and Social Security Act 1984 and the related references in section 26 of that Act and in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999; section 10 relates to the reimbursement of cost of medical and maternity treatment in Member States of the European Economic Community and extends to England, Wales and Scotland.
- Revoke the legislation implementing the CBHD and related legislation in relation to England, namely the relevant provisions of the National Health Service Act 2006, the National Health Service (Cross-Border Healthcare) Regulations 2013, the National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013 and the National Health Service (Cross-Border Healthcare) (Amendment) Regulations 2015. The regulations will also make any necessary consequential amendments within that legislation and any other related legislation. Since the CBHD was implemented for both England and Wales by the same regulations, this will include technical, consequential amendments to ensure that, once the provisions relating to England are omitted, the remaining legislation works in relation to Wales.

- Revoke the relevant provisions of the National Health Service (Reimbursement of the Cost of EEA Treatment) Regulations 2010. These Regulations give effect to the judgment of the then European Court of Justice in relation to the case of *Watts v Bedford Primary Care Trust and Secretary of State for Health (2006)* – namely that the obligation under the Treaty Article relating to the freedom to provide and receive services (now Article 56), to reimburse the cost of hospital treatment provided in another member State, also applies to a tax-funded national health service.
- Revoke EU Decisions 2013/329/EU, 2011/890/EU, 2014/286/EU and 2014/287/EU. Decisions 2013/329/EU and 2011/890/EU concern EU networks on the evaluation of health technology (Health Technology Assessment) and networks on e-health respectively. Decisions 2014/286/EU and 2014/287/EU concern the operation of networks on rare diseases (European Reference Networks).
- Omit the second sub-paragraphs (a) and (b) of paragraph 10 of Schedule 2 to the Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006. This requires certain information to be supplied to NHS Blood and Transplant, by a person who has received material to be transplanted, namely, a statement indicating that the recipient was entitled to the provision of the treatment by virtue of regulations made under Article 48 TFEU or an agreement entered into between the European Union and another country.

The fixes are required to the above retained EU law, as they make provision for, or in connection with, reciprocal arrangements which will not exist or will not be appropriate, or otherwise contain EU references, which will no longer be appropriate following the UK's exit from the EU.

As mentioned above, the fixes will include appropriate savings provision to reflect the policy of maintaining certain reciprocal and cross-border healthcare arrangements, on a time-limited basis, for a list of countries with whom the UK has agreed continued arrangements (yet to be determined) and to protect certain groups in a transitional situation on Exit Day.

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA - L/VG/0709/18

Lord James O'Shaughnessy
Parliamentary Under Secretary of State for Health (Lords)
Department of Health and Social Care
39 Victoria Street
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SW1H 0EU
lords@dh.gsi.gov.uk

19 December 2018

Dear James,

Thank you for your letter of 14 December, seeking my agreement to the UK Government's proposed approach to fixing regulations relating to reciprocal healthcare.

I note that the approach taken in these correcting regulations is intended to complement the Healthcare (International Arrangements) Bill. I wrote to you in relation to this Bill on 4 December and I understand that officials are currently engaged on this issue. Once we have reached agreement on the framework legislation, and the memorandum which will establish the foundation of cooperation on reciprocal healthcare, I will be able to consider in more detail the proposed approach to fixing legislation under the section 8 powers in the European Union (Withdrawal) Act 2018.

I welcome your offer of further discussion on the proposed legislation with officials within your department. I will write to you again once these discussions have taken place.

On the specific issue of consent, I will be able to consider the consent of Welsh Ministers to the proposed legislation when regulations are shared. I would be grateful if you would write again at this point.

I am copying this letter to the First Minister of Wales, the Secretary of State for Wales, the Scottish Government Cabinet Secretary for Health and Sport and the Permanent Secretary at the Department for Health in Northern Ireland.

Yours sincerely,

Vaughan Gething AC/AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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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.



Vaughan Gething AM
Cabinet Secretary for Health and Social Services
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

19 December 2018

Dear Vaughan,

HEALTHCARE (INTERNATIONAL ARRANGEMENTS) BILL

Thank you for your letter of 4 December. May I first take this opportunity to congratulate you on your reappointment as Minister for Health and Social Care. I look forward to working with you further on this and other issues.

Regarding the Healthcare (International Arrangements) Bill, I would like to underline from the outset that we have always acknowledged that the provisions in the Bill may be exercised in ways which relate to a devolved matter, and it is for that reason that we are looking to secure your support for recommending a Legislative Consent Motion.

I am delighted to hear that you are prepared to recommend consent to the Bill. This is a truly positive step forward and demonstrates that this Bill can be taken forward in the interests of the whole of the UK.

As discussed between our officials, we could amend the Bill to insert a statutory duty on the UK Government to consult the Devolved Administrations before making regulations under Clause 2 of the Bill that contain provisions which are within devolved competence. This would necessarily extend to any regulations that amend, repeal or revoke a Measure or Act of the National Assembly for Wales. We would like to make this change as soon as practically possible.

With regard to the Memorandum of Understanding setting out more detail as to how and when consultation would take place, we are very happy to provide you with assurances that the Welsh Government, and indeed all of the DAs, would be meaningfully consulted on the development and drafting of regulations. We can discuss this further as officials progress the drafting of an MoU.

As I am sure you can appreciate, this is a time-sensitive issue and it is in both of our interests to progress the passage of the Bill as a matter of expediency. We would very much like to work with you and all the DAs in good faith to proceed with the drafting of an MoU. The MoU would set out the detail of how UKG will consult the DAs to underpin the proposed statutory consultation requirement. If feasible, it would be helpful to agree the key terms before we amend the Bill.

This Bill is expressly concerned with implementing international agreements and the extent to which regulations implement new agreements. There is already an MoU between the UK and the Devolved Administrations concerning international agreements that deals with respective roles in the negotiations process which is under review and so this is not something we can currently open via the HIAB.

With regard to the clarification sought on financial arrangements, I believe our officials have discussed this at some length. To reiterate, we do not want the current administrative system to change and thereby place additional burdens on the Devolved Administrations. By this I mean that the Department for Health and Social Care will continue to fund and administer schemes that entitle individuals across the whole United Kingdom to access healthcare abroad. Where these schemes entitle foreign nationals to access domestic healthcare services, it will remain the responsibility of all the four nations to provide those individuals with that healthcare, to legislate for that provision through charging regulations, and bear the costs, accordingly. Going forward, and as part of our close working, we would expect to provide analysis on the potential costs and benefits of reciprocal agreements to the UK Government, to the NHS in England, Wales, Scotland and Northern Ireland, and to UK citizens and residents and to involve the DAs in formation of strategy in this area.

I would like to stress that my Department is fully committed to working with you and all the DAs in the interests of individuals in all the four nations and their access to healthcare abroad. I will make every effort to proceed by consensus in this area and hope that in doing so I am able to alleviate some of the broader concerns you have expressed throughout our discussions on this matter. Indeed, many of these concerns have been expressed by all the DAs and I hope that the measures proposed in this letter will provide assurances to colleagues in Scotland and Northern Ireland as well.

I look forward to hearing back from you and hope we can indeed move this forward at pace to ensure we can jointly provide individuals in Wales with confidence that the measures in this Bill will apply to them as well.

I am copying this letter to the First Minister of Wales, the Secretary of State for Wales and the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office. I am also copying it to the Scottish Government's Cabinet Secretary for Health and Sport and Cabinet Secretary for Government Business and Constitutional Relations, and to the Permanent Secretary at the Department of Health in Northern Ireland and Head of the Northern Ireland Civil Service.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John', is centered on the page. The signature is fluid and cursive, with a large loop at the beginning and a wavy tail.

LORD O'SHAUGHNESSY

Agenda Item 3

Statutory Instruments with Clear Reports

07 January 2019

SL(5)291 – The Abolition of the Right to Buy and Associated Rights (Wales) Act 2018 (Consequential Amendments and Savings Provisions) Regulations 2019

Procedure: Affirmative

The Regulations are made under section 9 of the Abolition of Right to Buy and Associated Rights (Wales) Act 2018 (“the 2018 Act”). The 2018 Act ends the Right to Buy under Part 5 of the Housing Act 1985 and the Right to Acquire under section 16 of the Housing Act 1996, these rights applying to tenants of social housing landlords who have secure or assured tenancies respectively. The 2018 Act provides for a one-year period following Royal Assent during which existing rights may be exercised before complete abolition of these rights. This notice period expires on the 25 January 2019. The rights in respect of new properties was effectively ended on 24 March 2018.

These Regulations make amendments to the Housing Act 1985 (“1985 Act”) and the Land Transaction and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“2017 Act”) in consequence of the Abolition of the Right to Buy and Associated Rights (Wales) Act 2018.

The Regulations make saving provisions to ensure that relevant provisions within the 1985 Act will continue to apply in respect of applications made to exercise the right to buy or the right to acquire in respect of dwelling-houses in Wales on or before 25 January 2019 and in respect of dwelling-houses which have been purchased under the right to buy or the right to acquire on or before that date (or after that date in pursuance of a notice served before that date).



The Regulations also make saving provisions to ensure that relevant reliefs within Schedule 15 to the 2017 Act will also apply in respect of transactions arising from applications made to exercise certain rights to buy and rent to mortgage submitted on or before 25 January 2019.

Parent Act: Abolition of the Right to Buy and Associated Rights (Wales) Act 2018

Date Made:

Date Laid: 10 December 2018

Coming into force date:



Agenda Item 4

Proposed Negative Statutory Instruments with Clear Reports

07 January 2019

pN(5)001 – The Election (Wales) (Amendment) (EU Exit) Regulations 2018

Procedure: proposed negative

This instrument removes references to Members of the European Parliament, the European Parliament and Elections to the European Parliament not required following the date of withdrawal. No substitute provisions have been made.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: Yes

pN(5)002 – The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (EU Exit) Regulations 2018

Procedure: proposed negative

These Regulations amend the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 (the ‘2009 Regulations’) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the UK’s withdrawal from the European Union.

The 2009 Regulations implement Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage.



These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: Yes

pN(5)003 – The Environmental Noise (Wales) (Amendment) (EU Exit) Regulations 2018

Procedure: proposed negative

These Regulations are made under powers conferred by section 11 of and paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018. The Regulations amend the Environmental Noise (Wales) Regulations 2006 (“the 2006 Regulations”) in order to address failures of retained EU to operate effectively and other deficiencies arising from the UK’s departure from the European Union.

The 2006 Regulations implemented 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. These Regulations will maintain the domestic requirements imposed by the 2006 Regulations but will remove references to, and requirements to report to, the European Commission, replace references to “Member States” with references to “Welsh Ministers” and make other minor and technical amendments to the 2006 Regulations.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A

Parent Act: European Union (Withdrawal) Act 2018

Sift requirements satisfied: Yes



Agenda Item 5.1

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/0810/18

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

SeneddCLA@assembly.wales

5
December 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 Flood and Water (Amendment etc.) (EU Exit) Regulations 2019, 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 Water Act 1989, Water Industry Act 1991, Water Resources Act 1991, Water Act 2014 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

Lesley Griffiths AC/AM

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Floods and Water (Amendments etc.) (EU Exit) Regulations 2019**

DATE **10 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Floods and Water (Amendments etc.) (EU Exit) Regulations 2019

The law which is being amended

Amends retained EU legislation relating to Water Framework Directive:

This instrument amends the transposing legislation of key EU water Directives. The main directive is the Water Framework Directive (WFD) 2000/60/EC.

It also amends the following EU Implementing decisions;

Commission Implementing Decision 2011/321/EU establishing, pursuant to Directive 2006/7/EC of the European Parliament and of the Council, a symbol for information to the public on bathing water classification and any bathing prohibition or advice against bathing.

Commission Decision (EU) 2017/1583 specifying, pursuant to Directive 2006/7/EC of the European Parliament and of the Council, EN ISO 17994:2014 as the standard on the equivalence of microbiological methods

Commission Decision (EU) 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

Commission Implementing Decision 2018/840/EU establishing a watch list of substances for Union-wide monitoring in the field of water policy pursuant to Directive 2008/105/EC of the European Parliament and of the Council;

The following retained direct EU legislation is revoked and any reference to that legislation in Annex 20 to the EEA agreement is to be omitted;

Decision No 2455/2001/EC of the European Parliament and of the Council establishing the list of priority substances in the field of water policy;

Commission Decision 2005/646/EC on the establishment of a register of sites to form the intercalibration network in accordance with Directive 2000/60/EC of the European Parliament and of the Council;

Commission Implementing Decision 2014/431/EU concerning formats for reporting on the national programmes for the implementation of Council Directive 91/271/EEC.

The SI also amends the following domestic legislation;

Primary legislation

Water Act 1989

Water Industry Act 1991

Water Resources Act 1991

Water Act 2014

Secondary Legislation

The Sludge (Use in Agriculture) Regulations 1989

The Urban Waste Water Treatment (England and Wales) Regulations 1994

The Water Supply (Water Fittings) Regulations 1999

The Drinking Water (Undertakings) (England and Wales) Regulations 2000

The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003

The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004

The Water Industry (Special Administration) Rules 2009

The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010

The Incidental Flooding and Coastal Erosion (England) Order 2011 **Error! Bookmark not defined.**

The Bathing Water Regulations 2013

The Nitrate Pollution Prevention Regulations 2015

The Flood Reinsurance (Scheme Funding and Administration) Regulations 2015

The Water Supply (Water Quality) Regulations 2016

The Private Water Supplies (England) Regulations 2016

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

The Water Abstraction and Impounding (Exemptions) Regulations 2017

The Water Abstraction (Transitional Provisions) Regulations 2017

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 legislative and executive competence respectively in relation to flood and water; the Assembly's competence in relation to water is subject to the specific reservations in Section C15 of Schedule 7A to GoWA.

Whilst this SI includes amendments to composite SIs, due to the exceptional circumstances of EU exit, on this sole occasion, it has been agreed to make the relevant amendments in a UK SI.

The purpose of the amendments

The purpose of this SI (affirmative procedure) is to address the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU on the basis of a no-deal scenario.

The function of the EU law in this area is to protect and improve the water environment from various sources of pollution e.g. from agriculture and urban sources; it is also about protecting human health by preventing contamination of drinking water and bathing waters.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

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.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Flood and Water (Amendments etc.) (EU Exit) Regulations 2019

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 Flood and Water (Amendments etc.) (EU Exit) Regulations 2019 (“2019 Regulations”) were laid before the Houses of Parliament on 04 December 2018. The Regulations can be found at:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

Summary of the Statutory Instrument and its objective

3. The objective of the 2019 Regulations is to make minor and technical changes which are necessary to ensure that floods and water legislation will continue to be operable in the United Kingdom after the UK leaves the EU. The instrument addresses deficiencies in the retained EU law arising from the UK’s withdrawal from the EU. The purpose of the instrument is to preserve and protect the existing policy regime.
4. In accordance with this objective, the 2019 Regulations amend the following primary legislation:
 - The Water Act 1989
 - The Water Industry Act 1991
 - The Water Resources Act 1991
 - The Water Act 2014

All four Acts are amended so as to replace references to “EU obligations” with “retained EU obligations”, reflecting the change of status of EU derived obligations following exit day.

The Water Resources Act 1991 is amended so as to remove references to UK obligations as a Member State with the Water Framework Directive. The obligations will remain on a domestic footing through relevant domestic enactments including the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. The Water Resources Act 1991 is amended so as to include references to such legislation.

There are also other consequential amendments to the Acts as a result of the UK’s withdrawal from the EU.

Relevant provision to be made by the SI

5. The amendments made to the Water Act 1989 by the 2019 Regulations, are to the following provisions:

In section 174(2)(k) of the Water Act 1989(1), for “an EU obligation” substitute “a retained EU obligation”.

6. The amendments made to the Water Industry Act 1991 by the 2019 Regulations, are to the following provisions:

(1) The Water Industry Act 1991(2) is amended as follows.

In section 2(7)(3), for “EU obligation” substitute “retained EU obligation”.

In section 92(4)—

in the heading, at the end insert “etc.”;

in subsection (1)—

in the words before paragraph (a) omit “enabling Her Majesty’s Government in the United Kingdom to give effect”;

for paragraph (a) substitute—

“(a) giving effect to any retained EU obligations, or”;

at the beginning of paragraph (b) insert “enabling Her Majesty’s Government in the United Kingdom to give effect”.

In section 127(3)(a)(5), for the words from “enabling” to “obligation or” substitute “giving effect to any retained EU obligation or enabling Her Majesty’s Government in the United Kingdom to give effect”.

In section 131(3)(a)(6), for the words from “enabling” to “obligation or” substitute “giving effect to any retained EU obligation or enabling Her Majesty’s Government in the United Kingdom to give effect”.

In section 206(3)(k)(7), for “an EU obligation” substitute “a retained EU obligation”.

7. The amendments made to the Water Resources Act 1991 by the 2019 Regulations, are to the following provisions

—(2) The Water Resources Act 1991(8) is amended as follows.

In section 93(9)—

in subsection (1B), for the words from “enabling” to “in relation to” substitute “achievement of”;

omit subsection (2C);

(1) 1989 c. 15; section 174(2)(k) was amended by S.I. 2011/1043.

(2) 1991 c. 56.

(3) Section 2(7) was inserted by section 39(9) of the Water Act 2003 (c. 37) and amended by section 24(2) of the Water Act 2014 (c. 21) and by S.I. 2011/1043.

(4) Section 92(1)(a) was amended by S.I. 2011/1043.

(5) Section 127(3)(a) was amended by S.I. 2011/1043.

(6) Section 131(3)(a) was amended by S.I. 2011/1043.

(7) Section 206(3)(k) was amended by S.I. 2011/1043.

(8) 1991 c. 57.

(9) Section 93 was amended by S.I. 2009/3104, 2013/755 (W.90) and 2018/942.

in subsection (7), at the appropriate places insert the following definitions—

““environmental objectives”—

- (a) in relation to the Solway Tweed River Basin District, means the objectives as defined in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99);
- (b) in relation to the Northumbria River Basin District, means the objectives referred to in the WFD Regulations as applied and modified by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245);
- (c) in relation to any other river basin district, within the meaning of the WFD Regulations, has the same meaning as in those regulations;

“hydromorphological quality element” has the same meaning as in the Water Framework Directive;

“the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (S.I. 2017/407).”.

In section 102(10)—

in the heading, at the end insert “etc.”;

in the words before paragraph (a), omit “enabling Her Majesty’s Government in the United Kingdom to give effect”;

for paragraph (a) substitute—

“(a) giving effect to any retained EU obligations, or”;

at the beginning of paragraph (b) insert “enabling Her Majesty’s Government in the United Kingdom to give effect”.

In section 116(11)—

in the heading, at the end insert “etc.”;

in subsection (1)—

in the words before paragraph (a), omit “enabling Her Majesty’s Government in the United Kingdom to give effect”;

for paragraph (a) substitute—

“(a) giving effect to any retained EU obligations, or”;

at the beginning of paragraph (b) insert “enabling Her Majesty’s Government in the United Kingdom to give effect”.

In each of sections 161ZA(12) and 161ZB(13) omit subsection (3).

In section 161ZC(14)—

in subsection (8), omit the words from “and in sections” to the end;

after subsection (8) insert—

“(9) In sections 161ZA and 161ZB “environmental objectives”, “hydromorphological quality element” and “Water Framework Directive” have the meanings given by section 93(7) of this Act.”.

In section 204(2)(k)(15), for “an EU obligation” substitute “a retained EU obligation”.

(10) Section 102(a) was amended by S.I. 2011/1043.

(11) Section 116(1)(a) was amended by paragraph 22 of Schedule 16 to the Marine and Coastal Access Act 2009 (c. 23) and by S.I. 2011/1043 and 2013/755 (W. 90). Article 4 of S.I. 1999/1746 disappplied section 116 in relation to part of the River Esk.

(12) Section 161ZA(3) was inserted by S.I. 2009/3104 and amended by S.I. 2013/755 (W. 90).

(13) Section 161ZB(3) was inserted by S.I. 2009/3104 and amended by S.I. 2013/755 (W. 90).

(14) Section 161ZC(8) was inserted by S.I. 2009/3104

(15) Section 204(2)(k) was amended by S.I. 2011/1043.

8. The amendments made to the Water Act 2014 by the 2019 Regulations, are to the following provisions

In paragraph 5(b) of Schedule 8 to the Water Act 2014⁽¹⁶⁾, for the words from “obligations” to “treaties” substitute “retained EU obligations”.

9. The changes identified in paragraphs 5 and 8 relate to a subject matter that is within the legislative competence of the National Assembly for Wales, and which could be the subject of a National Assembly Bill.
10. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to flood and water.

Why it is appropriate for the SI to make this provision

11. 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

December 2018

⁽¹⁶⁾ 2014 c. 21.

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.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION

AGRICULTURE, ENGLAND

COAST PROTECTION, ENGLAND

COMPANIES, ENGLAND AND WALES

ENVIRONMENTAL PROTECTION, ENGLAND

FLOOD RISK MANAGEMENT, ENGLAND

INSOLVENCY, ENGLAND AND WALES

INSURANCE

PUBLIC HEALTH, ENGLAND AND WALES

WATER

WATER INDUSTRY, ENGLAND AND WALES

WATER RESOURCES

**The Floods and Water (Amendment etc.) (EU Exit) Regulations
2019**

Made - - - -

Coming into force in accordance with regulation 1(1)

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The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018(a).

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament pursuant to paragraph 1(1) of Schedule 7 to that Act.

PART 1

Introductory

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 and come into force on exit day.

(2) Subject to paragraph (3), an amendment or revocation made by Parts 2 to 4 has the same extent and application as the provision amended or revoked.

(3) Regulation 6 does not apply in relation to Scotland.

PART 2

Amendment of primary legislation

Water Act 1989

2. In section 174(2)(k) of the Water Act 1989(b), for “an EU obligation” substitute “a retained EU obligation”.

Water Industry Act 1991

3.—(1) The Water Industry Act 1991(c) is amended as follows.

(2) In section 2(7)(d), for “EU obligation” substitute “retained EU obligation”.

(3) In section 92(e)—

(a) in the heading, at the end insert “etc.”;

(b) in subsection (1)—

(i) in the words before paragraph (a) omit “enabling Her Majesty’s Government in the United Kingdom to give effect”;

(ii) for paragraph (a) substitute—

“(a) giving effect to any retained EU obligations, or”;

(iii) at the beginning of paragraph (b) insert “enabling Her Majesty’s Government in the United Kingdom to give effect”.

(4) In section 127(3)(a)(f), for the words from “enabling” to “obligation or” substitute “giving effect to any retained EU obligation or enabling Her Majesty’s Government in the United Kingdom to give effect”.

(a) 2018 c. 16.

(b) 1989 c. 15; section 174(2)(k) was amended by S.I. 2011/1043.

(c) 1991 c. 56.

(d) Section 2(7) was inserted by section 39(9) of the Water Act 2003 (c. 37) and amended by section 24(2) of the Water Act 2014 (c. 21) and by S.I. 2011/1043.

(e) Section 92(1)(a) was amended by S.I. 2011/1043.

(f) Section 127(3)(a) was amended by S.I. 2011/1043.

(5) In section 131(3)(a)(a), for the words from “enabling” to “obligation or” substitute “giving effect to any retained EU obligation or enabling Her Majesty’s Government in the United Kingdom to give effect”.

(6) In section 206(3)(k)(b), for “an EU obligation” substitute “a retained EU obligation”.

Water Resources Act 1991

4.—(1) The Water Resources Act 1991(c) is amended as follows.

(2) In section 93(d)—

(a) in subsection (1B), for the words from “enabling” to “in relation to” substitute “achievement of”;

(b) omit subsection (2C);

(c) in subsection (7), at the appropriate places insert the following definitions—

““environmental objectives”—

(a) in relation to the Solway Tweed River Basin District, means the objectives as defined in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99);

(b) in relation to the Northumbria River Basin District, means the objectives referred to in the WFD Regulations as applied and modified by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245);

(c) in relation to any other river basin district, within the meaning of the WFD Regulations, has the same meaning as in those regulations;”;

““hydromorphological quality element” has the same meaning as in the Water Framework Directive;”;

““the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (S.I. 2017/407).”.

(3) In section 102(e)—

(a) in the heading, at the end insert “etc.”;

(b) in the words before paragraph (a), omit “enabling Her Majesty’s Government in the United Kingdom to give effect”;

(c) for paragraph (a) substitute—

“(a) giving effect to any retained EU obligations, or”;

(d) at the beginning of paragraph (b) insert “enabling Her Majesty’s Government in the United Kingdom to give effect”.

(4) In section 116(f)—

(a) in the heading, at the end insert “etc.”;

(b) in subsection (1)—

(i) in the words before paragraph (a), omit “enabling Her Majesty’s Government in the United Kingdom to give effect”;

(ii) for paragraph (a) substitute—

“(a) giving effect to any retained EU obligations, or”;

(a) Section 131(3)(a) was amended by S.I. 2011/1043.

(b) Section 206(3)(k) was amended by S.I. 2011/1043.

(c) 1991 c. 57.

(d) Section 93 was amended by S.I. 2009/3104, 2013/755 (W. 90) and 2018/942.

(e) Section 102(a) was amended by S.I. 2011/1043.

(f) Section 116(1)(a) was amended by paragraph 22 of Schedule 16 to the Marine and Coastal Access Act 2009 (c. 23) and by S.I. 2011/1043 and 2013/755 (W. 90). Article 4 of S.I. 1999/1746 disapplied section 116 in relation to part of the River Esk.

- (iii) at the beginning of paragraph (b) insert “enabling Her Majesty’s Government in the United Kingdom to give effect”.
- (5) In each of sections 161ZA(a) and 161ZB(b) omit subsection (3).
- (6) In section 161ZC(c)—
 - (a) in subsection (8), omit the words from “and in sections” to the end;
 - (b) after subsection (8) insert—
 - “(9) In sections 161ZA and 161ZB, “environmental objectives”, “hydromorphological quality element” and “Water Framework Directive” have the meanings given by section 93(7) of this Act.”.
- (7) In section 204(2)(k)(d), for “an EU obligation” substitute “a retained EU obligation”.

Water Act 2014

- 5. In paragraph 5(b) of Schedule 8 to the Water Act 2014(e), for the words from “obligations” to “treaties” substitute “retained EU obligations”.

PART 3

Amendment of secondary legislation

The Sludge (Use in Agriculture) Regulations 1989

- 6. After regulation 11 of the Sludge (Use in Agriculture) Regulations 1989(f), insert—

“Reporting

12.—(1) The appropriate authority must prepare and publish a report on the implementation of these Regulations.

(2) A report under paragraph (1) must be published in such manner as the appropriate authority considers appropriate.

(3) The first report under this regulation must be published by 31st December 2019.

(4) Subsequent reports under this regulation must be published at intervals not exceeding three years.

(5) In this regulation, the “appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers.”.

The Urban Waste Water Treatment (England and Wales) Regulations 1994

- 7.—(1) The Urban Waste Water Treatment (England and Wales) Regulations 1994(g) are amended as follows.

(2) In regulation 5—

- (a) in paragraph (1)(a)—
 - (i) for “such” substitute “a”;

(a) Section 161ZA(3) was inserted by S.I. 2009/3104 and amended by S.I. 2013/755 (W. 90).
 (b) Section 161ZB(3) was inserted by S.I. 2009/3104 and amended by S.I. 2013/755 (W. 90).
 (c) Section 161ZC(8) was inserted by S.I. 2009/3104.
 (d) Section 204(2)(k) was amended by S.I. 2011/1043.
 (e) 2014 c. 21.
 (f) S.I. 1989/1263 was amended by S.I. 2010/1820; there are other amending instruments but none is relevant.
 (g) S.I. 1994/2841; relevant amending instruments are S.I. 2013/755 (W. 90), 2018/942.

- (ii) omit the words from “as” to “Directive”;
 - (b) in paragraph (5), omit the words from “and with” to “Directive”;
 - (c) in paragraph (6), omit the words from “for the purpose” to the end;
 - (d) in paragraph (8)(a), for “the Directive and other Community Directives” substitute “retained EU law”.
- (3) After regulation 12 insert—

“Reporting

12A.—(1) The appropriate authority must prepare and publish a situation report on the disposal of urban waste water and sludge.

(2) The appropriate authority must review and assess compliance with these Regulations in each agglomeration and prepare and publish a report on—

- (a) the level of that compliance;
- (b) identified reasons for non-compliance where applicable;
- (c) proposed measures to achieve compliance with these Regulations.

(3) A report under paragraph (1) and (2) must be published in such manner as the appropriate authority considers appropriate.

(4) The first reports under paragraphs (1) and (2) must be published by 31st December 2020.

(5) Subsequent reports must be published at intervals not exceeding two years.

(6) In this regulation, the “appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers.”.

(4) In regulation 13—

(a) in the words before paragraph (a)—

- (i) for “the following obligations” substitute “the obligations of the Secretary of State and the Welsh Ministers under regulation 12A to publish a report”;
- (ii) after “the Secretary of State” insert “and the Welsh Ministers”;

(b) omit paragraphs (a) and (b).

(5) In Part 1 of Schedule 1, in paragraph (c), for “Council Directives” substitute “retained EU law”.

(6) In Part 1 of Schedule 3, in paragraph 4, for “any other relevant Community Directives” substitute “retained EU law”.

(7) In Schedule 4, for “other Community Directives” substitute “retained EU law”.

The Water Supply (Water Fittings) Regulations 1999

8.—(1) The Water Supply (Water Fittings) Regulations 1999(a) are amended as follows.

(2) In regulation 1(2), omit the definitions of “EEA Agreement” and “EEA State”.

(3) In regulation 4—

- (a) omit paragraph (2)(a);
- (b) in paragraph (2)(c), omit “of an EEA State”;
- (c) in paragraph (6)(a)—
 - (i) omit the words from “, a European” to “paragraph (2)(a)”;

(a) S.I. 1999/1148; relevant amending instruments are S.I. 2013/1387, 2018/942.

- (ii) omit “of an EEA State”.

The Drinking Water (Undertakings) (England and Wales) Regulations 2000

9. In regulation 2 of the Drinking Water (Undertakings) (England and Wales) Regulations 2000(a), for “implements” substitute “implemented”.

The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003

10.—(1) The Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003(b) are amended as follows.

(2) In regulation 4, for paragraph (2) substitute—

“(2) In this regulation—

- (a) “environmental objectives” means the objectives set under regulation 12, in accordance with regulation 13, of the principal Regulations (as applied by regulation 5 of these Regulations);
- (b) “programme of measures” means the programme of measures established under regulation 12, in accordance with regulation 20, of the principal Regulations (as applied by regulation 5 of these Regulations);
- (c) references to the Directive, the EQS Directive and the Groundwater Directive are to be read in accordance with Schedule 5 (modification of directives) to the principal Regulations(c).”.

(3) In regulation 5—

(a) in paragraph (1A)—

- (i) in sub-paragraph (a), for “Schedules 1 and 3” substitute “Schedules 1, 3 and 5”;
- (ii) omit sub-paragraph (b);

(b) after paragraph (6) insert—

“(7) Schedule 5 (modification of directives) has effect as if, in each of paragraphs 2(a), 18(a) and 26(a), for “England or Wales” there were substituted “the Northumbria River Basin District”.”.

The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004

11.—(1) The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004(d) are amended as follows.

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

“(3) For the purposes of these Regulations, references to the Directive, the EQS Directive and the Groundwater Directive, or to any provision of them, are to be read in accordance with Schedule 5.”.

(3) In Schedule 1—

(a) in paragraph 4(2)(b)—

- (i) for “any EU instrument” substitute “retained EU law”;
- (ii) omit “, or any enactment implementing such an EU instrument”;

(a) S.I. 2000/1297; relevant amending instruments are S.I. 2010/996, 2018/942.

(b) S.I. 2003/3245, amended by S.I. 2016/139, 2017/407.

(c) Regulation 20 of these Regulations inserts Schedule 5 into the principal Regulations.

(d) S.I. 2004/99; relevant amending instruments are S.I. 2011/1043, 2016/139, 2018/942.

- (b) in paragraph 5(4)(b), for “1.4 to 1.4.3” substitute “1.4.1 (excluding points (iv) to (ix)), 1.4.2 and 1.4.3”;
 - (c) in paragraph 7, after sub-paragraph (3B) insert—
 - “(3C) Where a provision referred to in sub-paragraphs (3) to (3B) refers to Article 13 of the Directive, that reference is to be read as a reference to Article 13 except in so far as it gives rise to any obligation under Article 15 of the Directive.”;
 - (d) in paragraph 14, for sub-paragraph (4) substitute—
 - “(4) The Ministers must ensure that, no more than three years after publication of an updated river basin management plan under paragraph 11—
 - (a) an interim report is produced describing progress in the implementation of the planned programme of measures;
 - (b) the report is published in such manner as the Ministers consider appropriate.”;
 - (e) omit paragraph 14A;
 - (f) in paragraph 16—
 - (i) in sub-paragraph (1), after “giving effect to” insert “these Regulations or any other retained EU law which transposed”;
 - (ii) in sub-paragraph (2), after “practical implementation of” insert “these Regulations or any other retained EU law which transposed”.
- (4) In Schedule 2, omit paragraph 1.
- (5) In Schedule 3, in the definition of “Good surface water chemical status”, for the words from “in Annex IX” to the end substitute “by the table of priority substances, and under relevant retained EU law which sets environmental quality standards”.
- (6) After Schedule 4 insert—

“SCHEDULE 5

Regulation 2(3)

Modification of directives

PART 1

Modifications of the Water Framework Directive

1. A reference to the Directive, or to any provision of it, is to be read in accordance with this Part.
2. When interpreting the Directive for the purposes of these Regulations—
 - (a) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the relevant authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or able to exercise that discretion, in respect of the Solway Tweed River Basin District;
 - (b) in sub-paragraph (a), “relevant authority” means—
 - (i) the Ministers;
 - (ii) the Agencies;
 - (iii) any other public body with functions under these Regulations;
 - (c) a reference to Article 13 of the Directive is to be read as a reference to Article 13 except in so far as it gives rise to any obligation under Article 15 of the Directive;
 - (d) any reference to Community legislation (other than a reference to existing Community legislation) is to be read as if it were a reference to retained EU law;

(e) any reference to existing Community legislation or existing legislation is to be read as if it were a reference to Community legislation which was in force prior to 23rd October 2000;

(f) the Directive is to be read as if the following modifications were made to it.

3. Article 2(24) is to be read as if, for the words from “in Annex IX” to the end, there were substituted “by the table of priority substances, and under relevant retained EU law which sets environmental quality standards”.

4. Article 4 is to be read as if—

(a) in paragraph 1—

(i) in point (a)(iv), for “Article 16(1) and (8)” there were substituted “the EQS Directive”;

(ii) in point (b)(iii), for “paragraphs 2, 4 and 5 of Article 17” there were substituted “the Groundwater Directive”;

(b) in paragraph 8, the reference to other Community environmental legislation were a reference to retained EU law relating to the environment.

5. Article 7(2) is to be read as if—

(a) for “at Community level under Article 16” there were substituted “by retained EU law which implemented the EQS Directive”;

(b) for “Directive 80/778/EEC as amended by Directive 98/83/EC” there were substituted “retained EU law which implemented Directive 98/83/EC on the quality of water intended for human consumption(a)”.

6. Article 10 is to be ignored.

7. Article 11(3) is to be read as if—

(a) in subparagraph (a), for the words from “to implement” to the end, there were substituted “under retained EU law for the protection of water”;

(b) in subparagraph (j), in the fourth indent, for the words from “Directive 2009/31/EC” to the end there were substituted “Chapter 3 of Part 1 of the Energy Act 2008(b) and other retained EU law which transposed Directive 2009/31/EC on the geological storage of carbon dioxide(c)”;

(c) in subparagraph (k)—

(i) the words “in accordance with action taken pursuant to Article 16,” were omitted;

(ii) for “agreed pursuant to Article 16(2)” there were substituted “in Annex 10”.

8. Article 12 is to be ignored.

9. Article 15 is to be ignored.

10. Article 24 is to be ignored.

11. Annex 1 is to be ignored.

12. Annex 2 is to be read as if—

(a) in section 1.1, paragraph (vi) were omitted;

(b) in section 1.4—

(a) OJ No L 350, 5.12.1998, p 32, as last amended by Commission Directive (EU) 2015/1787 (OJ No L 260, 7.10.2015, p 6).

(b) 2008 c. 32. Chapter 3 was amended by paragraph 5 of Schedule 4 to the Marine and Coastal Access Act 2009 (c.23), section 107 of the Energy Act 2011 (c.16), Schedules 1 and 2 to the Energy Act 2016 (c.20), S.I. 2011/2453, 2015/664, 2017/524 and S.S.I. 2011/224.

(c) OJ No L 140, 5.6.2009, p 114, as last amended by Decision 2018/853/EU (OJ No L 150, 14.6.2018, p 155).

- (i) in the second paragraph—
 - (aa) after “gathered under” there were inserted “the retained EU law which implemented”;
 - (bb) in sub-paragraph (ii), the reference to information gathered under Articles 9 and 15 of Directive 96/61/EC were a reference to relevant information gathered under the retained EU law which transposed Articles 5(3), 14 and 24 of Directive 2010/75/EC on industrial emissions(a);
- (ii) in the third paragraph—
 - (aa) after “gathered under” there were inserted “the retained EU law which implemented”;
 - (bb) in sub-paragraph (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.

13. Annex 4 is to be read as if—

- (a) in paragraph 1—
 - (i) in subparagraph (iii), for “Directive 76/160/EEC” there were substituted “retained EU law which transposed Directive 2006/7/EC concerning the management of bathing water quality(b)”;
 - (ii) in subparagraph (iv), after “under” (in both places it occurs) there were inserted “retained EU law which transposed”;
 - (iii) in subparagraph (v), for “Directive 79/409/EEC” there were substituted “retained EU law which transposed Directive 2009/147/EC on the conservation of wild birds(c)”;
- (b) in paragraph 2, the words “Community, local or national” were omitted.

14. Annex 5 is to be read as if—

- (a) references in tables 1.2.1 to 1.2.5 to Directive 91/414/EC, in each place they occur, were references to Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market;
- (b) references in tables 1.2.1 to 1.2.5 to Directive 98/8/EC, in each place they occur, were references 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;
- (c) in section 1.3.1, in the paragraph headed “Selection of monitoring points”, the fourth indent (referring to “the Information Exchange Decision 77/795/EEC”) were omitted;
- (d) 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;
- (e) in section 1.4.1—
 - (i) in point (iii), for the words from “shall be established” to the end there were substituted “is as set out in Commission Decision 2018/229 establishing, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, the values of the Member State monitoring system classifications as a result of the intercalibration exercise”;

(a) OJ No L 334, 17.12.2010, p 17, as last corrected by a corrigendum (OJ No L 158, 19.6.2012, p 25).

(b) OJ No L 64, 4.3.2006, p 37, as last amended by Council Directive 2013/641/EU (OJ No L 353, 28.12.2013, p 8).

(c) OJ No L 20, 26.1.2010, p 7, as last amended by Council Directive 2013/17/EU (OJ No L 158, 10.6.2013, p 193).

- (ii) points (iv) to (ix) were omitted;
- (f) in section 1.4.3, for the words “Annex IX, Article 16 and under other relevant Community legislation” there were substituted “Annex 1 to the EQS Directive and under relevant retained EU law”;
- (g) in the table in section 2.3.2, in the column for “good status”, for “other relevant Community legislation in accordance with Article 17” there were substituted “the Groundwater Directive”;
- (h) in section 2.4.5, the words “Without prejudice to the Directives concerned,” were omitted.

15. Annex 6 is to be read as if Part A were omitted.

16. Annex 7 is to be read as if, in Part A—

- (a) in point 7.1, for “to implement Community legislation” there were substituted “under retained EU law”;
- (b) point 10 were omitted.

PART 2

Modifications of the Groundwater Directive

17. A reference to the Groundwater Directive, or to any provision of it, is to be read in accordance with this Part.

18. When interpreting the Groundwater Directive for the purposes of these Regulations—

- (a) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the relevant authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or able to exercise that discretion, in respect of the Solway Tweed River Basin District;
- (b) in sub-paragraph (a), “relevant authority” means—
 - (i) the Ministers;
 - (ii) the Agencies;
 - (iii) any other public body with functions under these Regulations;
- (c) any reference to Community legislation is to be read as if it were a reference to retained EU law;
- (d) the Groundwater Directive is to be read as if the following modifications were made to it.

19. Article 3 is to be read as if—

- (a) paragraphs 3 and 4 were omitted;
- (b) in paragraph 5, for “submitted” there were substituted “produced”.

20. Article 5 is to be read as if, in each of paragraphs 4 and 5, for “submitted” there were substituted “produced”.

21. Article 6(4) is to be read as if the words after “paragraph 3” were omitted.

22. Article 12 is to be ignored.

23. Annex 1 is to be read as if—

- (a) in footnote 1 to the table in point 1, for “Article 2 of Directive 91/414/EEC and in Article 2 of Directive 98/8/EC” there were substituted “Article 2 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the

placing of plant protection products on the market and Article 3 of 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”;

- (b) in point 2, for “Directive 91/414/EEC or Directive 98/8/EC” there were substituted “Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market or 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”.

24. Annex 2 is to be read as if, in Part C—

- (a) for “submitted” there were substituted “produced”;
- (b) in point (c)(iii), for “at national, Union or” there were substituted “in retained EU law or other national legislation, or at”.

PART 3

Modifications of the Environmental Quality Standards Directive

25. A reference to the EQS Directive, or to any provision of it, is to be read in accordance with this Part.

26. When interpreting the EQS Directive for the purposes of these Regulations—

- (a) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the relevant authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or able to exercise that discretion, in respect of the Solway Tweed River Basin District;
- (b) in sub-paragraph (a), “relevant authority” means—
 - (i) the Ministers;
 - (ii) the Agencies;
 - (iii) any other public body with functions under these Regulations;
- (c) the EQS Directive is to be read as if the following modifications were made to it.

27. Article 3 is to be read as if—

- (a) each reference to a provision of Commission Directive 2009/90/EC laying down, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status were modified in accordance with paragraph 26(a);
- (b) paragraph 5a were omitted.

28. Article 4 is to be read as if—

- (a) in paragraph 2(b), the words from “, such as” to the end were omitted;
- (b) in paragraph 3(b), the reference to Community law were a reference to retained EU law.

29. Article 5 is to be read as if—

- (a) references to Directive 91/414/EEC were references to Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market;
- (b) paragraph 3 were omitted.

30. The following Articles are to be ignored—

- (a) Article 6(1)(c) and (2);

- (b) Article 7a;
- (c) in Article 8a(1), the final sentence of the second subparagraph;
- (d) Article 8b(4);
- (e) Article 8c;
- (f) Article 13.”.

The Water Industry (Special Administration) Rules 2009

12. In rule 123 of the Water Industry (Special Administration) Rules 2009(a), omit paragraph (2).

The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010

13. In regulation 2(3) of the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010(b), omit the words from “and is recognised” to the end.

The Incidental Flooding and Coastal Erosion (England) Order 2011

14. In article 3 of the Incidental Flooding and Coastal Erosion (England) Order 2011(c)—

- (a) in paragraph (3), for the words from “the United Kingdom” to “under” substitute “compliance with the retained EU law which implemented”;
- (b) for paragraph (4)(a) substitute—
 - “(a) “environmental objectives”—
 - (i) in relation to the Solway Tweed River Basin District, means the objectives as defined in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004;
 - (ii) in relation to the Northumbria River Basin District, means the objectives referred to in the WFD Regulations as applied and modified by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;
 - (iii) in relation to any other river basin district, within the meaning of the WFD Regulations, has the same meaning as in those Regulations;”;
- (c) after paragraph (4)(d) insert—
 - “(e) “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(d).”.

The Bathing Water Regulations 2013

15.—(1) The Bathing Water Regulations 2013(e) are amended as follows.

(2) In regulation 2, at the end insert—

“(4) For the purposes of these Regulations, a reference to an EU Directive is to be read as if any reference in that Directive to one or more member States in a provision imposing an obligation on, or conferring a discretion on, a member State or member States were a reference to the appropriate Minister, appropriate agency or local authority which,

(a) S.I. 2009/2477, to which there are amendments not relevant to these Regulations.
 (b) S.I. 2010/639, to which there are amendments not relevant to these Regulations.
 (c) S.I. 2011/2855, relevant amending instruments are S.I. 2013/755 (W.90), 2018/575.
 (d) S.I. 2017/407, amended by S.I. 2018/942.
 (e) S.I. 2013/1675, relevant amending instruments are S.I. 2017/407, 2018/575.

immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or able to exercise that discretion, in respect of England or Wales.”.

(3) In regulation 3(7), for “giving effect to the Bathing Water Directive” substitute “these Regulations”.

(4) In regulation 5—

(a) in paragraph (1)(c), for “requirements” substitute “provisions”;

(b) at the end insert—

“(4) For the purposes of this regulation, the Bathing Water Directive is to be read as if—

(a) in Article 2(13), the reference to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment were a reference to Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment^(a);

(b) the following provisions were omitted—

(i) Article 3(8);

(ii) in Article 3(9), the final sentence;

(iii) in Article 4(2), in the second subparagraph, the second and third sentences;

(c) in Article 6(3), the reference to Council Directive 2000/60/EC were a reference to Article 8 of that Directive;

(d) the following provisions were omitted—

(i) Article 13;

(ii) Article 14;

(iii) Article 18;

(e) in Annex 3, in paragraph 1(a), the reference to Council Directive 2000/60/EC were omitted.

(5) For the purposes of paragraph (4)(c), Article 8 of Council Directive 2000/60/EC is to be read as if—

(a) in paragraph 1, in the final indent, the reference to Community legislation were a reference to retained EU law;

(b) in paragraph 2, the reference in the second sentence to Annex 5 to Council Directive 2000/60/EC were a reference to that Annex as modified by Part 1 of Schedule 5 to the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017^(b).”.

(5) In Part 6, before regulation 16 insert—

“Annual reports

15A.—(1) Subject to paragraph (2), the appropriate Minister must prepare and publish, by 30th April each calendar year, a report on the bathing water season in the previous year.

(2) The first report under this regulation must be published by 30th April 2020.

(3) A report must—

(a) be published in such manner as the appropriate Minister considers appropriate;

(b) contain the following information for a bathing water—

(i) the results of monitoring carried out under regulation 8;

(a) OJ No L 26, 28.1.2012, p 1, as last amended by Directive 2014/52/EU (OJ No L 124, 25.4.2014, p 1).

(b) Regulation 20 of these Regulations inserts Schedule 5 into the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.

- (ii) the reasons for any suspension of the monitoring calendar notified by the appropriate agency under regulation 8(6);
- (iii) the results of bathing water quality assessments carried out under regulation 10;
- (iv) a description of any significant management measures taken.”.

(6) In regulation 16(6), for “giving effect to the Bathing Water Directive” substitute “these Regulations”.

(7) In regulation 17, for “the Bathing Water Directive” substitute “these Regulations”.

The Nitrate Pollution Prevention Regulations 2015

16.—(1) The Nitrate Pollution Prevention Regulations 2015(a) are amended as follows.

(2) In regulation 2, at the end insert—

“(4) For the purposes of these Regulations, a reference to an EU Directive is to be read as if any reference in that Directive to one or more member States in a provision imposing an obligation on, or conferring a discretion on, a member State or member States were a reference to the authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or able to exercise that discretion, in respect of England.

(5) In paragraph (4), the “authority” means the Agency or the Secretary of State.”.

(3) In regulation 4—

(a) in paragraph (2)(b), for “Council Directive 98/83/EC” substitute “the Water Supply (Water Quality) Regulations 2016(b) and the Private Water Supplies (England) Regulations 2016(c)”;

(b) at the end insert—

“(7) For the purposes of paragraph (5)(a), the reference to Annex 1 to Council Directive 91/676/EEC(d) is to be read as if—

(a) each reference in it to Article 5 of that Directive were to regulations 7 to 35 of these Regulations;

(b) in point A(1), for the words from “more than” to “Directive 75/440/EEC” there were substituted “a concentration of nitrates greater than 50 mg/l”.”.

(4) In regulation 36—

(a) after paragraph (2) insert—

“(2A) For the purposes of paragraph (2), paragraph 2(b) of Annex 3 to Council Directive 91/676/EEC is to be read as if the third subparagraph were omitted.”;

(b) at the end insert—

“(7) As part of the review conducted under regulation 39, the Secretary of State must review the overall position of derogations granted under this regulation against—

(a) objective criteria, including—

(i) the existence, in designated nitrate vulnerable zones, of long growing seasons, crops with high nitrogen uptake, and soils with exceptionally high denitrification capacity;

(ii) the net rainfall in designated nitrate vulnerable zones;

(b) the following objectives—

(a) S.I. 2015/668, relevant amending instruments are S.I. 2016/1154, 2016/1190, 2018/575.

(b) S.I. 2016/614, amended by S.I. 2017/506, 2018/378, 2018/706.

(c) S.I. 2016/618, amended by S.I. 2017/506, 2018/707.

(d) OJ No L 375, 31.12.1991, p 1, as last amended by Regulation (EC) No 1137/2008 (OJ No L 311, 21.11.2008, p 1).

- (i) reducing water pollution caused or induced by nitrates from agricultural sources;
 - (ii) preventing further such pollution.”.
- (5) In the heading of regulation 39, at the end insert “of the action programme”.
- (6) After regulation 40, insert—

“Implementation report

40A.—(1) The Secretary of State must prepare a report on the implementation of these Regulations for each relevant period.

(2) A report under paragraph (1) must contain—

- (a) details of any steps taken to promote good agricultural practice;
- (b) the map published under regulation 3(2), accompanied by a statement detailing the nature of, and reasons for, any revisions to the designated nitrate vulnerable zone since the end of the previous reporting period;
- (c) a summary of the monitoring results obtained by the Agency under regulation 4;
- (d) a summary of the most recent review conducted under regulation 39.

(3) A report under paragraph (1) must be published—

- (a) in such manner as the Secretary of State considers appropriate;
- (b) by the last day of the six month period beginning with the day on which the relevant period ends.

(4) In this regulation, “relevant period” means the period of four years beginning with 1st January 2016 and each successive period of four years.”.

The Flood Reinsurance (Scheme Funding and Administration) Regulations 2015

17. In regulation 11(1)(a)(i) of the Flood Reinsurance (Scheme Funding and Administration) Regulations 2015(a), for “directly applicable” substitute “retained direct”.

The Water Supply (Water Quality) Regulations 2016

18.—(1) The Water Supply (Water Quality) Regulations 2016 are amended as follows.

(2) In regulation 2, at the end insert—

“(5) In these Regulations, a reference to an EU or Euratom Directive is to be read as if any reference in that Directive to one or more member States in a provision imposing an obligation on, or conferring a discretion on, a member State or member States were a reference to either the Secretary of State or local authority depending on which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or able to exercise that discretion, in respect of England or Wales.”.

(3) In regulation 6(13), for the words from “communicate” to “Commission” substitute “publish, in such manner as the Secretary of State considers appropriate, the grounds for the notification”.

(4) In regulation 9, at the end insert—

“(13) For the purposes of paragraph (11)(c), Articles 7(1) and 8 of Directive 2000/60/EC are to be read with the following modifications—

- (a) as if any reference to Annex 5 to that Directive were a reference to that Annex as modified by Part 1 of Schedule 5 to the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017;
- (b) in Article 8, as if—

(a) S.I. 2015/1902.

- (i) in paragraph 1, the final indent were omitted;
 - (ii) in paragraph 2, the first sentence were omitted;
 - (iii) paragraph 3 were omitted.”.
- (5) In regulation 23—
- (a) in paragraph (7), for “further departure” substitute “further two departures”;
 - (b) omit paragraphs (9) and (10);
 - (c) in paragraph (12) omit “and (9)”.
- (6) In regulation 31—
- (a) omit paragraph (2)(a) (together with the final “or”);
 - (b) in paragraph (2)(b), omit “of an EEA state or Turkey”;
 - (c) omit paragraph (3)(b);
 - (d) omit paragraph (15).
- (7) After regulation 39 insert—

“Reporting

- 39A.**—(1) The Secretary of State must prepare and publish a report on the quality of water intended for human consumption, with the objective of informing consumers.
- (2) A report under paragraph (1) must—
- (a) be published in such manner as the Secretary of State considers appropriate;
 - (b) include, as a minimum, information on all individual supplies of water that—
 - (i) exceed 1,000m³ a day as an average, or
 - (ii) serve more than 5,000 persons;
 - (c) cover a period of three calendar years.
- (3) The first report under this regulation must cover the years 2017, 2018 and 2019 and be published by 31st December 2021.
- (4) Subsequent reports under this regulation must be published at intervals not exceeding three years.”.

The Private Water Supplies (England) Regulations 2016

- 19.**—(1) The Private Water Supplies (England) Regulations 2016 are amended as follows.
- (2) In regulation 2, at the end insert—
- “(3) In these Regulations, a reference to an EU or Euratom Directive is to be read as if any reference in that Directive to one or more member States in a provision imposing an obligation on, or conferring a discretion on, a member State or member States were a reference to either the Secretary of State or local authority depending on which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or was able to exercise that discretion, in respect of England.”.
- (3) In regulation 6, at the end insert—
- “(7) For the purposes of paragraph (5)(c), Articles 7(1) and 8 of Directive 2000/60/EC are to be read with the following modifications—
- (a) as if any reference to Annex 5 to that Directive were a reference to that Annex as modified by Part 1 of Schedule 5 to the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017;
 - (b) in Article 8, as if—
 - (i) in paragraph 1, the final indent were omitted;
 - (ii) in paragraph 2, the first sentence were omitted;

(iii) paragraph 3 were omitted.”.

(4) In regulation 11(12), for “communicate to the European Commission” substitute “publish, in such manner as the Secretary of State considers appropriate,”.

(5) After regulation 21, insert—

“Reporting

21A.—(1) The Secretary of State must prepare and publish a report on the quality of water intended for human consumption, with the objective of informing consumers.

(2) A report under paragraph (1) must—

- (a) be published in such manner as the Secretary of State considers appropriate;
- (b) include, as a minimum, information on all individual supplies of water that—
 - (i) exceed 1,000m³ a day as an average, or
 - (ii) serve more than 5,000 persons;
- (c) cover a period of three calendar years.

(3) The first report under this regulation must cover the years 2017, 2018 and 2019 and be published by 31st December 2021.

(4) Subsequent reports under this regulation must be published at intervals not exceeding three years.”.

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017

20.—(1) The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 are amended as follows.

(2) In regulation 2, at the end insert—

“(5) For the purposes of these Regulations, references to the WFD, GWD and EQSD, or to a provision of one of them, are to be read in accordance with Schedule 5.”.

(3) In regulation 10(2)(b)—

- (a) for “any EU instrument” substitute “retained EU law”;
- (b) omit “, or any enactment implementing such an EU instrument”.

(4) In regulation 11—

- (a) in paragraph (4)(a), for “the EU legislation” substitute “retained EU law”;
- (b) in paragraph (5)(c), for “1.4 to 1.4.3” substitute “1.4.1 (excluding points (iv) to (ix)), 1.4.2 and 1.4.3”;
- (c) after paragraph (5) insert—

“(5A) A requirement in any of the provisions of Annex 5 listed in paragraph (5) to provide a map is to be read (where this is not otherwise specified) as a requirement to include the map in the relevant river basin management plan.”.

(5) In regulation 13(6)—

- (a) for “any EU instrument” substitute “the retained EU law”;
- (b) for “that EU instrument” substitute “the relevant retained EU law”.

(6) In regulation 14(b), for “the implementation of any other EU instrument” substitute “any other retained EU law”.

(7) In regulation 20(2)—

- (a) omit sub-paragraph (a);

- (b) in sub-paragraph (j)(iv)(aa), for the words from “Directive” to the end substitute “Chapter 3 of Part 1 of the Energy Act 2008 and other retained EU law which transposed Directive 2009/31/EC on the geological storage of carbon dioxide”;
 - (c) omit sub-paragraph (j)(iv)(bb).
- (8) Omit regulation 23.
- (9) In regulation 34, for paragraph (4) substitute—
- “(4) The appropriate agency must, within three years of an updated river basin management plan being published under regulation 31(5)—
- (a) produce an interim report describing progress in the implementation of each planned programme of measures;
 - (b) publish that report in such manner as the appropriate agency considers appropriate.
- ”.
- (10) In regulation 36—
- (a) in paragraphs (1) and (3), after “giving effect to” insert “these Regulations or any other retained EU law which implemented”;
 - (b) in paragraph (5), after “practical implementation of” insert “these Regulations or any other retained EU law which implemented”.
- (11) In Schedule 1—
- (a) in paragraph 1(1)(a), after “the WFD” insert “and is to be read in accordance with Schedule 5”;
 - (b) in paragraph 1(2), in the definition of “good surface water chemical status”, for “other relevant EU legislation setting environmental quality standards at EU level” substitute “relevant retained EU law which sets environmental quality standards”.
- (12) In Schedule 2, omit paragraph 1.
- (13) Omit Schedule 3.
- (14) After Schedule 4 insert—

“SCHEDULE 5

Regulation 2(5)

Modification of directives

PART 1

Modifications of the Water Framework Directive

1. A reference to the WFD, or to any provision of it, is to be read in accordance with this Part.
2. When interpreting the WFD for the purposes of these Regulations—
 - (a) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or other public body which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or able to exercise that discretion, in respect of England or Wales;
 - (b) a reference to Article 13 of the WFD is to be read as a reference to Article 13 except in so far as it gives rise to any obligation under Article 15 of that Directive;
 - (c) any reference to Community legislation (other than a reference to existing Community legislation) is to be read as if it were a reference to retained EU law;

(d) any reference to existing Community legislation or existing legislation is to be read as if it were a reference to Community legislation which was in force prior to 23rd October 2000;

(e) the WFD is to be read as if the following modifications were made to it.

3. Article 2(24) is to be read as if, for the words from “in Annex IX” to the end, there were substituted “by the table of priority substances, and under relevant retained EU law which sets environmental quality standards”.

4. Article 4 is to be read as if—

(a) in paragraph 1—

(i) in point (a)(iv), for “Article 16(1) and (8)” there were substituted “the EQSD”;

(ii) in point (b)(iii), for “paragraphs 2, 4 and 5 of Article 17” there were substituted “the GWD”;

(b) in paragraph 8, the reference to other Community environmental legislation were a reference to retained EU law relating to the environment.

5. Article 7(2) is to be read as if—

(a) for “at Community level under Article 16” there were substituted “by retained EU law which implemented the EQSD”;

(b) for “Directive 80/778/EEC as amended by Directive 98/83/EC” there were substituted “retained EU law which implemented Directive 98/83/EC on the quality of water intended for human consumption”.

6. Article 10 is to be ignored.

7. Article 11(3) is to be read as if—

(a) in subparagraph (a), for the words from “to implement” to the end, there were substituted “under retained EU law for the protection of water”;

(b) in subparagraph (j), in the fourth indent, for the words from “Directive 2009/31/EC” to the end there were substituted “Chapter 3 of Part 1 of the Energy Act 2008 and other retained EU law which transposed Directive 2009/31/EC on the geological storage of carbon dioxide”;

(c) in subparagraph (k)—

(i) the words “in accordance with action taken pursuant to Article 16,” were omitted;

(ii) for “agreed pursuant to Article 16(2)” there were substituted “in Annex 10”.

8. Article 12 is to be ignored.

9. Article 15 is to be ignored.

10. Article 24 is to be ignored.

11. Annex 1 is to be ignored.

12. Annex 2 is to be read as if—

(a) in section 1.1, paragraph (vi) were omitted;

(b) in section 1.4—

(i) in the second paragraph—

(aa) after “gathered under” there were inserted “the retained EU law which implemented”;

(bb) in sub-paragraph (ii), the reference to information gathered under Articles 9 and 15 of Directive 96/61/EC were a reference to relevant

information gathered under the retained EU law which transposed Articles 5(3), 14 and 24 of Directive 2010/75/EC on industrial emissions;

(ii) in the third paragraph—

(aa) after “gathered under” there were inserted “the retained EU law which implemented”;

(bb) in sub-paragraph (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.

13. Annex 4 is to be read as if—

(a) in paragraph 1—

(i) in subparagraph (iii), for “Directive 76/160/EEC” there were substituted “retained EU law which transposed Directive 2006/7/EC concerning the management of bathing water quality”;

(ii) in subparagraph (iv), after “under” (in both places it occurs) there were inserted “retained EU law which transposed”;

(iii) in subparagraph (v), for “Directive 79/409/EEC” there were substituted “retained EU law which transposed Directive 2009/147/EC on the conservation of wild birds”;

(b) in paragraph 2, the words “Community, local or national” were omitted.

14. Annex 5 is to be read as if—

(a) references in tables 1.2.1 to 1.2.5 to Directive 91/414/EC, in each place they occur, were references to Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market;

(b) references in tables 1.2.1 to 1.2.5 to Directive 98/8/EC, in each place they occur, were references 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;

(c) in section 1.3.1, in the paragraph headed “Selection of monitoring points”, the fourth indent (referring to “the Information Exchange Decision 77/795/EEC”) were omitted;

(d) 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;

(e) in section 1.4.1—

(i) in point (iii), for the words from “shall be established” to the end there were substituted “is as set out in Commission Decision 2018/229 establishing, pursuant to Directive 2000/60/EC of the European 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;

(f) in section 1.4.3, for the words “Annex IX, Article 16 and under other relevant Community legislation” there were substituted “Annex 1 to the EQSD and under relevant retained EU law”;

(g) in the table in section 2.3.2, in the column for “good status”, for “other relevant Community legislation in accordance with Article 17” there were substituted “the GWD”;

(h) in section 2.4.5, the words “Without prejudice to the Directives concerned” were omitted.

- 15.** Annex 6 is to be read as if Part A were omitted.
- 16.** Annex 7 is to be read as if, in Part A—
- (a) in point 7.1, for “to implement Community legislation” there were substituted “under retained EU law”;
 - (b) point 10 were omitted.

PART 2

Modifications of the Groundwater Directive

- 17.** A reference to the GWD, or to any provision of it, is to be read in accordance with this Part.
- 18.** When interpreting the GWD for the purposes of these Regulations—
- (a) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or other public authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or able to exercise that discretion, in respect of England or Wales;
 - (b) any reference to Community legislation is to be read as if it were a reference to retained EU law;
 - (c) the GWD is to be read as if the following modifications were made to it.
- 19.** Article 3 is to be read as if—
- (a) paragraphs 3 and 4 were omitted;
 - (b) in paragraph 5, for “submitted” there were substituted “produced”.
- 20.** Article 5 is to be read as if, in each of paragraphs 4 and 5, for “submitted” there were substituted “produced”.
- 21.** Article 6(4) is to be read as if the words after “paragraph 3” were omitted.
- 22.** Article 12 is to be ignored.
- 23.** Annex 1 is to be read as if—
- (a) in footnote 1 to the table in point 1, for “Article 2 of Directive 91/414/EEC and in Article 2 of Directive 98/8/EC” there were substituted “Article 2 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and Article 3 of 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”;
 - (b) in point 2, for “Directive 91/414/EEC or Directive 98/8/EC” there were substituted “Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market or 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”.
- 24.** Annex 2 is to be read as if, in Part C—
- (a) for “submitted” there were substituted “produced”;
 - (b) in point (c)(iii), for “at national, Union or” there were substituted “in retained EU law or other national legislation, or at”.

PART 3

Modifications of the Environmental Quality Standards Directive

25. A reference to the EQSD, or to any provision of it, is to be read in accordance with this Part.

26. When interpreting the EQSD for the purposes of these Regulations—

- (a) each reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the appropriate authority, appropriate agency or other public authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or able to exercise that discretion, in respect of England or Wales;
- (b) the EQSD is to be read as if the following modifications were made to it.

27. Article 3 is to be read as if—

- (a) each reference to a provision of Commission Directive 2009/90/EC laying down, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status were modified in accordance with paragraph 26(a);
- (b) paragraph 5a were omitted.

28. Article 4 is to be read as if—

- (a) in paragraph 2(b), for “referred to in Directive 2008/1/EC” there were substituted “under the Environmental Permitting (England and Wales) Regulations 2016^(a)”;
- (b) in paragraph 3(b), the reference to Community law were a reference to retained EU law.

29. Article 5 is to be read as if—

- (a) references to Directive 91/414/EEC were references to Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market;
- (b) paragraph 3 were omitted.

30. The following Articles are to be ignored—

- (a) Article 6(1)(c) and (2);
- (b) Article 7a;
- (c) in Article 8a(1), the final sentence of the second subparagraph;
- (d) Article 8b(4);
- (e) Article 8c;
- (f) Article 13.”.

The Water Abstraction and Impounding (Exemptions) Regulations 2017

21. In regulation 2 of the Water Abstraction and Impounding (Exemptions) Regulations 2017^(b), in the definition of “conservation site”—

- (a) omit paragraph (a);

(a) S.I. 2016/1154, to which there are amendments not relevant to these Regulations.

(b) S.I. 2017/1044, amended by S.I. 2018/942.

- (b) in paragraph (b), for the words from “within” to the end substitute “or proposed special area of conservation within the meaning of regulations 12 and 13, respectively, of the 2017 Regulations”.

The Water Abstraction (Transitional Provisions) Regulations 2017

22. In regulation 9 of the Water Abstraction (Transitional Provisions) Regulations 2017(a)—

- (a) after paragraph (4) insert—

“(4A) In paragraph (4)—

- (a) in the definitions of “good ecological potential” and “good ecological status”, references to Annex 5 to the Directive are to be read as if in Annex 5—

- (i) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the appropriate authority or appropriate agency which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation, or was able to exercise that discretion, in respect of England or Wales;

- (ii) references in tables 1.2.1 to 1.2.5 to Directive 91/414/EC, in each place 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;

- (iii) references in tables 1.2.1 to 1.2.5 to Directive 98/8/EC, in each place 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;

- (iv) in section 1.4.1—

- (aa) in point (iii), for the words from “shall be established” to the end there were substituted “is as set out in Commission Decision 2018/229 establishing, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, the values of the Member State monitoring system classifications as a result of the intercalibration exercise”;

- (bb) points (iv) to (ix) were omitted;

- (b) in the definition of “good quantitative status”, the reference to table 2.1.2 of Annex 5 to the Directive is to be read as if the reference to environmental objectives under Article 4 were a reference to the environmental objectives—

- (i) in relation to the Solway Tweed River Basin District, as defined in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004;

- (ii) in relation to the Northumbria River Basin District, referred to in the WFD Regulations as applied and modified by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003(b);

- (iii) in relation to any other river basin district, within the meaning of the WFD Regulations.”.

- (b) in paragraph (5)—

- (i) for “paragraph (4),” substitute “this regulation—”;

- (ii) the definition of “the Directive” becomes sub-paragraph (a);

(a) S.I. 2017/1047, amended by S.I. 2018/575.

(b) S.I. 2003/3245; relevant amending instruments are S.I. 2016/139 and 2017/407.

(iii) after sub-paragraph (a) insert—

“(b) “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(a).”.

PART 4

Amendment and revocation of EU decisions

Commission Implementing Decision 2011/321/EU

23. In Commission Implementing Decision 2011/321/EU establishing, pursuant to Directive 2006/7/EC of the European Parliament and of the Council, a symbol for information to the public on bathing water classification and any bathing prohibition or advice against bathing, omit Article 2.

Commission Decision (EU) 2017/1583

24.—(1) Commission Decision (EU) 2017/1583 specifying, pursuant to Directive 2006/7/EC of the European Parliament and of the Council, EN ISO 17994:2014 as the standard on the equivalence of microbiological methods is amended as follows.

(2) In Article 1—

- (a) the existing text becomes paragraph 1;
- (b) after paragraph 1 insert—

“2. The reference in paragraph 1 to Article 3(9) of Directive 2006/7/EC, is to be read as if any requirements imposed or discretion conferred by that provision on a member State were imposed or conferred on the relevant person.

3. In this Article, “relevant person” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland, the Scottish Environment Protection Agency;
- (d) in relation to Northern Ireland, the Department for Agriculture, Environment and Rural Affairs.”.

(3) Omit Articles 2 and 3.

Commission Decision (EU) 2018/229

25.—(1) Commission Decision (EU) 2018/229 establishing, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, the values of the Member State monitoring system classifications as a result of the intercalibration exercise is amended as follows.

(2) In Article 1—

- (a) in paragraph 1, for “Member States shall use in their” substitute “the relevant person must use in its”;
- (b) in paragraph 2—
 - (i) for “Member States shall” substitute “the relevant person must”;
 - (ii) for “use in their” substitute “use in its”;
- (c) in paragraph 3, for “Member States” substitute “The relevant person”;
- (d) after paragraph 3 insert—

(a) S.I. 2017/407, amended by S.I. 2018/942.

- “4. In this Article—
- (a) “relevant person” means—
- (i) in relation to England and the Northumbria River Basin District, the Environment Agency (“the EA”) (subject to points (iii) and (v));
 - (ii) in relation to Wales, the Natural Resources Body for Wales (“NRW”) (subject to point (iii));
 - (iii) in relation to a river basin district which is partly in England and partly in Wales, the EA and NRW acting jointly;
 - (iv) in relation to Scotland, the Scottish Ministers (subject to point (v));
 - (v) in relation to the Solway Tweed River Basin District, the EA and the Scottish Environment Protection Agency acting jointly;
 - (vi) in relation to Northern Ireland, the Department for Agriculture, Environment and Rural Affairs;
- (b) references to Article 4(3) of, and Section 1.4.1(iii) of Annex 5 to, Directive 2000/60/EC are to be read as if any requirements imposed or discretion conferred by those provisions on a member State were imposed or conferred on the relevant person.”;
- (e) omit Articles 2 and 3.

Commission Implementing Decision 2018/840/EU

26. In Commission Implementing Decision 2018/840/EU establishing a watch list of substances for Union-wide monitoring in the field of water policy pursuant to Directive 2008/105/EC of the European Parliament and of the Council—

- (a) in Article 1, omit “for Union-wide”;
- (b) omit Articles 2 and 3;
- (c) in the heading of the Annex, omit “Union-wide”.

Revocations and removal of EEA references

27. The following retained direct EU legislation is revoked and any reference to that legislation in Annex 20 to the EEA agreement is to be omitted—

- (a) Decision No 2455/2001/EC of the European Parliament and of the Council establishing the list of priority substances in the field of water policy;
- (b) Commission Decision 2005/646/EC on the establishment of a register of sites to form the intercalibration network in accordance with Directive 2000/60/EC of the European Parliament and of the Council;
- (c) Commission Implementing Decision 2014/431/EU concerning formats for reporting on the national programmes for the implementation of Council Directive 91/271/EEC.

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

Date _____

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) to address failures of retained EU law to operate effectively and

other deficiencies (in particular under section 8(2)(a), (f) and (g) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the fields of floods and water. Part 2 amends primary legislation, Part 3 amends secondary legislation and Part 4 amends and revokes EU Decisions.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, public or voluntary sector is foreseen.

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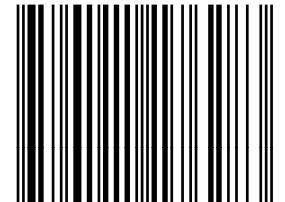
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EXPLANATORY MEMORANDUM TO
THE FLOODS AND WATER (AMENDMENT ETC.) (EU EXIT) REGULATIONS
2019

2019 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 ensure that floods and water legislation will continue to be operable in the United Kingdom after the UK leaves the EU. The instrument addresses deficiencies in retained EU law arising from the UK's withdrawal from the EU. The purpose of the instrument is to preserve and protect the existing policy regime rather than to introduce new policy.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The function of the EU law in this area is to protect and improve the water environment from various sources of pollution e.g. from agriculture and urban sources; it is also about protecting human health by preventing contamination of drinking water and bathing waters.
- 2.3 The main directive is Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy ("Water Framework Directive" or "WFD"). It is the cornerstone of EU water policy. Through a system of integrated planning, it establishes a framework for the protection of inland surface waters (rivers and lakes), transitional waters, coastal waters and groundwater, in order to prevent and reduce pollution, promote sustainable water use, protect the aquatic environment, improve the status of aquatic ecosystems and mitigate the effects of floods and droughts. It requires Member States to assess the condition of water and devise accurate ways to classify, measure and monitor water quality and to introduce appropriate measures to improve it where technically feasible and not disproportionately costly.
- 2.4 There are two so-called 'daughter' Directives of the WFD, the Groundwater Directive (Directive 2006/118/EC) and the Environmental Quality Standards Directive (Directive 2008/105/EC) ("the EQSD"). These EU Directives focus on the protection of the water environment from chemical pollution. Groundwater ecosystems are sensitive to such pollutants and groundwater supplies a significant proportion of our drinking water in the UK. The EQSD focuses on maintaining a list of substances considered harmful to the surface water environment that must be monitored and the setting of environmental standards for them.
- 2.5 In addition, there are other EU Directives designed to protect the water environment and contribute to meeting the water quality objectives of the WFD. The Urban Waste Water Treatment Directive (Directive 91/271 EEC) protects the water environment from discharges of waste water from domestic and some industrial sources. The

Nitrates Directive (Directive 91/676/EEC) concerns the control of diffuse nitrate pollution from agriculture and the Bathing Waters Directive (Directive 2006/7/EC), Drinking Water Directive (Directive 98/83/EC) and Sewage Sludge Directive (Directive 86/278/EEC) protect both the environment and public health.

- 2.6 In addition to the above, relevant EU law in this area includes directly applicable EU Decisions. These Decisions are technical in nature, for example they set out symbols to use for bathing water signage, reporting formats, and values for classification of some water bodies. One EU Decision 2018/840/EU establishes a watch list of chemical substances for EU-wide monitoring to support future reviews of the list of priority substances contained in the EQSD.

Why is it being changed?

- 2.7 This instrument makes minor and technical amendments to fix deficiencies in the transposing legislation for the EU Directives described above and some other pieces of domestic legislation to ensure the legislation works effectively after exit. The principal changes are described in the following paragraphs.
- 2.8 Where there was a reference in an EU Directive to a Member State reporting to the European Commission, for example the requirement in the Urban Waste Water Treatment Directive to provide a situation report on the disposal of urban waste water and sludge, this is being replaced by a requirement in the domestic legislation that such an environmental report is to be made publicly available. This is being done as the Department wishes to remain transparent about its environmental performance.
- 2.9 There are many cross-references in domestic legislation to the water Directives (and other EU instruments) which are deficient and are therefore amended by the Exit SI. For example, there are obligations on the Secretary of State (and the Welsh Ministers) to act in compliance with an EU Directive, for example the Bathing Waters Directive, or a provision of it. These obligations need to be amended so that they are read with appropriate modifications. The main ways in which such cross-references have been modified are explained in paragraphs 2.10 to 2.12.
- 2.10 Cross-references in domestic legislation to UK obligations as a Member State in EU Directives are instead to be read as an obligation on the appropriate Minister or regulator responsible for complying with that obligation before exit day.
- 2.11 Cross-references to provisions in EU Directives where the UK, as a Member State, engages in EU-wide exercises and processes, for instance under the intercalibration exercise in the Water Framework Directive, including obligations to collaborate with other Member States, have been removed. This change has been made as the UK will no longer be mandated by, or have a mechanism to take part in, EU procedures and processes.
- 2.12 Some amendments remove cross-references to provisions in Directives requiring Member States to inform the European Commission of certain actions, for instance informing the European Commission under the Drinking Water Directive where the UK grants a third derogation under the Water Supply (Water Quality) Regulations 2016. It would no longer be appropriate to receive any direction from the EU Commission to grant that derogation after EU exit. Instead provision is inserted for the Secretary of State to be able to grant it.
- 2.13 Amendments will ensure that after EU exit, when the UK is no longer part of the EU, the Water Supply (Water Fittings) Regulations 2016 no longer give preferential

treatment to products with EU or EEA markings for use in plumbing systems, water fittings and other water-using appliances. Similarly, the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 are amended to allow products that are of equivalent standards to the British Standards to be installed. These amendments are to align with World Trade Organisation principles.

- 2.14 This instrument also amends relevant EU Decisions (which will form part of retained EU law) to make them operable, and revokes other EU Decisions which would be unnecessary or unworkable if they remained part of domestic law after exit. For example, Decision 2014/431/EU provides a format for reports to the EU Commission on the implementation of the Urban Waste Water Treatment Directive. As the UK will no longer be reporting to the Commission on that Directive, it is appropriate to revoke that Decision.

What will it now do?

- 2.15 The instrument will ensure that the EU derived law in this area will operate effectively in the UK after we leave the EU. By making the proposed instrument, Defra will be maintaining the existing policy regime, thereby providing businesses, environmental NGOs and the public with maximum certainty as the UK leaves the EU.

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 includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24(1) of the European Union (Withdrawal) Act 2018). While most of the provisions apply to England and Wales or to England only, some provisions extend and apply to the whole of the United Kingdom.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is as follows. Part 1, regulation 17 and Part 4 extend to the United Kingdom. Regulations 2 to 4, 7 to 9, 12 to 16 and 18 to 22 extend to England and Wales. Regulations 5, 6, 10 and 11 extend to Great Britain.
- 4.2 The territorial application is as follows. The amendments and revocations in the instrument have the same application as the provisions amended or revoked, with the exception of the amendment in regulation 6 (to the Sludge (Use in Agriculture) Regulations 1989) which does not apply to Scotland. For the rest of the regulations, the territorial application is as follows:
- Much legislation in floods and water covers both England and Wales to reflect the geographical coverage of river basins and the Secretary of State is also making amendments to this legislation with the consent of the Welsh Government. Regulations 2 to 9, 12, 15 and 20 to 22 apply to England and Wales. Regulation 5 also applies in relation to so much of the River Esk as is situated in Scotland.

- Regulations 10 and 11 apply to the Northumbria and the Solway Tweed river basin districts, including the parts that are in Scotland.
- Regulations 13, 14, 16, 18 and 19 apply to England only.
- Regulation 17 which amends the Flood Reinsurance (Scheme Funding and Administration) Regulations 2015 applies to the whole of the UK; this is a reserved matter.
- Floods and water are devolved matters in Scotland and Wales and a transferred matter in Northern Ireland, however it has been agreed that the Secretary of State will make the amendments to and revocations of EU Decisions in this area with the consent of the devolved administrations. Therefore regulations 23 to 27 apply to the whole of the UK.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Environment Thérèse Coffey MP has made the following statement regarding Human Rights:

“In my view the provisions of the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The key legislative context for this instrument is set out at paragraph 2.2 above.
- 6.2 This instrument is made in exercise of the powers in the European Union (Withdrawal) Act 2018 to make minor and technical amendments to relevant retained EU law about floods and water to address deficiencies arising from the UK’s withdrawal from the EU.

7. Policy background

What is being done and why?

- 7.1 The UK is currently part of an EU regime that sets standards regarding the quality of our water environment. The primary goal of this EU policy framework is to ensure a healthy and sustainable supply of water for people and the environment across a range of uses. The policy framework therefore requires managing sources of pollution to our waters from chemicals, agriculture and urban sources. The instrument is required to fix the current legislation which protects the water environment so it is still operable after EU Exit. This will ensure that there are clear environmental obligations on government, regulators and water companies. More detail on what is being done and why is set out at paragraph 2 of this document.

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.

9. Consolidation

9.1 Not applicable to this instrument.

10. Consultation outcome

10.1 The Government and its Arm's Length Bodies discussed the changes being introduced with interested parties including water company representatives; farming representatives, local government representatives and environmental NGOs (including WWF, RSBP and Angling Trust).

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.

11. Guidance

11.1 There is no associated guidance.

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 we expect it to have no impact on business.

13. Regulating small business

13.1 While the legislation listed in this instrument does apply to activities that are undertaken by small businesses, the amendments made do not affect their activities.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 William Wakefield at the Department for Environment, Food and Rural Affairs, Telephone: 0208 026 4275 or email: William.wakefield@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kirstin Green and Jan Dixon, Deputy Directors for the Policy area, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for the Environment Thérèse Coffey MP at the 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. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for the Environment Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Floods and Water (Amendments etc.) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case because the instrument makes minor and technical amendments to correct deficiencies which arise from withdrawal to ensure that floods and water legislation continues to operate effectively at the point at which the UK leaves the EU.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for the Environment 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”.

- 2.2 These are that this instrument corrects deficiencies to ensure that legislation for floods and water continues to operate effectively after UK withdrawal from the EU.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for the Environment 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”.

- 3.2 The Parliamentary Under Secretary of State for the Environment 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".

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Floods and Water (Amendments etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 5 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 12
SICM under SO 30A (because amends primary legislation)	Paper 13

Scrutiny procedure

Outcome of sifting	NA
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(b) of Schedule 7 to the European Union (Withdrawal) Act 2018.

The Regulations amend domestic legislation that implements EU legislation in the field of water protection and improvement. The Regulations will to ensure this area of law continues to be operable after the withdrawal of the UK from the EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 10 December 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.

Agenda Item 5.2

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/0807/18

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

SeneddCLA@assembly.wales

5

December 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 Fisheries (Amendment) (EU Exit) Regulations 2019, 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 Fisheries Act 1981 and 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

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 Fisheries (Amendment) (EU Exit) Regulations 2019**

DATE **7 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

SO30C –SI laid in Parliament, which amends secondary legislation in a devolved area

The Fisheries (Amendment) (EU Exit) Regulations 2019

Summary of the primary and secondary legislation to be corrected

Primary Legislation

The Sea Fish (Conservation) Act 1967

The Fisheries Act 1981

The Marine and Coastal Access Act 2009

Secondary Legislation

The Merchant Shipping (Registration of Ships) Regulations 1993

The Sea Fisheries (Northern Ireland) Order 2002

The Tote (Prohibition of Fishing) Order 2008

The Eels (England and Wales) Regulations 2009

The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009.

The Fish Labelling Regulations 2013

The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014

The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015
The Grants for Fishing and Aquaculture Industries Regulations 2015

The Sea Fishing (Enforcement) Regulations 2018

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

No legislative functions are transferred by this statutory instrument.

This instrument respects the existing devolution settlement and does not impact on the National Assembly for Wales's legislative competence or the Welsh Ministers executive competence. The National Assembly for Wales has legislative competence in relation to Wales (which includes the territorial sea out to 12nm) for fisheries management and the marine environment subject to reservations within Schedule 7A to the Government of Wales Act 2006 (GOWA 2006). Further, Welsh Ministers have executive competence for fisheries management and the marine environment, subject to reservations within Schedule 7A to GOWA 2006 for Wales, the Welsh zone, and Welsh fishing boats beyond that zone.

The purpose of the amendments

This affirmative procedure SI provides technical corrections to primary and secondary domestic legislation which gives effect to certain EU measures forming part of the Common Fisheries Policy (CFP), marine management measures and measures relating to the register of British fishing boats. This will ensure that the legislation continues to operate effectively, and that the UK has an enforceable approach to maintaining the sustainability of fisheries management, after the UK leaves the EU. This instrument is linked with The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2018

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

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.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Fisheries (Amendment) (EU Exit) Regulations 2019

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 Fisheries (Amendment) (EU Exit) Regulations 2019 (“2019 Regulations”) were laid before the Houses of Parliament on 04 December 2018. The Regulations can be found at:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

Summary of the Statutory Instrument and its objective

3. The objective of the 2019 Regulations is to make minor and technical changes which are necessary to ensure that the domestic laws which give effect to, and provide for the enforcement of certain Common Fisheries Policy (CFP) measures, marine management measures and related measures will continue to operate effectively after the UK leaves the European Union.
4. In accordance with this objective, the 2019 Regulations amend the following primary legislation:
 - The Fisheries Act 1981 (“The 1981 Act”).
 - The Marine and Coastal Access Act 2009 (“The 2009 Act”)

Relevant provision to be made by the SI

5. The amendments made to the 1981 Act by the 2019 Regulations, are to the following provisions:

The Act is amended as follows.

- 1.(1) The Fisheries Act 1981 (b) is amended as follows.
 - (2) In section 2—
 - (a) in subsection (1), omit “Subject to subsection (2A) below”;
 - (b) omit subsection (2A);
 - (c) in subsection (3), for “subsections (1) and (2A)” substitute “subsection (1)”.
 - (3) In section 14(2), in the words before paragraph (a), for “sections 2(2A) and 3(5)” substitute “section 3(5)”.
 - (4) In section 30, insofar as it extends to England and Wales and Scotland—
 - (a) in the heading, for “Community rules” substitute “rules relating to sea fishing”;

- (b) in subsection (1), in the words before paragraph (a), for “enforceable Community restrictions, and enforceable EU obligations,” substitute “retained EU restrictions and retained EU obligations”;
- (c) in subsection (2), for “enforceable Community restriction or other” substitute “retained EU restriction or retained EU”;
- (d) in subsection (3), for the definition of “enforceable Community restriction” and “enforceable EU obligation” substitute—
 - ““retained EU restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties before exit day, and
 - (b) forms part of retained EU law,
 - as modified from time to time;”.

(5) Omit section 31(3).

6. The 2019 Regulations make amendments concerning the duties of the Sea Fish Industry Authority, a UK body that exercises functions in relation to Wales, in relation to the sea fish industries of member States, Part III concerns the enforcement of EU restrictions or obligations under the CFP, and Part IV concerns financial assistance for fish farming, relating to technical and operability amendments.

7. The amendments made to the 2009 Act by the 2019 Regulations, are to the following provisions:

2.The Marine and Coastal Access Act 2009 (a)is amended as follows.

(1) In section 238—

- (a) in subsection (2)(b), for “enforceable EU restrictions and enforceable EU obligations” substitute “retained EU restriction or retained EU obligation”;
- (b) in subsection (10)—
 - (i) omit the definitions of “enforceable EU obligation” and “enforceable EU restriction”;
 - (ii) after the definition of “relevant British fishing boat” insert—
 - ““retained EU restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties before exit day, and
 - (b) forms part of retained EU law,
 - as modified from time to time;”.

(2) In section 278(6)—

- (a) in the definition of “the fisheries legislation”, in paragraph (b), for “enforceable EU restrictions and enforceable EU obligations” substitute “retained EU restriction or retained EU obligation”;
- (b) for the definitions of “enforceable EU obligation” and “enforceable EU restriction” substitute—
 - ““retained EU restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties before exit day, and
 - (b) forms part of retained EU law,
 - as modified from time to time.”.

8. Amendments to sections 238 and 278(6) of the 2009 Act concern the enforcement powers of Marine Enforcement Officers in relation to EU restrictions or obligations under the CFP, and rules regarding forfeiture of fish or fishing gear following a conviction for a sea fishing offence. Welsh Ministers have the function of appointing Marine Enforcement Officers in Wales.

9. . Section 108A of the Government of Wales Act 2006 (GOWA 2006) enables the National Assembly for Wales (NAW) to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to GOWA 2006. In relation to fisheries management, the NAW has legislative competence in relation to Wales.

Why it is appropriate for the SI to make this provision

10. 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

December 2018

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

**EXITING THE EUROPEAN UNION
FISHERIES, ENGLAND AND WALES
FOOD
MARINE MANAGEMENT
SEA FISHERIES**

The Fisheries (Amendment) (EU Exit) Regulations 2019

Made - - - - *****

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(a).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Fisheries (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(a) 2018 c. 16.

PART 2

Amendment of primary legislation

The Sea Fish (Conservation) Act 1967

2. In section 4C(2)(a) of the Sea Fish (Conservation) Act 1967(a), for “an enforceable” substitute “a retained”.

The Fisheries Act 1981

3.—(1) The Fisheries Act 1981(b) is amended as follows.

(2) In section 2—

- (a) in subsection (1), omit “Subject to subsection (2A) below”;
- (b) omit subsection (2A);
- (c) in subsection (3), for “subsections (1) and (2A)” substitute “subsection (1)”.

(3) In section 14(2), in the words before paragraph (a), for “sections 2(2A) and 3(5)” substitute “section 3(5)”.

(4) In section 30, insofar as it extends to England and Wales and Scotland—

- (a) in the heading, for “Community rules” substitute “rules relating to sea fishing”;
- (b) in subsection (1), in the words before paragraph (a), for “enforceable Community restrictions, and enforceable EU obligations,” substitute “retained EU restrictions and retained EU obligations”;
- (c) in subsection (2), for “enforceable Community restriction or other” substitute “retained EU restriction or retained EU”;
- (d) in subsection (3), for the definition of “enforceable Community restriction” and “enforceable EU obligation” substitute—

““retained EU restriction” means a restriction that—

- (a) was created or arose by or under the EU Treaties before exit day, and
- (b) forms part of retained EU law, as modified from time to time;”.

(5) In section 30, insofar as it extends to Northern Ireland—

- (a) in the heading, for “EU rules” substitute “rules relating to sea fishing”;
- (b) in subsection (1), in the words before paragraph (a), for “enforceable EU restrictions, and enforceable EU obligations,” substitute “retained EU restrictions and retained EU obligations”;
- (c) in subsection (2), for “enforceable EU restriction or other” substitute “retained EU restriction or retained EU”;
- (d) in subsection (3), for the definition of “enforceable EU restriction” and “enforceable EU obligation” substitute—

““retained EU restriction” means a restriction that—

(a) 1967 c. 84. Section 4C was inserted by the Sea Fish (Conservation) Act 1992 (c. 60), section 4. Section 4C(2) was amended by S.I. 2011/1043.

(b) 1981 c. 29. Section 2(1) and (3) was amended by S.I. 1989/1190. Section 2(2A) was inserted by S.I. 1989/1190. Section 14(2) was amended by S.I. 1989/1190. In section 30(1), the words before paragraph (a) were amended in relation to England and Wales by the Marine and Coastal Access Act 2009 (c. 23), section 293(2)(a) and in relation to Scotland by the Aquaculture and Fisheries (Scotland) Act 2007 (asp 12), section 33(a); the definition of “enforceable Community restriction” and “enforceable EU obligation” in section 30(3) was amended by S.I. 2011/1043. Section 30 was amended in relation to Northern Ireland by the Fisheries Act (Northern Ireland) 2016 (c. 27). Section 31(3) was amended by S.I. 2011/1043.

- (a) was created or arose by or under the EU Treaties before exit day, and
 - (b) forms part of retained EU law,
as modified from time to time;”.
- (6) Omit section 31(3).

The Marine and Coastal Access Act 2009

- 4.**—(1) The Marine and Coastal Access Act 2009(a) is amended as follows.
- (2) In section 30—
- (a) in subsection (2)(b), for “enforceable EU restrictions and enforceable EU obligations” substitute “retained EU restriction or retained EU obligation”;
 - (b) in subsection (4), for the definitions of “enforceable EU obligation” and “enforceable EU restriction” substitute—
 - ““retained EU restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties before exit day, and
 - (b) forms part of retained EU law,
as modified from time to time.”.
- (3) In section 37—
- (a) in subsection (2)—
 - (i) omit paragraph (a);
 - (ii) in paragraph (b), omit “or the European Union”;
 - (b) omit subsection (9).
- (4) In section 238—
- (a) in subsection (2)(b), for “enforceable EU restrictions and enforceable EU obligations” substitute “retained EU restriction or retained EU obligation”;
 - (b) in subsection (10)—
 - (i) omit the definitions of “enforceable EU obligation” and “enforceable EU restriction”;
 - (ii) after the definition of “relevant British fishing boat” insert—
 - ““retained EU restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties before exit day, and
 - (b) forms part of retained EU law,
as modified from time to time;”.
- (5) In section 278(6)—
- (a) in the definition of “the fisheries legislation”, in paragraph (b), for “enforceable EU restrictions and enforceable EU obligations” substitute “retained EU restriction or retained EU obligation”;
 - (b) for the definitions of “enforceable EU obligation” and “enforceable EU restriction” substitute—
 - ““retained EU restriction” means a restriction that—
 - (a) was created or arose by or under the EU Treaties before exit day, and
 - (b) forms part of retained EU law,
as modified from time to time.”.

(a) 2009 c. 23.

PART 3

Amendment of subordinate legislation

The Merchant Shipping (Registration of Ships) Regulations 1993

5. In paragraph 5(a) of Schedule 4 to the Merchant Shipping (Registration of Ships) Regulations 1993(a), omit “and EC Number”.

The Sea Fisheries (Northern Ireland) Order 2002

6.—(1) The Sea Fisheries (Northern Ireland) Order 2002(b) is amended as follows.

(2) In Schedule 2, in paragraph 3—

- (a) in the heading, omit “(enforcement of Community rules)”;
- (b) in sub-paragraph (1), for “enforceable Community restriction or other” substitute “retained EU restriction or retained EU”.

(3) In Schedule 3, in paragraph 3(2)(c), for “an obligation under EU law” substitute “a retained EU obligation”.

The Tope (Prohibition of Fishing) Order 2008

7. In article 2(2) of the Tope (Prohibition of Fishing) Order 2008(c)—

- (a) omit “another member State or in”;
- (b) after “country”, insert “as defined in Article 4 of that Council Regulation.”.

The Eels (England and Wales) Regulations 2009

8.—(1) The Eels (England and Wales) Regulations 2009(d) are amended as follows.

(2) In regulation 9, in the definition of “eel river basin”, for the words from “that has” to “Article 2(1)”, substitute “for which there is an Eel Management Plan as defined in Article 1A”.

(3) Omit regulation 11.

The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009

9.—(1) The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009(e) is amended as follows.

(2) In article 3(1), in the definition of “third country fishing vessel”, for “Community” substitute “United Kingdom”.

(3) In article 9—

- (a) in paragraphs (5)(b) and (6), for “Community” substitute “United Kingdom”;
- (b) in paragraph (6A)—
 - (i) in sub-paragraph (c), for “fishing vessel flying the flag of a member State” substitute “United Kingdom fishing vessel”;
 - (ii) in sub-paragraph (d), omit the words from “in relation to” to the end;
 - (iii) in sub-paragraph (e), for “Community” substitute “United Kingdom”;

(a) S.I. 1993/3138, to which there are amendments not relevant to these Regulations.

(b) S.I. 2002/790, amended by S.I. 2011/1043.

(c) S.I. 2008/691, amended by S.I. 2015/191.

(d) S.I. 2009/3344, to which there are amendments not relevant to these Regulations.

(e) S.I. 2009/3391, amended by S.I. 2018/643; there is another amending instrument but it is not relevant.

- (iv) in sub-paragraph (f), for “fishing vessel flying the flag of a member State” substitute “United Kingdom fishing vessel”.

The Fish Labelling Regulations 2013

- 10.**—(1) The Fish Labelling Regulations 2013(a) are amended as follows.
- (2) In regulation 1(2), omit the words from “except Part 2” to the end.
 - (3) In regulation 2—
 - (a) in paragraph (1), in the definition “the EU Regulations”, for “EU” substitute “specified”;
 - (b) in paragraph (2)(a) and (b), for “EU”, in each place it occurs, substitute “specified”.
 - (4) Omit regulation 3.
 - (5) In regulation 6—
 - (i) in paragraph (3), for “and (5)”, in the second place it occurs, substitute “, (5) to (7) and (9)”;
 - (ii) in paragraph (7), for “the sterling equivalent of 50 euros” substitute “£45”.
 - (6) In regulation 7(3), in the definition of “operator”, for “EU” substitute “specified”.

The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014

- 11.**—(1) The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014(b) are amended as follows.
- (2) In regulation 2(1)—
 - (a) in the definition of “administrative sanction”, for “ another member State or” substitute “a”;
 - (b) in the definition of “third country”, for “which is not a member State” substitute “other than the United Kingdom”.
 - (3) In regulation 3—
 - (a) omit paragraph (1);
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (a)(ii)—
 - (aa) in paragraphs (aa) and (bb), omit “another member State or in”;
 - (bb) in paragraph (cc), omit “another member State or”;
 - (ii) in sub-paragraph (b)(ii)—
 - (aa) in paragraphs (aa) and (bb), omit “another member State or in”;
 - (bb) in paragraph (cc), omit “another member State or”;
 - (iii) in sub-paragraph (c)(ii)—
 - (aa) in paragraphs (aa) and (bb), omit “another member State or in”;
 - (bb) in paragraph (cc), omit “another member State or”.
 - (4) In regulation 8—
 - (a) in the heading, omit “other member States and”;
 - (b) in paragraphs (1), (3) and (5), in the words before sub-paragraph (a), omit “another member State or”.
 - (5) In regulation 9(2)(a)—

(a) S.I. 2013/1768, amended by S.I. 2014/3104.

(b) S.I. 2014/3345, to which there are amendments not relevant to these Regulations.

- (a) in the words before paragraph (i), for “Article 74 of the Control Regulation” substitute “carrying out inspections”;
- (b) omit paragraph (ii) (together with the final “or”).

The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015

12.—(1) The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015(a) is amended as follows.

(2) In article 2—

- (a) in paragraph (1)(a) and (b), omit “EU and”;
- (b) omit paragraph (2).

(3) In article 3(1)(a), omit “(enforcement of Community rules)”.

The Grants for Fishing and Aquaculture Industries Regulations 2015

13.—(1) The Grants for Fishing and Aquaculture Industries Regulations 2015(b) are amended as follows.

(2) In regulation 3—

- (a) in paragraph (1), omit—
 - (i) “of Article 123”;
 - (ii) “EMFF”;

(b) in paragraph (3)—

- (i) omit “EMFF” in the first place it occurs;
- (ii) for “drawn up for the purposes of Article 17” substitute “referred to in Article 18”.

The Sea Fishing (Enforcement) Regulations 2018

14.—(1) The Sea Fishing (Enforcement) Regulations 2018(c) are amended as follows.

(2) In regulation 2—

- (a) in paragraph (1), omit “EU”.
- (b) in paragraph (2), omit “EU” in both places it occurs.

(3) In the Schedule—

- (a) in the heading, omit “EU”;
- (b) in the entry for Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy—
 - (i) in the first column, omit “Article 42”;
 - (ii) in the second column, omit the corresponding entry for Article 42;
- (c) in the entry for Council Regulation (EU) 2016/1627 of the European Parliament and of the Council on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean, in the entry for Article 19(1), in the second column, omit “issued by the Member State”.

(a) S.I. 2015/191.
(b) S.I. 2015/1711.
(c) S.I. 2018/849.

Date

Name
Minister of State
Department for Environment, Food and Rural Affairs

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 particular under section 8(2)(a), (c), (d) and (g)) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of sea fisheries, inland fisheries, marine management and food. Part 2 amends primary legislation and Part 3 amends subordinate legislation.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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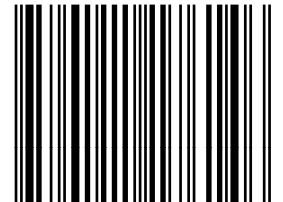
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EXPLANATORY MEMORANDUM TO
THE FISHERIES (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument makes minor technical corrections to primary and secondary domestic legislation which gives effect to EU measures forming part of the Common Fisheries Policy (CFP). This will ensure that the legislation continues to operate effectively, so that fishing continues to be regulated in a sustainable manner after the UK leaves the EU. This instrument is linked with The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2018.

Explanations

What did any relevant EU law do before exit day?

2.2 This instrument does not amend EU law itself, but amends domestic laws which give effect to and enable enforcement of certain CFP and marine management measures.

2.3 The domestic laws being amended are as follows.

- (i) The Sea Fish (Conservation) Act 1967: the relevant provision relates to proceedings in Scotland for offences relating to licensing requirements for fishing boats.
- (ii) The Fisheries Act 1981: the relevant provisions are in Part 1 concerning the duties of the Sea Fish Industry Authority in relation to the sea fish industries of member States, Part III concerning the enforcement of EU restrictions or obligations under the CFP, and Part IV concerning financial assistance for fish farming.
- (iii) The Marine and Coastal Access Act 2009: the relevant provisions are in Part 1 concerning the transfer of functions to and the continuation of prosecutions by the Marine Management Organisation (MMO) in respect of sea fishing offences, and the power of the Secretary of State to give directions to the MMO in relation to the implementation of international obligations, and Part 8 concerning the enforcement powers of Marine Enforcement Officers in relation to EU restrictions or obligations under the CFP, and rules regarding forfeiture of fish or fishing gear following a conviction for a sea fishing offence.
- (iv) The Merchant Shipping (Registration of Ships) Regulations 1993: the relevant provision is in paragraph 5 of Schedule 4 which sets out the details which must be recorded for fishing boats on the register of British ships.
- (v) The Sea Fisheries (Northern Ireland) Order 2002 transfers functions relating to sea fishing in the Northern Ireland zone, and sea fishing by Northern Ireland

fishing boats to the Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA). The relevant parts relate to powers, concurrently held by DAERA and UK Ministers, to make provision for the enforcement of EU restrictions or obligations under the Fisheries Act 1981 and the Sea Fisheries Act 1968.

- (vi) The Tope (Prohibition of Fishing) Order 2008 prohibits the development of a directed fishery for tope.
- (vii) The Eels (England and Wales) Regulations 2009 implement Council Regulation (EC) No 1100/2007 establishing measures for the recovery of the stock of European eel.
- (viii) The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 provides for the enforcement of Council Regulation (EC) No 1005/2008 and Commission Regulation (EC) 1010/2009 establishing restrictions and obligations relating to illegal, unreported and unregulated fishing.
- (ix) The Fish Labelling Regulations 2013 designate the Secretary of State to draw up and publish the list of commercial designations of fish species accepted in the UK and provide for the enforcement of the consumer information requirements in Chapter IV of Regulation (EC) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products.
- (x) The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 implement provisions of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with CFP rules, and set up a system for the allocation of points to UK masters of fishing boats who have committed serious infringements of CFP measures.
- (xi) The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 makes amendments to instruments relating to the enforcement of CFP measures and revokes obsolete fisheries legislation.
- (xii) The Grants for Fishing and Aquaculture Industries Regulations 2015 enact procedures for the management of the European Maritime and Fisheries Fund (established under Regulation (EU) No 508/2014) in England.
- (xiii) The Sea Fishing (Enforcement) Regulations 2018 give Inshore Fisheries Conservation Officers powers to enforce certain specified EU technical and conservation fisheries measures.

Why is it being changed?

- 2.4 This instrument makes minor and technical changes which are necessary to ensure that the domestic laws which give effect to and provide for the enforcement of certain CFP measures, marine management measures and related measures will continue to operate effectively after the UK leaves the EU.

What will it now do?

- 2.5 This instrument makes the minimum necessary technical fixes to address deficiencies in domestic fisheries legislation arising from withdrawal of the United Kingdom from the European Union. This will ensure that controls over fishing activities remain fully operable, and that other aspects of fisheries management, such as grant aid for fishing

activities, continue to operate on EU exit. Amending the legislation will also help to ensure that international obligations are met, and the marine environment and public health are protected. There are no substantive changes to policy.

- 2.6 The fixes include the removal or replacement of references to “Community”, “member States” or “another member State” where necessary, and the replacement of references to “Community” or “EU” “restrictions” or “obligations” with references to “retained EU restrictions” and “retained EU obligations”. The changes also ensure that cross references to CFP measures will continue to work after EU exit.
- 2.7 This instrument respects the existing devolution settlements.

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.

4. Extent and Territorial Application

- 4.1 The territorial extent and application of the amendments made by this instrument varies as it is dependent on the extent and application of the legislation that is being amended.
- 4.2 The amendments to legislation extend and apply to the United Kingdom except as summarised below:
- (i) The amendment to the Sea Fish Conservation Act applies to Scotland.
 - (ii) The Fisheries Act 1981 mainly extends and applies to the United Kingdom but one of the provisions being amended extends and applies to England, Wales and Scotland.
 - (iii) The territorial application of the provisions of the Marine and Coastal Access Act 2009 that are being amended varies as between provisions.¹
 - (iv) The Tope (Prohibition of Fishing) Order extends to the United Kingdom and applies within British Fishery Limits.
 - (v) The Eels (England and Wales) Regulations 2009 extend and apply to England and Wales.
 - (vi) The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 mainly extends and applies to England and Wales but some of the provisions that are being amended also extend and apply to Scotland and Northern Ireland.
 - (vii) The Fish Labelling Regulations extend to the United Kingdom and mainly apply to England but some of the provisions that are being amended apply to the United Kingdom.

¹ The Explanatory Notes to the Marine and Coastal Access Act 2009, Section 323: Extent (paragraphs 830 to 842), comment on the application of the relevant Parts of the Act.

- (viii) The Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014 extend mainly to England and Wales, and Northern Ireland but some of the provisions being amended also extend to Scotland.
- (ix) The Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 mainly extends and applies to England, Wales and Northern Ireland, but some of the amendments do not extend to Northern Ireland.
- (x) The Sea Fishing (Enforcement) Regulations 2018 extend to England and Wales, and Scotland and apply mainly in England.

5. European Convention on Human Rights

5.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP has made the following statement regarding Human Rights:

“In my view the provisions of the Fisheries (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights”.

6. Legislative Context

- 6.1 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. This instrument is made in exercise of these powers.
- 6.2 Paragraph 21 of Schedule 7 to the Act specifies that the power to modify retained EU law includes a power to make supplementary, incidental and consequential provision.
- 6.3 The key legislative context is set out at paragraphs 2.2 and 2.3 above.
- 6.4 In addition to this instrument, the Department will introduce several other instruments as part of the exit process, which will also amend CFP measures and interact with the legislation amended by this instrument. These include the instruments described in paragraphs 6.5 to 6.7.
- 6.5 In particular, this instrument is linked to and can be read in conjunction with The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2018 which amend CFP measures to ensure that they will operate effectively on EU exit. Some of the amendments in those Regulations affect references to CFP measures and other provisions in domestic law. This instrument corrects those references and provisions to ensure operability and consistency with those Regulations.
- 6.6 This instrument is also linked to and can be read in conjunction with The Marine Environment (Amendment) (EU Exit) 2018 Regulations which also amend the Marine and Coastal Access Act 2009. Those Regulations amend EU and domestic law relating to the marine environment, in particular marine strategy.
- 6.7 The Department will also introduce an instrument which will transfer functions of the European Commission under the CFP to the appropriate UK authority, where appropriate.

7. Policy background

What is being done and why?

- 7.1 This instrument is essential for the UK to have an operable legislative framework for the sustainable management of fisheries as an independent coastal state. It amends legislation related to sea fisheries, inland fisheries, marine management and food, ensuring that, after the UK leaves the EU, there is immediate continuity in regulation, enabling the maintenance of sustainable fisheries management.
- 7.2 The amendments do not constitute a substantive change of policy, but are technical and minor corrections ensuring operability.
- 7.3 We do not consider any other policy options in this explanatory memorandum, because the deadline of the UK's departure from the EU means that the priority is to ensure essential legislation operates in UK law in time for EU exit, so that the UK is not left with a legislative deficit upon exit. The CFP is the main body of law which regulates fishing activities and enforcement in UK waters and the domestic legislation amended in this instrument helps to give effect to CFP and related EU measures.

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, and paragraph 21 of Schedule 7 to, 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.

9. Consolidation

- 9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

- 10.1 The Devolved Administrations (Scottish Government, Department of Agriculture, Environment and Rural Affairs in Northern Ireland, and Welsh Government) were involved in the drafting of the proposed amendments.
- 10.2 A targeted engagement was carried out on the approach, involving key stakeholders from the fisheries sector, food industry and environmental non-governmental bodies. In addition, a ten-week consultation was conducted through the Fisheries White Paper which described future fisheries policy. Stakeholders were broadly supportive of the approach being taken in the White Paper.

11. Guidance

- 11.1 As these are technical changes to existing legislation there is no associated guidance.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or the voluntary sector.
- 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 are no changes to what the public sector, or business, will have to do under the regulations.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 As the legislation will continue to operate substantially as it did before EU exit, it will not disproportionately affect small business.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of their standard policy-making procedures.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Tim Godson at the Department for Environment, Food and Rural Affairs, Telephone: 0208 225 8532 or email: Tim.Godson@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Anne Freeman, Deputy Director for Domestic Fisheries and Reform at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

15.3 George Eustice MP, Minister of State for Agriculture, Fisheries and Food at the 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising 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. Appropriateness statement

- 1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Fisheries (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

This is the case because: this instrument corrects deficiencies in legislation that arise from withdrawal from the EU, to ensure the UK has functional and operable fisheries legislation after EU Exit, as further described in paragraphs 2.2, 2.3 and 2.4 of the main part of this explanatory memorandum.

2. Good reasons

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice 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”.

These are: correcting deficiencies as necessary to ensure we continue to have operable fisheries legislation after EU exit and provisions for the enforcement of regulations, as further detailed in paragraphs 2.2, 2.3 and 2.4 of the main part of this explanatory memorandum, so as to maintain a sustainable approach to fisheries management.

3. Equalities

- 3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP 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”.

- 3.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, George Eustice 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”.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main part of this explanatory memorandum.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Fisheries (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 4 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 18
SICM under SO 30A (because amends primary legislation)	Paper 19

Scrutiny procedure

Outcome of sifting	NA
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 by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

This instrument makes technical corrections to primary and secondary domestic legislation which gives effect to EU measures forming part of the Common Fisheries Policy (CFP). This will ensure that the legislation continues to operate effectively, so that fishing continues to be regulated in a sustainable manner after the UK leaves the EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 7 December 2018 regarding the effect of these Regulations. The Welsh Government's statement provides a link to a list of EU Withdrawal Act 2018 statutory instruments on the UK Government's website. However, these Regulations and their accompanying Explanatory Memorandum were not included on that list at the time of writing. Legal

Advisers were able to access the relevant documentation from legislation.gov.uk.

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.

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion
Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Agenda Item 5.3


Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA - L/LG/0781/18

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

SeneddCLA@assembly.wales

10 December 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 Environment (Amendment Etc) (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 technical and operational changes in relation to the Environmental Protection Act 1990; Environment Act 1995; and Pollution Prevention and Control Act 1999, 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 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 **Environment (Amendment Etc.) (EU Exit) Regulations 2018**

DATE **10 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

Environment (Amendment Etc.) (EU Exit) Regulations 2018

The 2018 Regulations amend legislation which apply in Wales. The Regulations also amends other legislation on an England-only basis. The legislation that is being amended in relation to Wales is as follows:

Domestic Primary Legislation - Amended

1. Environmental Protection Act 1990 (EPA 1990);
2. Environment Act 1995 (EA 1995) ; and
3. Pollution Prevention and Control Act 1999 (PPCA 1999);

European Directly Applicable - Revoked

EU Regulations

4. Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC.
5. Regulation (EC) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel.
6. Commission Regulation (EU) No 782/2013 amending Annex III to Regulation (EU) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel.
7. Commission Regulation (EU) 2017/1505 amending Annexes I, II and III to Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
8. Commission Regulation (EU) 2017/1941 amending Annex II to Regulation (EC) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel.

EU Decisions

9. Decision No 2179/98/EC of the European Parliament and of the Council on the review of the European Community programme of policy and action in relation to the environment and sustainable development 'Towards sustainability'.
10. Commission Decision 2010/709/EU establishing the European Union Ecolabelling Board.
11. Commission Decision 2011/330/EU on establishing the ecological criteria for the award of the EU Ecolabel for notebook computers.
12. Commission Decision 2011/333/EU on establishing the ecological criteria for the award of the EU Ecolabel for copying and graphic paper.
13. Commission Decision 2011/337/EU on establishing the ecological criteria for the award of the EU Ecolabel for personal computers.
14. Commission Decision 2011/381/EU on establishing the ecological criteria for the award of the EU Ecolabel to lubricants.
15. Commission Decision 2011/740 amending Decisions 2006/799/EC, 2007/64/EC, 2007/506/EC, 2007/742/EC, 2009/543/EC and 2009/544/EC in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to certain products.
16. Commission Decision 2011/832/EU concerning a guide on EU corporate registration, third country and global registration under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
17. Commission Decision 2012/448/EU establishing the ecological criteria for the award of the EU Ecolabel for newsprint paper.
18. Commission Decision 2012/481/EU establishing the ecological criteria for the award of the EU Ecolabel for printed paper.
19. Commission Decision 2013/131/EU establishing the user's guide setting out the steps needed to participate in EMAS, under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
20. Commission Decision 2013/135/EU amending Decisions 2007/506/EC and 2007/742/EC in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to certain products.
21. Commission Decision 2013/250/EU establishing the ecological criteria for the award of the EU Ecolabel for sanitary tapware.
22. Commission Decision 2013/295/EU amending Decisions 2006/799/EC, 2007/64/EC, 2009/300/EC, 2009/543/EC, 2009/544/EC, 2009/563/EC, 2009/564/EC, 2009/567/EC, 2009/568/EC, 2009/578/EC, 2009/598/EC, 2009/607/EC,

- 2009/894/EC, 2009/967/EC, 2010/18/EC and 2011/331/EU in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to certain products.
23. Commission Decision 2013/641/EU establishing the ecological criteria for the award of the EU Ecolabel for flushing toilets and urinals.
 24. Commission Decision 2013/806/EU establishing the ecological criteria for the award of the EU Ecolabel for imaging equipment.
 25. Decision No 1386/2013/EU of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'.
 26. Commission Decision 2014/256/EU establishing the ecological criteria for the award of the EU Ecolabel for converted paper products.
 27. Commission Decision 2014/312/EU establishing the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes.
 28. Commission Decision 2014/314/EU establishing the criteria for the award of the EU Ecolabel for water-based heaters.
 29. Commission Decision 2014/336/EU amending Decisions 2006/799/EC, 2007/64/EC, 2009/300/EC, 2009/894/EC, 2011/330/EU, 2011/331/EU and 2011/337/EU in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to certain products.
 30. Commission Decision 2014/345/EU amending Decision 2012/481/EU establishing the ecological criteria for the award of the EU Ecolabel for printed paper.
 31. Commission Decision 2014/350/EU establishing the ecological criteria for the award of the EU Ecolabel for textile products.
 32. Commission Decision 2014/391/EU establishing the ecological criteria for the award of the EU Ecolabel for bed mattresses.
 33. Commission Decision 2014/763/EU establishing the ecological criteria for the award of the EU Ecolabel for absorbent hygiene products.
 34. Commission Decision 2014/893/EU establishing the ecological criteria for the award of the EU Ecolabel for rinse-off cosmetic products.
 35. Commission Decision (EU) 2015/801 on reference document on best environmental management practice, sector environmental performance indicators and benchmarks of excellence for the retail trade sector under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
 36. Commission Decision (EU) 2015/877 amending Decisions 2009/568/EC, 2011/333/EU, 2011/381/EU, 2012/448/EU and 2012/481/EU in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to certain products.

37. Commission Decision (EU) 2015/886 amending Decision 2014/312/EU establishing the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes.
38. Commission Decision (EU) 2015/2099 establishing the ecological criteria for the award of the EU Ecolabel for growing media, soil improvers and mulch.
39. Commission Decision (EU) 2016/397 amending Decision 2014/312/EU establishing the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes.
40. Commission Decision (EU) 2016/611 on the reference document on best environmental management practice, sector environmental performance indicators and benchmarks of excellence for the tourism sector under Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
41. Commission Decision (EU) 2016/1332 establishing the ecological criteria for the award of the EU Ecolabel for furniture.
42. Commission Decision (EU) 2016/1371 establishing the ecological criteria for the award of the EU Ecolabel for personal, notebook and tablet computers.
43. Commission Decision (EU) 2017/175 on establishing EU Ecolabel criteria for tourist accommodation.
44. Commission Decision (EU) 2017/176 on establishing EU Ecolabel criteria for wood-, cork- and bamboo-based floor coverings.
45. Commission Decision (EU) 2017/1214 establishing the EU Ecolabel criteria for hand dishwashing detergents.
46. Commission Decision (EU) 2017/1215 establishing the EU Ecolabel criteria for industrial and institutional dishwasher detergents.
47. Commission Decision (EU) 2017/1216 establishing the EU Ecolabel criteria for dishwasher detergents.
48. Commission Decision (EU) 2017/1217 establishing the EU Ecolabel criteria for hard surface cleaning products.
49. Commission Decision (EU) 2017/1218 establishing the EU Ecolabel criteria for laundry detergents.
50. Commission Decision (EU) 2017/1219 establishing the EU Ecolabel criteria for industrial and institutional laundry detergents.
51. Commission Decision (EU) 2017/1392 amending Decision 2014/350/EU establishing the ecological criteria for the award of the EU Ecolabel for textile products.
52. Commission Decision (EU) 2017/1508 on the reference document on best environmental management practice, sector environmental performance indicators and benchmarks of excellence for the food and beverage manufacturing sector under

Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

53. Commission Decision (EU) 2017/1525 amending Decision 2014/256/EU in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to converted paper products.
54. Commission Decision (EU) 2017/2076 amending Decision 2009/607/EC as regards the period of validity of the ecological criteria for the award of the EU Ecolabel to hard coverings.
55. Commission Decision (EU) 2017/2285 of 6 December 2017 amending the user's guide setting out the steps needed to participate in EMAS, under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
56. Commission Implementing Decision (EU) 2017/2286 on the recognition of the requirements of the Eco-Lighthouse environmental management system as complying with the corresponding requirements of the eco-management and audit scheme (EMAS) in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
57. Commission Decision (EU) 2018/59 amending Decision 2009/300/EC as regards the content, and period of validity, of the ecological criteria for the award of the EU Ecolabel to televisions.
58. Commission Decision (EU) 2018/666 amending Decision 2014/312/EU as regards the period of validity of the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes.
59. Commission Decision (EU) 2018/680 establishing EU Ecolabel criteria for indoor cleaning services.
60. Commission Decision (EU) 2018/813 on the sectoral reference document on best environmental management practices, sector environmental performance indicators and benchmarks of excellence for the agriculture sector under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
61. Commission Decision (EU) 2018/993 amending Decisions (EU) 2017/1214, (EU) 2017/1215, (EU) 2017/1216, (EU) 2017/1218 and (EU) 2017/1219 as regards the duration of the transitional period.

Domestic Subordinate Legislation - Revoked

62. Pollution Prevention and Control (Designation of the Industrial Emissions Directive) (Offshore) Order 2013; and

63. Pollution Prevention and Control (Designation of Medium Combustion Plant Directive) (Offshore) Order 2018

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The SI relates to areas within devolved competence. The amendments ensure existing functions of the Welsh Ministers are retained as far as possible in relation to retained EU law. Existing powers of the Welsh Ministers, in order to address deficiencies, have been amended to ensure post exit day they will be able to continue introducing legislation for example in relation to pollution and emissions control.

The purpose of the amendments

This affirmative 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 SI makes technical, legal amendments to ensure the law continues to function in the UK after EU exit. For example, the EPA 1990, the EA 1995 and the PPCA 1999 all refer to obligations as an EU Member State, and to EU legislation, these references are either inappropriate after exit, or will no longer work legally without amendment.

In the EA1995, there are amendments to the power for appropriate agencies to impose charges in relation to retained EU law. For Wales, the appropriate agency is Natural Resources Wales, who will now be able to charge fees in relation to performing functions conferred by Regulation (EC) No 1005/2009 (Ozone Depleting substances) and Regulation (EU) No 517/2014 (Fluorinated Greenhouse Gases), which are provided in the EU Exit SI on Fluorinated Greenhouse Gases and Ozone-Depleting Substances (EU Exit) Regulations to be laid before the Houses of Parliament in December.

In the EPA 1990, the amendment retains the Welsh Minister's power to introduce subordinate legislation previously in relation to 'EU Obligations' but post exit day in relation to "Retained EU Obligations" as inserted into the Interpretation Act 1978 by the EU (Withdrawal) Act 2018 Schedule 8.

The amendments in the PPPCA 1999 are to enable regulations currently made under section 2 of the PPCA to continue to be made in relation to pollution/emissions control within the scope of the retained EU law listed within the Schedule of the Act.

The revocations contained within this SI are necessary as in the case of Eco-Management and Audit and Ecolabel schemes, which will be out-of-date or have no further function once the UK has left the EU, these will be revoked and will cease on exit day. As a result of exiting the EU, neither of these schemes can apply in the UK. National bodies will no longer have the authority to register businesses under EMAS or grant Ecolabels, and existing UK registrations and Ecolabels will no longer be valid.

The SI and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

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 and expediency and to ensure consistency and coherence of the statute book. 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.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

Environment (Amendment etc) (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 Environment (Amendment etc) (EU Exit) Regulations 2018 (“2018 Regulations”) were laid before the sifting committees in the Houses of Parliament on 4 December 2018. The Regulations can be found at:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

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 arising 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:
 - Environmental Protection Act 1990;
 - Environment Act 1995; and
 - Pollution Prevention and Control Act 1999

Relevant provision to be made by the SI

5. The amendments made by the 2018 Regulations to the following provisions are as follows:
 - Environmental Protection Act 1990: sections 7, 19(3), 113(5), 116(2), 140(4)(a), 142(2)(a), and 156 – the amendments make technical changes such as including retained EU law or retained EU obligation or United Kingdom and omit references to EU Treaties.
 - Environment Act 1995: sections 40(d), 41(a), 41A(b), 56(1)(b), 80(2)(a), 85(5)(a), 86(8)(a), 87(1)(b)(i), 93(3)(a), 94(2)(a)(i), 108(15)(c), 111(5)(e), and 122 – the amendments insert references to domestic legislation such as the Hazardous Waste (Wales) Regulations, amend references to now read as to retained EU obligations, changing the definition of environmental licence to refer to domestic legislations such as Greenhouse Gas Emissions Trading Scheme Regulations 2012.

- Pollution Prevention and Control Act 1999: Schedule 1, paragraphs 3(b), 20(1)(b) and 20(1)(c) - the amendments preserve the scope of the subordinate legislation making power of section 2 PPCA 1999. The reference in paragraph 3 to obligations under the EU treaties is replaced with a reference to retained EU obligations. The wording of paragraph 20 is amended so that it no longer operates by reference to section 2 of the European Communities Act 1972.
6. The changes identified in paragraphs 5 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. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to the environment.

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

December 2018

(7) A revocation made by Part 5 in respect of subordinate legislation in Part 3 of the Schedule has the same extent as the provision revoked.

PART 2

Amendment of primary legislation

The Environmental Protection Act 1990

2.—(1) The Environmental Protection Act 1990(a) is amended as follows.

(2) In section 7—

(a) in subsection (2)(b), for “obligations of the United Kingdom under the EU Treaties” substitute “retained EU obligations”;

(b) for subsection (12)(b) substitute—
“(b) retained EU law;”.

(3) In section 19(3), omit “the EU Treaties or”.

(4) In section 113(5), for “the implementation of Council Directive 90/220/EEC” substitute “retained EU law which implemented Directive 2001/18/EC of the European Parliament and of the Council(b)”.

(5) In section 116(2)—

(a) after “Secretary of State of” insert “a function under retained EU law or”;

(b) omit “the EU Treaties or”.

(6) Omit section 140(4)(a).

(7) In section 142(2)(a), after “State” insert “or in the United Kingdom”.

(8) In section 156—

(a) in the heading, for “EU and other” substitute “retained EU obligations and”;

(b) in subsection (1)(a), for “EU obligation” substitute “retained EU obligation”.

The Environment Act 1995

3.—(1) The Environment Act 1995(c) is amended as follows.

(2) In section 40(d)—

(a) in subsection (2)—

(i) in the opening words, omit “for the implementation of”;

(ii) for paragraph (a) substitute—

“(a) for securing that any retained EU obligation is met, or”;

(iii) in paragraph (b), at the beginning insert “for the implementation of”;

(b) in subsection (4)—

(i) in the opening words, omit “for the implementation of”;

(ii) for paragraph (a) substitute—

“(a) for securing that any retained EU obligation is met, or”;

(iii) in paragraph (b), at the beginning insert “for the implementation of”.

(a) 1990 c. 43.

(b) OJ No L 106, 17.4.2001, p. 1, as last amended by Commission Directive (EU) 2018/350 (OJ No L 67, 9.3.2018, p. 30).

(c) 1995 c. 25.

(d) Section 40(2) and (4) was amended by S.I. 2011/1043.

- (3) In section 41(a)—
- (a) in subsection (1)—
- (i) paragraph (c) is omitted (as it applies in relation to England and as it applies in relation to Wales);
- (ii) after paragraph (c) insert—
- “(ca) as a means of recovering costs incurred by it in performing functions conferred by the Hazardous Waste (England and Wales) Regulations 2005, the Agency may require the payment to it of such charges as may from time to time be prescribed;
- (cb) as a means of recovering costs incurred by it in performing functions conferred by the Hazardous Waste (Wales) Regulations 2005, the Natural Resources Body for Wales may require the payment to it of such charges as may from time to time be prescribed;”;
- (iii) in paragraph (f) as it applies to England and Wales, for the words from “regulations made for the purposes of” to “(as amended from time to time)” substitute “retained EU law which implemented Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel (as it had effect immediately before exit day)”;
- (iv) in paragraph (g), for the words from “regulations made for the purpose of” to “as amended from time to time,” substitute “retained EU law which implemented Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators (as it had effect immediately before exit day)”;
- (v) after paragraph (k) insert—
- “(l) as a means of recovering costs incurred by it in performing functions conferred by Regulation (EC) No 1005/2009 on substances that deplete the ozone layer, the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;
- (m) as a means of recovering costs incurred by it in performing functions conferred by Regulation (EU) No 517/2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006, the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;”;
- (b) in subsection (2)(g), for “obligations of the United Kingdom under the EU Treaties” substitute “retained EU obligation”.
- (4) In section 41A(1)(b), for paragraph (a) substitute—
- “(a) as a means of recovering costs incurred by it in performing functions conferred under or by virtue of—
- (i) the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2005/925)(c);
- (ii) the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (S.I. 2010/1996)(d);
- (iii) the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038)(e).”.

(a) In section 41, subsection (1)(c) was amended for England and Wales by S.I. 2005/894, 2005/1806, 2011/988, 2013/755, 2018/942; subsection (1)(f) was amended for England and Wales by S.I. 2008/3087, 2013/755; subsection (1)(g) was amended by S.I. 2009/890, 2011/2911, 2013/755; subsection (1)(k) was inserted by S.I. 2017/1200; subsection (2)(g) was amended for Scotland by S.S.I. 2003/235 and S.I. 2011/1043.

(b) Section 41A(1) was inserted by S.I. 2005/925 and amended by S.I. 2012/2788, 2013/1821 and 3135.

(c) S.I. 2005/925, revoked with savings by S.I. 2012/3038.

(d) S.I. 2010/1996, revoked with savings by S.I. 2012/3038.

(e) S.I. 2012/3038, to which there are amendments not relevant to these Regulations.

- (5) In section 56(1)(a)—
- (a) in the definition of “environmental licence” in relation to an appropriate agency—
 - (i) in paragraph (aa)(i), for “regulations made for the purpose of implementing the EU ETS Directive” substitute “the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2005/925) and the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038)”;
 - (ii) in paragraph (h), for “any provision which gives effect in England and Wales to” substitute “retained EU law which, in England and Wales, implemented”;
 - (b) in the definition of “environmental licence” in relation to SEPA, in paragraph (ja), for the words from “or accumulators to” to the end, substitute “(including accumulators) as defined in regulation 2 of those Regulations, and where those batteries have been collected in accordance with Article 8 of Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators”;
 - (c) omit the definition of “the EU ETS Directive”.
- (6) In section 80(2)—
- (a) in the opening words, omit “implementing”;
 - (b) for paragraph (a) substitute—
 - “(a) securing that any retained EU obligation is met, or”;
 - (c) in paragraph (b), at the beginning insert “the implementation of”.
- (7) In section 85(5)—
- (a) in the opening words, omit “for the implementation of”;
 - (b) for paragraph (a) substitute—
 - “(a) for securing that any retained EU obligation is met, or”;
 - (c) in paragraph (b), at the beginning insert “for the implementation of”.
- (8) In section 86(8)—
- (a) in the opening words, omit “for the implementation of”;
 - (b) for paragraph (a) substitute—
 - “(a) for securing that any retained EU obligation is met, or”;
 - (c) in paragraph (b), at the beginning insert “for the implementation of”.
- (9) In section 87(1)(b)—
- (a) omit “, implementing”;
 - (b) for sub-paragraph (i) substitute—
 - “(i) securing that any retained EU obligation is met, or”;
 - (c) in sub-paragraph (ii), at the beginning insert “the implementation of any”.
- (10) In section 93(3)(a), for “obligations of the United Kingdom under the EU Treaties” substitute “retained EU obligations”.
- (11) In section 94(2)(a)(i), for “obligations of the United Kingdom under the EU Treaties” substitute “retained EU obligations”.
- (12) In section 108(15)(b)—
- (a) in the definition of “pollution control functions” in relation to the Agency, the Natural Resources Body for Wales or SEPA, for paragraph (m) substitute—
 - “(m)EU-derived domestic legislation (as defined by section 2 of the European Union (Withdrawal) Act 2018) to the extent that it relates to pollution;”;

(a) Section 56(1) was amended by S.I. 2011/988, 2012/2788, 2013/755, 2016/475 and S.S.I. 2009/247; there are other amending instruments but none is relevant.

(b) Section 108(15) was amended by S.I. 2013/755; there are other amending instruments but none is relevant.

- (b) in the definition of “pollution control functions” in relation to a local enforcing authority, for paragraph (c) substitute—

“(c) by or under EU-derived domestic legislation (as defined by section 2 of the European Union (Withdrawal) Act 2018) to the extent that it relates to pollution;”.

- (13) In section 111(5)(a), for the definition of “relevant regulations” substitute—

““relevant regulations” means—

- (a) the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2005/925);
- (b) the Aviation Greenhouse Gas Emissions Trading Scheme Regulations 2010 (S.I. 2010/1966);
- (c) the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (S.I. 2012/3038).”.

- (14) In section 122—

- (a) for subsection (3) substitute—

“(3) Subsections (4) and (5) apply to any direction which is—

- (a) given to—

- (i) the Agency or SEPA under any provision of this Act or any other enactment, or
- (ii) any other body or person under any provision of this Act, and

- (b) to any extent given—

- (i) before exit day, for the implementation of any obligation of the United Kingdom under the EU Treaties, or
- (ii) for securing that any retained EU obligation is met.”;

- (b) in subsection (4), for the words from “the obligations mentioned” to “continue to be implemented” substitute “any relevant retained EU obligation continues to be met”.

The Pollution Prevention and Control Act 1999

- 4.—**(1) Schedule 1 to the Pollution Prevention and Control Act 1999**(b)** is amended as follows.

- (2) For paragraph 3(b) substitute—

“(b) directions given for the purposes of the implementation of—

- (i) any retained EU obligations, or
- (ii) any obligations under an international agreement to which the United Kingdom is a party;”.

- (3) In paragraph 20—

- (a) for sub-paragraph (1)(b) substitute—

“(b) any provision (not being provision within any of paragraphs 1 to 19 or paragraph (a) above) that might be made by an Act of Parliament in connection with the relevant directives, other than provision—

- (i) imposing or increasing taxation;
- (ii) taking effect from a date earlier than that of the making of the instrument containing the provision;
- (iii) conferring any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal.”.

- (b) in sub-paragraph (2)—

(a) Section 111(5) was amended by S.I. 2012/2788; there are other amending instruments but none is relevant.

(b) 1999 c. 24.

- (i) omit paragraph (c);
- (ii) after paragraph (c) insert—
 - “(d) Council Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos**(a)**;
 - (e) European Parliament and Council Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations**(b)**;
 - (f) Council Directive 1999/31/EC on the landfill of waste**(c)**, as last amended by Directive 2011/97/EU**(d)**;
 - (g) Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles**(e)**, as last amended by Directive (EU) 2017/2096**(f)**;
 - (h) Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy**(g)**;
 - (i) Directive 2001/81/EC of the European Parliament and of the Council on national emission ceilings for certain atmospheric pollutants**(h)**;
 - (j) Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment**(i)**;
 - (k) Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries**(j)**;
 - (l) Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators**(k)**, as last amended by Directive 2013/56/EU**(l)**;
 - (m) Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration**(m)**;
 - (n) Directive 2008/98/EC of the European Parliament and of the Council on waste**(n)**, as last amended by Regulation (EU) 2017/997**(o)**;
 - (o) Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide**(p)**;
 - (p) Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations**(q)**;
 - (q) Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)**(r)**;
 - (r) Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE)**(s)**, as it had effect immediately before 4th July 2018;

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- (a) OJ No L 85, 28.3.1987, p. 40, as last amended by Decision (EU) 2018/853 (OJ No L 150, 14.6.2018, p. 155).
 - (b) OJ No L 365, 31.12.1994, p. 24, as last amended by Decision (EU) 2018/853 (OJ No L 150, 14.6.2018, p. 155).
 - (c) OJ No L 182, 16.7.1999, p. 1.
 - (d) OJ No L 328, 10.12.2011, p. 49.
 - (e) OJ No L 269, 21.10.2000, p. 34.
 - (f) OJ No L 299, 16.11.2017, p. 24.
 - (g) OJ No L 327, 22.12.2000, p. 1, as last amended by Directive 2014/101/EU (OJ No L 311, 31.10.2014, p. 32).
 - (h) OJ No L 309, 27.11.2001, p. 22, as last amended by Directive (EU) 2016/2284 (OJ No L 344, 17.12.2016, p. 1).
 - (i) OJ No L 156, 25.6.2003, p. 17, as last amended by Directive (EU) 2016/2284 (OJ No L 344, 17.12.2016, p. 1).
 - (j) OJ No L 102, 11.4.2006, p. 15, as amended by Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p. 14).
 - (k) OJ No L 266, 26.9.2006, p. 1.
 - (l) OJ No L 329, 10.12.2013, p. 5.
 - (m) OJ No L 372, 27.12.2006, p. 19, as amended by Directive 2014/80/EU (OJ No L 182, 21.6.2014, p. 52).
 - (n) OJ No L 312, 22.11.2008, p. 3.
 - (o) OJ No L 150, 14.6.2017, p. 1.
 - (p) OJ No L 140, 5.6.2009, p. 114, as last amended by Decision (EU) 2018/853 (OJ No L 150, 14.6.2018, p. 155).
 - (q) OJ No L 285, 31.10.2009, p. 36, as amended by Directive 2014/99/EU (OJ No L 304, 23.10.2014, p. 89).
 - (r) OJ No L 334, 17.12.2010, p. 17, as corrected by Corrigendum to Directive 2010/75/EU (OJ No L 158, 19.6.2012, p. 25).
 - (s) OJ No L 197, 24.7.2012, p. 38.

- (s) Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency(**a**);
 - (t) Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation(**b**);
 - (u) Directive 2015/2193/EU of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants(**c**).”.
- (c) after sub-paragraph (2) insert—
- “(2A) In sub-paragraph (1)(b)(iii), the reference to provision conferring any power to legislate does not include provision—
- (a) amending or extending a power to legislate conferred other than under this paragraph;
 - (b) giving directions as to matters of administration.”.

PART 3

Amendment of subordinate legislation

The Contaminated Land (England) Regulations 2006

5.—(1) Regulation 3 of the Contaminated Land (England) Regulations 2006(**d**) is amended as follows.

- (2) The existing paragraph is renumbered as paragraph (1).
- (3) In paragraph (1) as renumbered, for sub-paragraph (b)(ii) (but not the final “or”) substitute—
 - “(ii) for controlled waters that are designated as shellfish water protected areas or bathing waters, those waters do not meet the environmental objectives that apply to them;”.
- (4) After paragraph (1) as renumbered insert—
 - “(2) In this regulation—
 - “the Northumbria WFD Regulations” means the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003(**e**);
 - “the Solway Tweed WFD Regulations” means the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004(**f**);
 - “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(**g**);
 - “a bathing water” has the same meaning as in the Bathing Water Regulations 2013(**h**);
 - “environmental objectives”—
 - (a) in relation to the Solway Tweed River Basin District, means the objectives as defined in regulation 2 of the Solway Tweed WFD Regulations;
 - (b) in relation to the Northumbria River Basin District, means the objectives referred to in the WFD Regulations as applied and modified by regulation 5 of the Northumbria WFD Regulations;

(a) OJ No L 315, 14.11.2012, p. 1, as last amended by Directive (EU) 2018/844 (OJ No L 156, 19.6.2018, p. 75).
 (b) OJ No L 13, 17.1.2014, p. 1, as corrected by Corrigendum to Directive 2013/59/Euratom (OJ No L 72, 17.3.2016, p. 69).
 (c) OJ No L 313, 28.11.2015, p. 1.
 (d) S.I. 2006/1380, amended by S.I. 2012/263 and 2018/575; there are other amending instruments but none is relevant.
 (e) S.I. 2003/3245, amended by S.I. 2016/139, 2017/407.
 (f) S.I. 2004/99, amended by S.I. 2016/139; there are other amending instruments but none is relevant.
 (g) S.I. 2017/407, to which there are amendments not relevant to these regulations.
 (h) S.I. 2013/1675, amended by S.I. 2018/575; there are other amending instruments but none is relevant.

- (c) in relation to any other river basin district within the meaning of the WFD Regulations, has the same meaning as in those Regulations;
- “shellfish water protected area”—
- (a) in relation to the Solway Tweed River Basin District, has the meaning given by regulation 2(1) of the Solway Tweed WFD Regulations;
 - (b) in relation to the Northumbria River Basin District, means a body of water designated under regulation 9 of the WFD Regulations, as applied by regulation 5 of the Northumbria WFD Regulations;
 - (c) in relation to any other river basin district within the meaning of the WFD Regulations, means a body of water designated under regulation 9 of those Regulations.”.

The Environmental Noise (England) Regulations 2006

6.—(1) The Environmental Noise (England) Regulations 2006(a) are amended as follows.

(2) In regulation 2—

- (a) in paragraph (3), for “as amended from time to time” substitute “as it had effect immediately before exit day”;
- (b) at the end insert—

“(4) For the purposes of these Regulations, the Directive is to be read as if a reference to one or more member States were a reference to the Secretary of State.”.

(3) In regulation 4, after paragraph (2) insert—

“(2A) For the purposes of paragraph (2)(a), a reference to Annex 1 of the Directive is to be read as if, in paragraph 1, in the fourth indent that begins “the day is 12 hours”, the words from “The Member” to the end were omitted.”.

(4) For regulation 15(1)(a) substitute—

- “(a) aim to prevent and reduce environmental noise where necessary and particularly where exposure levels can induce harmful effects on human health;
- (aa) aim to preserve environmental noise quality where it is good;”.

(5) In regulation 22—

- (a) in paragraph (2)(b), for the words “the Directive” substitute “relevant retained EU law(b)”;
- (b) in paragraph (3), for “Article 4 of the Directive” substitute “the relevant retained EU law”.

(6) In regulation 26(4)(b)—

- (a) in paragraph (i) omit “; or”;
- (b) omit paragraph (ii).

(7) In Schedule 1—

- (a) in paragraph 1—
 - (i) the existing text is renumbered as sub-paragraph (1);
 - (ii) at the end insert—

“(2) For the purposes of sub-paragraph (1), the reference to paragraphs 1.5, 1.6 and 2.6 of Annex 6 of the Directive is to be read with the following modifications—

(a) S.I. 2006/2238, amended by S.I. 2010/340, 2018/1089; there are other amending instruments but none is relevant.
 (b) Relevant retained EU law includes the Environmental Noise (Wales) Regulations 2006 (S.I. 2006/2629 (W. 225)), the Environmental Noise (Scotland) Regulations 2006 (S.S.I. 2006/465) and the Environmental Noise Regulations (Northern Ireland) 2006 (S.R. 2006 No. 387).

- (a) in paragraphs 1.5 and 1.6, as if the reference in those paragraphs to “major roads”, “major railways” and “major airports” as defined in Article 3 of the Directive were to “major road”, “major railway” and “major airport” as defined in regulation 2(2) of these Regulations;
- (b) in paragraphs 1.6 and 2.6, as if the words from “These data” to “Article 11(1).” were omitted.”;
- (b) in paragraph 2, at the end insert—
 - “(3) Further, in applying paragraph (1)(a) the following provisions of Annex 4 of the Directive are to be ignored—
 - (a) in paragraph 4, the first indent;
 - (b) in paragraph 5, the words from “concerning” to “Commission”;
 - (c) paragraph 9.”.

The Environmental Damage (Prevention and Remediation) (England) Regulations 2015

7.—(1) The Environmental Damage (Prevention and Remediation) (England) Regulations 2015(a) are amended as follows.

(2) For regulation 3 substitute—

“3.—(1) For the purposes of these Regulations, a reference in any EU instrument referred to in these Regulations—

- (a) to the “European Union” or otherwise to the area to which that instrument applies is to be taken to include the United Kingdom;
- (b) to a “Member State” is to be taken to include the United Kingdom.”.

(3) In Schedule 1, in paragraph 1(e), for “or in the European Union as a whole” substitute “, national or in their natural range”.

(4) In Schedule 2—

(a) after paragraph 1 insert—

“Interpretation

1A. A reference in this Schedule to an activity being authorised, prohibited or managed pursuant to, or subject to a permit or registration under, a Directive includes, after exit day, any activity authorised, prohibited or managed pursuant to, or subject to a permit or registration under, any retained EU law which transposed that Directive.”;

(b) in paragraph 10, after “the Community” insert “or into or out of the United Kingdom”.

PART 4

Savings

Savings

8.—(1) The amendments made by regulation 3(2), (7) and (8) to sections 40(2)(a), 85(5)(a) and 86(8)(a) of the Environment Act 1995 do not affect the validity, after exit day, of any direction given under those sections which has effect immediately before exit day, and such a direction may be—

- (a) varied so as to make any provision that could be made in a direction given under the relevant section after exit day, or

(a) S.I. 2015/810, as amended by S.I. 2017/1177.

(b) revoked.

(2) The power to vary or revoke such a direction is subject to section 122(4) and (5) of the Environment Act 1995.

(3) The amendment made by regulation 3(9) to section 87(1)(b)(i) of the Environment Act 1995 does not affect the validity, after exit day, of any regulations made under that section which have effect immediately before exit day.

PART 5

Revocations

Revocations

9. The following instruments are revoked—

- (a) the retained direct EU legislation referred to in Part 1 of the Schedule;
- (b) the subordinate legislation referred to in Parts 2 and 3 of the Schedule.

Date *Name*
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

We consent

Date *Name*
Name
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 9

Revocations

PART 1

Retained direct EU legislation

Regulations

1. Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

2. Regulation (EC) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel.

3. Commission Regulation (EU) No 782/2013 amending Annex III to Regulation (EU) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel.

4. Commission Regulation (EU) 2017/1505 amending Annexes I, II and III to Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

5. Commission Regulation (EU) 2017/1941 amending Annex II to Regulation (EC) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel.

Decisions

6. Decision No 2179/98/EC of the European Parliament and of the Council on the review of the European Community programme of policy and action in relation to the environment and sustainable development 'Towards sustainability'.

7. Commission Decision 2010/709/EU establishing the European Union Ecolabelling Board.

8. Commission Decision 2011/330/EU on establishing the ecological criteria for the award of the EU Ecolabel for notebook computers.

9. Commission Decision 2011/333/EU on establishing the ecological criteria for the award of the EU Ecolabel for copying and graphic paper.

10. Commission Decision 2011/337/EU on establishing the ecological criteria for the award of the EU Ecolabel for personal computers.

11. Commission Decision 2011/381/EU on establishing the ecological criteria for the award of the EU Ecolabel to lubricants.

12. Commission Decision 2011/740/EU amending Decisions 2006/799/EC, 2007/64/EC, 2007/506/EC, 2007/742/EC, 2009/543/EC and 2009/544/EC in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to certain products.

13. Commission Decision 2011/832/EU concerning a guide on EU corporate registration, third country and global registration under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

14. Commission Decision 2012/448/EU establishing the ecological criteria for the award of the EU Ecolabel for newsprint paper.

15. Commission Decision 2012/481/EU establishing the ecological criteria for the award of the EU Ecolabel for printed paper.

16. Commission Decision 2013/131/EU establishing the user's guide setting out the steps needed to participate in EMAS, under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

17. Commission Decision 2013/135/EU amending Decisions 2007/506/EC and 2007/742/EC in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to certain products.

18. Commission Decision 2013/250/EU establishing the ecological criteria for the award of the EU Ecolabel for sanitary tapware.

19. Commission Decision 2013/295/EU amending Decisions 2006/799/EC, 2007/64/EC, 2009/300/EC, 2009/543/EC, 2009/544/EC, 2009/563/EC, 2009/564/EC, 2009/567/EC, 2009/568/EC, 2009/578/EC, 2009/598/EC, 2009/607/EC, 2009/894/EC, 2009/967/EC, 2010/18/EC and 2011/331/EU in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to certain products.

20. Commission Decision 2013/641/EU establishing the ecological criteria for the award of the EU Ecolabel for flushing toilets and urinals.

21. Commission Decision 2013/806/EU establishing the ecological criteria for the award of the EU Ecolabel for imaging equipment.

22. Decision No 1386/2013/EU of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 ‘Living well, within the limits of our planet’.

23. Commission Decision 2014/256/EU establishing the ecological criteria for the award of the EU Ecolabel for converted paper products.

24. Commission Decision 2014/312/EU establishing the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes.

25. Commission Decision 2014/314/EU establishing the criteria for the award of the EU Ecolabel for water-based heaters.

26. Commission Decision 2014/336/EU amending Decisions 2006/799/EC, 2007/64/EC, 2009/300/EC, 2009/894/EC, 2011/330/EU, 2011/331/EU and 2011/337/EU in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to certain products.

27. Commission Decision 2014/345/EU amending Decision 2012/481/EU establishing the ecological criteria for the award of the EU Ecolabel for printed paper.

28. Commission Decision 2014/350/EU establishing the ecological criteria for the award of the EU Ecolabel for textile products.

29. Commission Decision 2014/391/EU establishing the ecological criteria for the award of the EU Ecolabel for bed mattresses.

30. Commission Decision 2014/763/EU establishing the ecological criteria for the award of the EU Ecolabel for absorbent hygiene products.

31. Commission Decision 2014/893/EU establishing the ecological criteria for the award of the EU Ecolabel for rinse-off cosmetic products.

32. Commission Decision (EU) 2015/801 on reference document on best environmental management practice, sector environmental performance indicators and benchmarks of excellence for the retail trade sector under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

33. Commission Decision (EU) 2015/877 amending Decisions 2009/568/EC, 2011/333/EU, 2011/381/EU, 2012/448/EU and 2012/481/EU in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to certain products.

34. Commission Decision (EU) 2015/886 amending Decision 2014/312/EU establishing the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes.

35. Commission Decision (EU) 2015/2099 establishing the ecological criteria for the award of the EU Ecolabel for growing media, soil improvers and mulch.

36. Commission Decision (EU) 2016/397 amending Decision 2014/312/EU establishing the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes.

37. Commission Decision (EU) 2016/611 on the reference document on best environmental management practice, sector environmental performance indicators and benchmarks of excellence for the tourism sector under Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

38. Commission Decision (EU) 2016/1332 establishing the ecological criteria for the award of the EU Ecolabel for furniture.

39. Commission Decision (EU) 2016/1371 establishing the ecological criteria for the award of the EU Ecolabel for personal, notebook and tablet computers.

40. Commission Decision (EU) 2017/175 on establishing EU Ecolabel criteria for tourist accommodation.

- 41.** Commission Decision (EU) 2017/176 on establishing EU Ecolabel criteria for wood-, cork- and bamboo-based floor coverings.
- 42.** Commission Decision (EU) 2017/1214 establishing the EU Ecolabel criteria for hand dishwashing detergents.
- 43.** Commission Decision (EU) 2017/1215 establishing the EU Ecolabel criteria for industrial and institutional dishwasher detergents.
- 44.** Commission Decision (EU) 2017/1216 establishing the EU Ecolabel criteria for dishwasher detergents.
- 45.** Commission Decision (EU) 2017/1217 establishing the EU Ecolabel criteria for hard surface cleaning products.
- 46.** Commission Decision (EU) 2017/1218 establishing the EU Ecolabel criteria for laundry detergents.
- 47.** Commission Decision (EU) 2017/1219 establishing the EU Ecolabel criteria for industrial and institutional laundry detergents.
- 48.** Commission Decision (EU) 2017/1392 amending Decision 2014/350/EU establishing the ecological criteria for the award of the EU Ecolabel for textile products.
- 49.** Commission Decision (EU) 2017/1508 on the reference document on best environmental management practice, sector environmental performance indicators and benchmarks of excellence for the food and beverage manufacturing sector under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
- 50.** Commission Decision (EU) 2017/1525 amending Decision 2014/256/EU in order to prolong the validity of the ecological criteria for the award of the EU Ecolabel to converted paper products.
- 51.** Commission Decision (EU) 2017/2076 amending Decision 2009/607/EC as regards the period of validity of the ecological criteria for the award of the EU Ecolabel to hard coverings.
- 52.** Commission Decision (EU) 2017/2285 of 6 December 2017 amending the user's guide setting out the steps needed to participate in EMAS, under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
- 53.** Commission Implementing Decision (EU) 2017/2286 on the recognition of the requirements of the Eco-Lighthouse environmental management system as complying with the corresponding requirements of the eco-management and audit scheme (EMAS) in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).
- 54.** Commission Decision (EU) 2018/59 amending Decision 2009/300/EC as regards the content, and period of validity, of the ecological criteria for the award of the EU Eco-label to televisions.
- 55.** Commission Decision (EU) 2018/666 amending Decision 2014/312/EU as regards the period of validity of the ecological criteria for the award of the EU Ecolabel for indoor and outdoor paints and varnishes.
- 56.** Commission Decision (EU) 2018/680 establishing EU Ecolabel criteria for indoor cleaning services.
- 57.** Commission Decision (EU) 2018/813 on the sectoral reference document on best environmental management practices, sector environmental performance indicators and benchmarks of excellence for the agriculture sector under Regulation (EC) No 1221/2009 of the

European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

58. Commission Decision (EU) 2018/993 amending Decisions (EU) 2017/1214, (EU) 2017/1215, (EU) 2017/1216, (EU) 2017/1218 and (EU) 2017/1219 as regards the duration of the transitional period.

PART 2

Subordinate legislation (England)

59. The Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2013(**a**).

60. The Pollution Prevention and Control (Designation of Energy Efficiency Directive) (England and Wales) Order 2015(**b**).

61. The Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2015(**c**).

62. The Pollution Prevention and Control (Designation) (England and Wales) Order 2016(**d**).

63. The Pollution Prevention and Control (Designation of Waste Directive) (England and Wales) Order 2016(**e**).

64. The Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2017(**f**).

PART 3

Subordinate legislation (offshore)

65. The Pollution Prevention and Control (Designation of the Industrial Emissions Directive) (Offshore) Order 2013(**g**).

66. The Pollution Prevention and Control (Designation of the Medium Combustion Plant Directive) (Offshore) Order 2018(**h**).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) 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 (g) of that Act) arising from the withdrawal of the United Kingdom from the European Union.

Part 2 makes amendments to primary legislation concerning the environment.

Part 3 makes amendments to subordinate legislation concerning the environment.

-
- (a) S.I. 2013/123.
 - (b) S.I. 2015/816.
 - (c) S.I. 2015/1352.
 - (d) S.I. 2016/150.
 - (e) S.I. 2016/398.
 - (f) S.I. 2017/1248.
 - (g) S.I. 2013/669.
 - (h) S.I. 2018/487.

Part 4 makes saving provisions in respect of amendments made to the Environment Act 1995 (c. 25) in Part 2.

Part 5 and the Schedule contain revocations. Part 1 of the Schedule revokes certain retained direct EU legislation concerning the environment. Parts 2 and 3 of the Schedule revoke subordinate legislation in consequence of amendments made to the Pollution Prevention and Control Act 1999 (c. 24) in Part 2 of the Regulations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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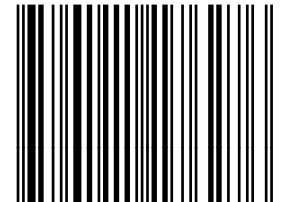
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EXPLANATORY MEMORANDUM TO

THE ENVIRONMENT (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument ensures that cross-cutting, environmental laws in the United Kingdom (“UK”) function legally after our exit from the European Union (“EU”). It does this in three ways: (1) by amending cross-cutting, environmental Acts; (2) by amending cross-cutting, environmental statutory instruments; and (3) by preventing some EU environmental Regulations and Decisions, which are out-of-date or will have no further function once we have left the EU, being brought into UK law by the automatic operation of the EU (Withdrawal) Act 2018 (“EUWA 2018”); together with domestic designation orders as regards England and Wales which are redundant in the light of the amendments to Acts elsewhere in the instrument.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Environmental Protection Act 1990 (“EPA 1990”), the Environment Act 1995 (“EA 1995”) and the Pollution Prevention and Control Act 1999 (“PPCA 1999”) refer to our obligations as an EU Member State, and to EU legislation.
- 2.3 The Contaminated Land (England) Regulations 2006 (SI 2006/1380), the Environmental Noise (England) Regulations 2006 (SI 2006/2238) and the Environmental Damage (Prevention and Remediation) (England) Regulations 2015. (SI 2015/810) make similar references to those made by the Acts mentioned in paragraph 2.2. The Environmental Noise Regulations transpose EU 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. This Directive establishes a common approach intended to avoid, prevent or reduce the harmful effects of exposure to environmental noise from transport and industry. The Environmental Damage Regulations transpose Directives 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage; and Article 38 of Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC. These Directives establish a framework based on the polluter pays principle to prevent and remedy environmental damage.
- 2.4 Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) establishes an EU scheme which promotes

continuous improvements in the environmental performance of organisations by their establishing, implementing and periodically reviewing environmental management systems. The Regulation was amended by Commission Regulation (EU) 2017/1505 of 28 August 2017 amending Annexes I, II and III to Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

- 2.5 Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel establishes a voluntary scheme, under which producers, importers and retailers can choose to apply for the EU label for their products. The aim of the scheme is to make it simple for consumers to know that a product or a service is both environmentally friendly and good quality. This Regulation was amended by Commission Regulation (EU) No 782/2013 of 14 August 2013 amending Annex III to Regulation (EU) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel; and Commission Regulation (EU) 2017/1941 of 24 October 2017 amending Annex II to Regulation (EC) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel.
- 2.6 The EU Decisions covered by this instrument relate to: (a) EU Environmental Action Programmes, the overarching policy statements that set the EU's objectives for a number of years; (b) technical aspects of the EMAS and Ecolabel schemes.

Why is it being changed?

- 2.7 In the case of the national primary legislation and statutory instruments, this instrument makes technical, legal amendments to ensure that the law continues to function after EU exit. For example, references to our status as a Member State, and certain cross-references to EU legislation are either inappropriate after we leave, or will no longer work legally without amendment.
- 2.8 In the EPA1990, references to obligations under EU law are omitted and where appropriate replaced with references to retained EU law and retained EU obligations.
- 2.9 In the EA1995, powers to make directions and regulations for the purposes of implementing EU law are adjusted to refer to retained EU obligations, with appropriate savings in Part 4. There are also amendments to the power for appropriate agencies to impose charges in relation to retained EU law.
- 2.10 In the PPCA1999, the power to make regulations under section 2 is adjusted so as to substitute references to retained EU obligations for existing references to the UK's obligations under the EU Treaties, and to replace the provisions, whereby relevant Directives may be designated from time to time, with provisions on the face of the Act which specify a closed list of Directives in connection with which regulations may be made.
- 2.11 The amendments to Acts have the same extent and application as the provisions being amended. The Devolved Administration in Northern Ireland is addressing separately any similar issues in its legislation. The statutory instruments amended by this instrument apply in England only, and the Devolved Administrations are addressing separately any similar issues in devolved legislation.
- 2.12 The provisions in this instrument relating to EU Regulations and Directions apply to the whole of the UK.

- 2.13 Much directly-applicable EU legislation (that is, law that currently applies in the UK without any further legislation by our parliaments, including EU Regulations and Decisions) will automatically be brought into national law by the EUWA 2018, as “retained EU law”. Ministers will consider the use of an environmental labelling scheme under the new strategic approach to resources and waste.
- 2.14 The EU Decisions are out-of-date and/or will serve no ongoing purpose.
- 2.15 Preventing the EU Regulations and Decisions being brought into the UK statute book helps to avoid confusion for businesses and the public.

What will it now do?

- 2.16 The Acts and statutory instruments being amended will continue to operate substantively as they do at present. There is no change in policy or the impact on businesses or the public.
- 2.17 We will leave the EMAS and Ecolabel schemes when we cease to be a Member State. This SI does not itself cause that, but prevents the relevant EU legislation being unnecessarily brought into our national law, which would cause confusion.
- 2.18 The Schedule to this instrument prevents the relevant EU Regulations and Decisions, concerning Environmental Action Programmes, EMAS and Ecolabel from being brought into national law, so these will not have legal effect in the UK on or after exit day. Part 2 of the Schedule revokes domestic designation orders as regards England and Wales which are redundant in the light of the amendments to the Pollution Prevention and Control Act 1999 made in Part 2 of the instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument uses powers in the EUWA 2018 to amend primary legislation (Acts).
- 3.2 The instrument attracts the affirmative resolution procedure under paragraph 1(2)(b) and (d) of Schedule 7 to the EUWA 2018. The amendments to sections 41 and 41A of the EA 1995 relate to a fee in respect of a function exercisable by a public authority in the United Kingdom. The amendments to the PPCA 1999 and section 156 of the EPA 1990 amend powers to legislate.

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)

- 3.3 The territorial application of this instrument varies between provisions.
- 3.4 Amendments to Acts apply to the whole of the UK with the exception of Northern Ireland. The provisions relating to directly-applicable EU legislation apply to the entire UK. The amendments of the England-only statutory instruments apply in England only.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom except for: Part 3 and Part 5 (in respect of Part 2 of the Schedule) which extend to England and Wales; Part 4 which extends to Great Britain; and the provisions in Part 2 and Part 5 (in respect of Part 3 of the Schedule) which have the same extent as the provisions being amended.

- 4.1 The territorial application of this instrument is the United Kingdom except for: Part 3 and Part 5 (in respect of Part 2 of the Schedule) which apply to England; Part 4 which applies to Great Britain; and the provisions in Part 2 and Part 5 (in respect of Part 3 of the Schedule) which have the same application as the provisions being amended.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Environment, Thérèse Coffey MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Environment (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights”.

6. Legislative Context

- 6.1 This instrument is being made to address deficiencies arising from the withdrawal of the United Kingdom from the European Union using the power in section 8 of the EUWA 2018, in order to ensure the appropriate functioning of legislation to which it relates after the UK leaves the EU.

7. Policy background

What is being done and why?

- 7.1 This instrument is being made in order to maintain the effectiveness and continuity of UK legislation that would otherwise be left partially inoperable/able to function legally following our exit from the EU. It is also being made to prevent the otherwise automatic incorporation of EU legislation into our national law, where to do so would be inappropriate.
- 7.2 The instrument makes only those amendments that are legally necessary to achieve its objectives. It represents no changes of policy, nor will it produce any impact on businesses or the public.
- 7.3 To the extent that businesses are impacted, that is as a direct result of the UK leaving the EU, and not because of this SI. For example, when we cease to be a Member State, existing EMAS registrations and Ecolabels granted by UK bodies will no longer be valid. Businesses that hold EMAS registrations or Ecolabels will, if they wish to continue to hold them, need to re-register or re-apply to a competent authority in an EU Member State. This instrument does not itself have that effect, but prevents the relevant EU legislation being brought into national law by the automatic operation of the EUWA 2018, which could cause confusion.

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 EUWA 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. 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 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 We have not consulted specifically on this instrument, because it represents no change of policy and has no impact of itself on businesses or the public. Individual Defra policy teams have engaged with stakeholders where appropriate.

10.2 We have liaised actively with Devolved Administrations in relation to the UK-wide elements of this instrument.

11. Guidance

11.1 Guidance is not being provided in relation to this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The only material impact will be on current holders of EMAS registrations or Ecolabels, but this is an effect of EU exit, rather than of this instrument.

12.2 EMAS is an environmental reporting tool and those organisations registered with EMAS can use this to show its environmental credentials to customers and regulators. The impact of the EMAS Regulation no longer applying in the UK could affect businesses registered with EMAS operating in the EU market (which is considered out of scope) as well as in the UK market (which is considered in scope).

12.3 In the UK each organisation pays a registration fee of £840 to £2,160, or renewal fee of £420 to £1,080, depending on the size of the business. As a result of EU withdrawal, a company may wish to register via one of the eight EU Member States offering registration through EMAS Global (as a result paying two registration fees, or a renewal (UK) and a new registration (global) in the same year). Registration costs through the UK competent body, based on nineteen renewals for six large organisations and thirteen SMEs, is around £11,000. To register with EMAS Global UK organisations would need to pay full registration fees, rather than renewal fees. Comparative costs in two of the countries offering EMAS Global registration for six large organisations and thirteen SMEs would be €26,000, or around £23,008 in Ireland (which has one registration fee irrespective of organisation size); or €16,000 or around £14,159 in Finland. Considering the number of organisations registered with EMAS in the UK, the costs that may accrue to UK businesses are negligible.

12.4 The impact of the EU Ecolabel Regulation no longer applying in the UK affects businesses that are registered with the EU Ecolabel UK competent body and which sell into the EU market (which is considered out of scope); as well as those businesses registered with the EU Ecolabel UK competent body that sell into the UK market (which is considered in scope). There are only 49 businesses registered with the EU Ecolabel UK competent body, sixteen of which are foreign-based companies, and a total of 110 licensed products. Each business will pay an annual licence fee of between £450 and £2,250 (depending on the size of the business), with additional costs of between £290 and £1,650 per product licence, which can last for a number of years. As a result of EU exit, a company may wish to register in an EU Member State (as a result paying two licence fees that year) and may choose to re-register products, paying product fee licences earlier than otherwise. Considering the number of

companies and products, the additional costs that may accrue to UK businesses are therefore negligible.

- 12.5 There is no, or no significant, impact on the public sector.
- 12.6 An Impact Assessment has not been prepared for this instrument because this instrument relates to maintenance of existing regulatory standards.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 There is no substantial change in impact on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of its standard policy-making procedures.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Duncan Mitchell at the Department for Environment, Food and Rural Affairs (telephone: 07887 821369; or email: duncan.mitchell@defra.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Sarah Swash, Deputy Director for EU Exit and Environmental Regulations, 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 Environment at the 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) Act 2018

1. Appropriateness statement

- 1.1 The Parliamentary Under Secretary of State for Environment, Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Environment (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case for the reasons explained in sections 7.1 to 7.3 in the main body of this Explanatory Memorandum.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for Environment, 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”.

- 2.2 These are explained in sections 7.1 to 7.3 in the main body of this Explanatory Memorandum.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Environment, Thérèse Coffey MP, has made the following statement(s):

“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”.

- 3.2 The Parliamentary Under Secretary of State for Environment, 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”.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Environment (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 5 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 24
SICM under SO 30A (because amends primary legislation)	Paper 25

Scrutiny procedure

Outcome of sifting	NA
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 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulation ensure that cross-cutting, environmental laws in the United Kingdom function legally after the exit from the European Union.

It does this in three ways:

- (1) by amending cross-cutting, environmental Acts;
 - (2) by amending cross-cutting, environmental statutory instruments;
- and
- (3) by preventing some EU environmental Regulations and Decisions, which are out-of-date
or will have no further function once we have left the EU, being brought into UK law by
the automatic operation of the EU (Withdrawal) Act 2018 ("EUWA 2018"); together with

domestic designation orders as regards England and Wales which are redundant in the light of the amendments to Acts elsewhere in the instrument.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 10 December 2018 regarding the effect of these Regulations:

The Welsh Government's statement incorrectly refers to these Regulations as being the Environment (Amendment etc.) (EU Exit) Regulations 2018, when in fact they are actually the Environment (Amendment etc.) (EU Exit) Regulations 2019.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2018

DATE 3 December 2018

BY Julie James AM, Leader of the House and Chief Whip

The European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) Regulations 2018

The retained EU Law which is being amended

- The Interpretation Act 1978
- The Interpretation and Legislative Reform (Scotland) Act 2010
- Interpretation Act (Northern Ireland) 1954
-

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 and make provision relating to the interpretation of EU law and terminology relating to exiting the EU.

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-union-withdrawal-act-2018-consequential-modifications-and-repeals-and-revocations-eu-exit-regulations-2018>

Why consent was given

The devolved elements of this SI were made under s.23 of the EU (Withdrawal) Act 2018, which is a power of Ministers of the Crown and which cannot be exercised by the Welsh Ministers. It falls outside of the Intergovernmental Agreement and therefore the consent of the Welsh Ministers was not required. The Parliamentary Under Secretary of State for DEXEU wrote to the Welsh Ministers informing them of this SI. While consent was not formally required, the Welsh Ministers have confirmed they are content for this SI to apply in

relation to Wales. 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 Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) 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	w/c 10 December 2018
Date sifting period ends in UK Parliament	18 December 2018
Written statement under SO 30C:	Paper 29
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[s][]] of the European Union (Withdrawal) Act 2018. The purpose of this instrument is to ensure that the UK statute book accommodates “retained EU law”, a new body of domestic law introduced by the European Union (Withdrawal) Act 2018 (“the EUWA 2018”), coherently and effectively after the UK’s withdrawal from the EU.

This instrument amends the Interpretation Act 1978 (and the Interpretation and Legislative Reform (Scotland) Act 2010 (“the ILRA 2010”) and the Interpretation Act (Northern Ireland) 1954, which set out general rules of interpretation for legislation.

This instrument makes provision for how non-ambulatory cross-references to European Union legislation up to the point immediately before exit should be read, including in devolved areas. Non-ambulatory references

are references which are not automatically updated. It also makes provision for how cross-references to EU legislation post-exit should be read.

(It also adds a number of words and expressions to the ILRA 2010 and the Interpretation Act (Northern Ireland) 1954 and provides general rules of interpretation in light of the introduction of “retained EU law”.)

These Regulations repeal and revoke primary and secondary legislations in consequence of the repeal of the European Communities Act 1972 (“the ECA 1972”) and arising from the withdrawal of the UK from the EU, including in devolved areas. These repeals and revocations are needed to remove redundant provisions of domestic legislation. These Regulations also make transitional and savings provisions in relation to the repeals. Legal Advisers agree with the statement laid by the Welsh Government dated 3 December 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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018**

DATE **3 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018

The law which is being amended

The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2018 amends retained EU legislation relating to Direct Payments:

- Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Agriculture is a devolved matter.

Functions in relation to the administration of the common agricultural policy (CAP) have been transferred by these instruments so that they are exercisable by the Welsh Ministers alone.

Any necessary transfer of legislative functions will be dealt with by a separate instrument.

The purpose of the amendments

The instruments amend retained EU legislation in relation to Direct Payments to farmers under pillar 1 of the Common Agricultural Policy (CAP).

The instruments address 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 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 third UK correcting Statutory Instrument included as part of the wider package to correcting the CAP.

The SIs 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-common-agricultural-policy-direct-payments-to-farmers-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 Common Agricultural Policy (Direct Payments to Farmers) (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	w/c 10 December 2018
Date sifting period ends in UK Parliament	18 December 2018
Written statement under SO 30C:	Paper 31
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 address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.

Legal Advisers agree with the statement laid by the Welsh Government dated 3 December 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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2018**

DATE **3 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2018

The law which is being amended

These Regulations amend the following Commission Delegated Regulations:

- Commission Delegated Regulation No 807/2014; and
- Commission Delegated Regulation No 808/2014.

They also amends the following EU implementing decisions:

- Commission Implementing Decision C(2015) 855;
- Commission Implementing Decision C(2016) 4147;
- Commission Implementing Decision C(2017) 4413;
- Commission Implementing Decision C(2017) 6493;
- Commission Implementing Decision C(2018) 1166;
- Commission Implementing Decision C(2015) 3488;
- Commission Implementing Decision C(2017) 4598;
- Commission Implementing Decision C(2015) 6018;
- Commission Implementing Decision C(2017) 9754;
- Commission Implementing Decision C(2017) 570;
- Commission Implementing Decision C(2017) 5498;
- Commission Implementing Decision C(2017) 8620;
- Commission Implementing Decision C(2015) 3489;
- Commission Implementing Decision C(2016) 3620;
- Commission Implementing Decision C(2017) 1429;
- Commission Implementing Decision C(2017) 6954; and
- Commission Implementing Decision C(2018) 1185.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Agriculture is a devolved matter.

No legislative functions are transferred by this instrument. Where the transfer of such functions is necessary, this will be dealt by a separate instrument.

The administrative powers exercised by the European Commission in relation to rural development are being transferred to the relevant authority (The Welsh Ministers) without encumbrance.

The purpose of the amendments

The effect of these Statutory Instruments is limited to allowing the retained EU Regulations to operate effectively in the event of a no-deal situation on exit from the EU. This is being done to enable existing programmes in the UK currently funded by the EAFRD to continue operating in the same way for the remainder of the 2014-2020 programme.

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-rural-development-rules-and-decisions-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 Rural Development (Rules and Decisions) (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	w/c 10 December 2018
Date sifting period ends in UK Parliament	18 December 2018
Written statement under SO 30C:	Paper 33
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 (together with The Rural Development (Amendment) (EU Exit) Regulations 2018) amend a series of EU regulations and implementing decisions applying to programmes currently funded by the European Agricultural Fund for Rural Development (EAFRD), to enable the UK's Rural Development Programmes for 2014-2020 to continue to operate in the event of a no deal scenario on the UK's exit from the European Union.

The amendments will correct deficiencies in retained EU law arising from the UK's exit from the EU and ensure that payments can continue to be made to beneficiaries under these programmes using domestic funding.

Legal Advisers agree with the statement laid by the Welsh Government dated 3 December 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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Rural Development (EU Exit) (Amendment) Regulations 2018**
DATE **3 December 2018**
BY **Julie James AM, Leader of the House and Chief Whip**

The Rural Development (EU Exit) (Amendment) Regulations 2018

The law which is being amended

These Regulations amend Council Directive 129/2007.

They also amend the following EU Regulations:

- Council Regulation (EEC) 2078/92;
- Commission Regulation (EC) 746/96;
- Council Regulation (EC) 1257/1999;
- Council Regulation (EC) 1698/2005;
- Commission Regulation (EC) 1974/2006;
- Commission Regulation (EU) 65/2011;
- Regulation (EU) 1305/2013; and
- Regulation (EU) 1310/2013.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Agriculture is a devolved matter.

No legislative functions are transferred by this instrument. Where the transfer of such functions is necessary, this will be dealt by a separate instrument.

The administrative powers exercised by the European Commission in relation to rural development are being transferred to the relevant authority (The Welsh Ministers) without encumbrance.

The purpose of the amendments

The effect of these Statutory Instruments is limited to allowing the retained EU Regulations to operate effectively in the event of a no-deal situation on exit from the EU. This is being done to enable existing programmes in the UK currently funded by the EAFRD to continue

operating in the same way for the remainder of the 2014-2020 programme

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-rural-development-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 Rural Development (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	w/c 10 December 2018
Date sifting period ends in UK Parliament	18 December 2018
Written statement under SO 30C:	Paper 35
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 (together with The Rural Development (Rules and Decisions) (Amendment) (EU Exit) Regulations 2018) amend a series of EU regulations and implementing decisions applying to programmes currently funded by the European Agricultural Fund for Rural Development (EAFRD), to enable the UK's Rural Development Programmes for 2014-2020 to continue to operate in the event of a no deal scenario on the UK's exit from the European Union.

The amendments will correct deficiencies in retained EU law arising from the UK's exit from the EU and ensure that payments can continue to be made to beneficiaries under these programmes using domestic funding.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 3 December 2018 regarding the effect of these Regulations:

1. The statement confirms that the title of these Regulations is "The Rural Development (EU Exit) (Amendment) Regulations 2018. The correct title of the Regulations is "The Rural Development (Amendment) (EU Exit) Regulations 2018".
2. The statement indicates that these Regulations amend Council Directive 129/2007. However neither the Regulations or the explanatory memorandum to the Regulations appear to refer to this Directive (and we have been unable to trace a Directive bearing this reference). We would therefore welcome clarification from the Welsh Government on this point.

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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Shipments of Radioactive Substances (EU Exit) Regulations 2018**

DATE **3 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Shipments of Radioactive Substances (EU Exit) Regulations 2018

The law which is being amended

The 2018 Regulations contain provisions which fall within devolved competence; this SI revokes the following legislation in so far as it applies within UK law and replaces it so far as possible:

EU Directly Applicable

Council Regulation (Euratom) No 1493/93 on shipments of radioactive substances between Member States (the Euratom Regulation).

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The SI does not limit or negatively impact on the legislative competence of the Assembly or of the Welsh Minister's executive competence.

The purpose of the amendments

Under the Withdrawal Agreement (section 3) the Euratom Regulation as EU directly applicable legislation would automatically become retained EU law. It would not be able to operate as it applies to 'shipments between Member States'. In a no-deal scenario, legislation is required to remedy this deficiency and ensure operability on exit day.

This SI does not amend the existing legislation but provides for a replacement regime, so far as possible, in relation prior notification of shipments of radioactive substances into the UK from EU Member States following the UK's exit from the European Union.

This SI revokes the Euratom Regulation as of exit day.

The SI imposes obligations on domestic operators, and the relevant devolved environmental regulator, in relation to consignments of radioactive substance being brought to the UK

from an EU Member State. Without the provisions provided in this SI, there would not be direct legal requirement for prior notification to the environmental regulators of shipments of radioactive substances coming into the UK from EU Member States.

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-shipments-of-radioactive-substances-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 nature of the amendments to retain operability of the legislation on exit day. 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 Shipments of Radioactive Substances (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	w/c 10 December 2018
Date sifting period ends in UK Parliament	18 December 2018
Written statement under SO 30C:	Paper 37
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) and (5) of the European Union (Withdrawal) Act 2018.

This statutory instrument corrects deficiencies in the operation of retained EU law within Euratom Regulation 1493/93 ('the Regulation') on the shipment of radioactive substances between EU Member States. The Regulation requires that shipment of radioactive sources between Member States are controlled and documented. On exit day (29 March 2019), the Regulation will automatically become retained EU law under the European Union (Withdrawal) Act 2018 but will be inoperable. This statutory instrument revokes the Regulation and replaces it with similar provisions so that retained deficiencies are fixed and the Regulations can continue to operate as it does now insofar as possible.

Legal Advisers agree with the statement laid by the Welsh Government dated 3 December 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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Environmental Permitting (England & Wales) (Amendment) (EU Exit) Regulations 2018**

DATE **3 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Environmental Permitting (England & Wales) (Amendment) (EU Exit) Regulations 2018

The 2018 Regulations amends:

Domestic Legislation

- Environmental Permitting (England and Wales) Regulations 2016 (2016 Regulations).

Regulation 2(8) of, and the Schedule to this SI inserts a new Schedule 1A into the 2016 Regulations. That new Schedule contains the modifications that are applied to the following Directives for the purposes of the post EU exit interpretation of the references to those Directives in the 2016 Regulations:

- Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos;
- Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation;
- Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators;
- Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles;
- Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency;
- Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control);
- Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste;
- Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants;

- Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from the extractive industries;
- European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations;
- Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations;
- Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste;
- Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for the Community action in the field of water policy;
- Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment

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 legislative and executive competence in relation to the environmental permitting regime.

This is a composite SI but due to the exceptional circumstances of EU exit, on this sole occasion, it has been agreed to make the relevant amendments in a UK SI.

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 on the basis of a no-deal scenario.

The 2016 Regulations contain more than 300 cross-references (directly and indirectly) to more than 20 EU Directives and other EU instruments. On exit from the EU, many of the cross-references will not function legally. In addition, the 2016 Regulations contain, and reference, terminology, which will not function, such as references to “Member States”, and obligations as a “Member State”.

The amendments to the 2016 Regulations made by the EU Exit SI ensure the law continues to function in the same way after the UK has left the EU. There are no substantive policy changes, and no immediate change in how operators are regulated. .

The amendments are required to ensure continued legal stability for those sectors covered by the 2016 Regulations and the regime will, so far as is possible, continue to function as before, delivering regulatory continuity.

The main change is the insertion of a new Schedule (Schedule 1A) into the 2016 Regulations. This new Schedule contains non-textual modifications of the various EU Directives transposed by the 2016 Regulation. These modifications are to be taken into account when reading those Directives for the purposes of the 2016 Regulations only – the

modifications do not apply outside the scope of the 2016 Regulations. The Schedule modifies the effect of the EU Directives, cross-referred to directly and indirectly in the 2016 Regulations in order for the cross-references to continue to work after EU exit. These existing cross-references in the 2016 Regulations to the EU Directives would not be operable without the modifications applied by the new Schedule 1A that is inserted by this EU Exit SI.

The SIs and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-environmental-permitting-england-and-wales-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.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2018

Laid in the UK Parliament: 28 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	w/c 10 December 2018
Date sifting period ends in UK Parliament	17 December 2018
Written statement under SO 30C:	Paper 39
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 the Environmental Permitting (England and Wales) Regulations 2016 (“the **2016 Regulations**”). The 2016 Regulations established a cross-cutting environmental permitting and compliance system in England and Wales, and comprise a framework through which the permitting requirements of a series of EU Directives, and some domestic legislation, are implemented in England and Wales. Accordingly, the 2016 Regulations contain numerous references to EU Directives and to the UK’s obligations as a Member State, which would not function following the UK’s exit from the European Union.

These Regulations insert a new Schedule 1A into the 2016 Regulations, which contains modifications to the EU Directives transposed by the 2016 Regulations. Those modifications apply only for the purposes of interpreting the 2016 Regulations.

The effect of these Regulations is therefore to correct deficiencies in the 2016 Regulations arising from the UK's exit from the European Union. The Regulations do not implement new policy.

Legal Advisers agree with the statement laid by the Welsh Government dated 3 December 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.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Intelligent Transport Systems (EU Exit) Regulations 2018**

DATE **04 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Intelligent Transport Systems (EU Exit) Regulations 2018

The Law which is being amended:

- Commission Implementing Decision 2011/453/EU
- Commission Delegated Regulation (EU) 885/2013
- Commission Delegated Regulation (EU) 886/2013
- Commission Delegated Regulation (EU) 2015/962
- Commission Delegated Regulation (EU) 2017/1926
- Commission Implementing Decision (EU) 2016/209
- Decision (EU) 2017/2380 of the European Parliament and of the Council
- Annex XIII to the EEA Agreement.

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.

The purpose of the amendments

The purpose of the statutory instrument is to remove provisions from retained direct EU legislation on Intelligent Transport Systems using powers within the European Union (Withdrawal) Act 2018.

The Intelligent Transport Systems EU legislation ensures European compatibility, interoperability and continuity for the deployment and operational use of intelligent transport systems, relevant data and procedures. The legislation requires that the relevant data can be accessed and shared in a common standardised format through a national access point.

The revocation of the retained direct EU legislation will address technical deficiencies which will arise as result of EU Exit. The requirements of the relevant legislation will also continue to be met by virtue of administrative measures and as such amendment of the legislation is considered to be disproportionate.

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-intelligent-transport-systems-eu-exit-regulations-2018>

Why consent was given

There is no policy divergence between the Welsh Government and the UK Government on the policy for the revocation, nor is the substance of the revocation 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.

UK MINISTERS ACTING IN DEVOLVED AREAS

The Intelligent Transport Systems (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	w/c 10 December 2018
Date sifting period ends in UK Parliament	18 December 2018
Written statement under SO 30C:	Paper 41
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 uses powers under the European Union (Withdrawal) Act 2018 to remove provisions from retained direct EU legislation on Intelligent Transport Systems. The revocation of the Intelligent Transport Systems EU legislation will remove technical deficiencies.

Legal Advisers agree with the statement laid by the Welsh Government dated 4 December 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.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Animal Breeding (Amendment) (EU Exit) Regulations 2018**
DATE **4 December 2018**
BY **Julie James AM, Leader of the House and Chief Whip**

The Animal Breeding (Amendment) (EU Exit) Regulations 2018

The law which is being amended

- Commission Regulation (EC) 2016/1012
- Commission Implementing Regulation (EU) No 2017/716
- Commission Implementing Regulation (EU) No 2017/717
- Commission Delegated Regulation (EU) No 2017/1940
- The EEA Agreement

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Animal Health and Welfare is an area 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 policy objective of these Regulations is to ensure the Zootechnical regime continues to apply in the UK. This objective can be achieved by rolling over existing EU legislation into UK law. For example, decisions to recognise and approve zootechnical businesses and their operations are taken on behalf of the EU Commission and under their direction. On exit from the EU, the majority of decisions will be made by each appropriate authority (in relation to Wales, the Welsh Ministers). The decisions will be based on the terms that mirror those in the EU. As there is no change in policy, there is no impact on businesses.

The corrections allow the appropriate authority to prescribe what pedigree breeding businesses have to do in order to become 'officially recognised'. It also allows the appropriate authority to prescribe what activities they may carry out to satisfy the zootechnical criteria (called a 'breeding programme') in the regulation.

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-animal-breeding-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 Animal Breeding (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	w/c 17 December 2018
Date sifting period ends in UK Parliament	18 December 2018
Written statement under SO 30C:	Paper 43
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 to, the European Union (Withdrawal) Act 2018.

These Regulations make amendments to EU Regulations in the field of zootechnical and genealogical conditions relating to pure-bred breeding animals and hybrid breeding pigs, and the germinal products of these animals. The provision made in the Regulations seeks to ensure that retained EU legislation remains operable after the UK leaves the EU. Legal Advisers agree with the statement laid by the Welsh Government dated 4 December 2018 regarding the effect of these Regulations, save that the reference to “Commission Regulation (EC) 2016/1012” in the Welsh Government’s statement should instead read “Regulation (EU) 2016/1012 of the European Parliament and of the Council”, as referenced in the 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.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2018

DATE 4 December 2018

BY Julie James AM, Leader of the House and Chief Whip

The European Structural and Investment Funds Common Provisions (Amendment) (EU Exit) Regulations 2018

The law which is being amended

These Regulations amend Regulation (EU) No 1303/2013

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Agriculture is a devolved matter.

No legislative functions are transferred by this instrument. Where the transfer of such functions is necessary, this will be dealt by a separate instrument.

The administrative powers exercised by the European Commission in relation to rural development are being transferred to the relevant authority (The Welsh Ministers) without encumbrance.

The purpose of the amendments

The effect of these Statutory Instruments is limited to allowing the retained EU Regulations to operate effectively in the event of a no-deal situation on exit from the EU. This is being done to enable existing programmes in the UK currently funded by the EAFRD to continue operating in the same way for the remainder of the 2014-2020 programme.

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-structural-and-investment-funds-common-provisions-amendments-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 Structural and Investment Funds Commons Provision (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	w/c 10 December 2018
Date sifting period ends in UK Parliament	18 December 2018
Written statement under SO 30C:	Paper 45
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.

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 the retained EU Regulations to incorporate new (agreed) terms to ensure the existing EU European Agricultural Fund for Rural Development (EAFRD) and European Maritime and Fisheries Fund (EMFF) programmes will continue to be funded for the remainder of the 2014 to 2020 programme, if there is no deal.

Legal Advisers note that the Welsh Government's statement dated 4 December 2018 does not mention that the instrument also amends provisions allowing programmes currently funded by the European Maritime and Fisheries Fund (EMFF) to continue to receive funding in the event of a no deal.

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.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Ionising Radiation (Environmental and Public Protection) (Miscellaneous Amendments) (EU Exit) Regulations 2018**

DATE **7 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Ionising Radiation (Environmental and Public Protection) (Miscellaneous Amendments) (EU Exit) Regulations 2018

The 2018 Regulations contain provisions which fall within devolved competence; these provisions amend the following legislation.

The retained EU Law which is being amended

- Council Directive 2013/59/Euratom
- Directive 2011/92/EU

Domestic Legislation

- The Justification of Practices Involving Ionising Radiation Regulations 2004

The SIs impact in relation to Wales:

In terms of the SIs impact in Wales, it makes minor technical amendments to ensure the operability of legislation relating to ionising radiation post EU exit.

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') allows 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 not function correct due to inoperable references to EU instruments and to terminology that is no longer appropriate from the point that the UK is no longer a Member state of the EU.

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>

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

55 - The Ionising Radiation (Environmental and Public Protection) (Miscellaneous Amendments) (EU Exit) Regulations 2018

Laid in the UK Parliament: 4 December 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	18 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	w/c 17 December 2018
Date sifting period ends in UK Parliament	20 December 2018
Written statement under SO 30C:	Paper 47
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.

These Regulations are being made in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

The Regulations amend domestic legislation that implements EU ionising radiation legislation to ensure it continues to be operable after the withdrawal of the UK from the EU. The United Kingdom is leaving the Treaty establishing the European Atomic Energy Community (Euratom Treaty) at the same time as it is leaving the EU.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 7 December 2018 regarding the effect of these Regulations:

The statement does not refer to The Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, which are referred to in the Explanatory Memorandum and extend to the United Kingdom.

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.



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE	The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018
DATE	10 December 2018
BY	Julie James AM, Leader of the House and Chief Whip

The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018

The law which is being amended

European legislation to be revoked

Council Regulation (EC) No. 2100/94 on Community plant variety rights

Commission Regulation (EC) No.1768/95 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community plant variety rights

Council Regulation (EC) No 2506/95 amending Regulation (EC) No 2100/94 on Community plant variety rights

Commission Regulation (EC) No. 1238/95 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards fees payable to the Community Plant Variety Office

Commission Regulation (EC) No 2605/98 amending Regulation (EC) No 1768/95 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community Plant Variety Rights

Commission Regulation (EC) No 329/2000 amending Regulation (EC) No 1238/95 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office

Commission Regulation (EC) No 569/2003 amending Regulation (EC) No 1238/95 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office

Council Regulation (EC) No 807/2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (unanimity)

Council Regulation (EC) No 1650/2003 amending Regulation (EC) No 2100/94 on Community plant variety rights

Council Regulation (EC) No 873/2004 amending Regulation (EC) No 2100/94 on Community plant variety rights

Commission Regulation (EC) No 1177/2005 amending Regulation (EC) No 1238/95 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office

Commission Regulation (EC) No 2039/2005 amending Regulation (EC) No 1238/95 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office

Council Regulation (EC) No 15/2008 amending Regulation (EC) No 2100/94 as regards the entitlement to file an application for a Community plant variety right

Commission Regulation (EC) 637/2009 establishing implementing rules as to the suitability of denominations of agricultural plant varieties and vegetable varieties

Commission Regulation (EC) No 874/2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office

Commission Implementing Regulation (EU) No 510/2012 amending Regulation (EC) No 1238/95 as regards the application fee payable to the Community Plant Variety Office

Commission Implementing Regulation (EU) No 623/2013 amending Regulation (EC) No 1238/95 as regards the level of the annual fee payable to the Community Plant Variety Office

Commission Implementing Regulation (EC) No 763/2013 amending Regulation (EC) No 637/2009 as regards the classification of certain plant species for the purposes of assessing the suitability of the denomination of varieties

Commission Implementing Regulation (EU) No 1294/2014 amending Regulation (EC) No 1238/95 as regards the level of the application fee and of the examination fee payable to the Community Plant Variety Office

Commission Implementing Regulation (EU) 2015/2206 amending Regulation (EC) No 1238/95 as regards the fees payable to the Community Plant Variety Office

Commission Implementing Regulation 2016/1448 amending Regulation (EC) 874/2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Varieties Office

Commission Implementing Regulation (EU) 2016/2141 amending Regulation (EC) No 1238/95 as regards the level of the annual fee and of the examination fees payable to the Community Plant Variety Office. The following implementing regulations are being revoked:

- Implementing Regulation (EU) 2017/1454 which specified the technical format for reporting by Member States.
- Implementing Regulation (EU) 2016/145 which adopted the format of the document serving as evidence for the permit issued by the competent authorities of Member States.
- Commission Delegated Regulation (EU) 2018/968 which specified the methodology for risk assessments for invasive alien species.

Domestic legislation

The Plant Varieties Act 1997

The Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998

The Plant Breeders' Rights Regulations 1998

The Plant Breeders' Rights (Information Notices) Regulations 1998

The Plant Breeders' Rights (Naming and Fees) Regulations 2006

The Plant Variety Rights Office (Extension of Functions) Regulations 1995 (being revoked)

The Plant Breeders' Rights (Information Notices) (Extension to the European Community Plant Variety Rights) Regulations 1998 (being revoked)

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

These regulations confer functions on the Controller of Plant Variety Rights, an officer established by the Plant Varieties Act 1997 as the head of the Plant Variety Rights Office. The Controller acts under the direction of and is appointed by the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department acting jointly.

Functions transferred to a public authority other than a devolved Welsh authority would engage paragraph 10 of Schedule 7B to GoWA 2006. This therefore 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 amendments made by this instrument do not amount to a change in policy. These regulations make amendments to ensure that industry can continue to function efficiently in the event of the UK leaving the EU in a "no deal" scenario, for example, by retaining existing EU rules allowing equivalent third countries to retain their status in the UK in regards to intellectual property rights. The instrument corrects deficiencies that arise as a result of EU exit so that the legislation works effectively, for example removes reference to the EU

Common Catalogue as plant varieties will need to be listed on the UK's National List only after EU Exit.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

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 Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2018 *Laid in the UK Parliament: 5 December 2018*

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	18 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	7 January 2018
Written statement under SO 30C:	Paper 49
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 range of amendments to legislation in the field of plant variety rights ("**PVR**") as a result of the UK's departure from the European Union. PVR are a form of intellectual property designed specifically to protect new varieties of plants.

The 1991 Convention of the International Union for the Protection of New Varieties of Plants (the "**UPOV Convention**") provides the international basis for PVR protection. The UK and the EU are both signatories to the UPOV Convention in their own right.

The Plant Varieties Act 1997 implements the UK's obligations under the UPOV Convention and provides for protection of PVR in the UK. Council

Regulation EC 2100/94 on Community PVR and its implementing regulations set out a unitary system of PVR protection in the EU. That Regulation also establishes the Community Plant Variety Office (the “**CPVO**”) to implement the EU system.

The CPVO will have no function in the UK following EU Exit, nor will any PVR granted by the CPVO be recognised in the UK. These Regulations are therefore being made to ensure continued PVR protection in the UK for PVR granted by the CPVO before 29 January 2019.

The effect of the Regulations will be to protect existing EU PVR as if they had been granted under the Plant Varieties Act 1997. The amendments made by these Regulations include revoking a series of retained EU law in this field, making provision for existing EU PVR which have effect in the UK, transitional provisions for existing applications for EU PVR and making amendments to the Plant Varieties Act 1997 and domestic secondary legislation to address deficiencies arising from EU Exit.

Legal Advisers make the following comments in relation to the Welsh Government’s statement dated 10 December 2018 regarding the effect of these Regulations:

1. These Regulations revoke Commission Regulation (EC) No 572/2008 amending Regulation (EC) No 1238/95 as regards the level of the annual fee and the fees relating to technical examination, payable to the CPVO, and the manner of payment, which is not referred to in the Welsh Government’s statement;
2. The Welsh Government’s statement refers to these Regulations revoking Implementing Regulation (EU) 2017/1454 which specified the technical format for reporting by Member States. However that Regulation is not revoked by these Regulations;
3. The Welsh Government’s statement refers to these Regulations revoking Implementing Regulation (EU) 2016/145 which adopted the format of the document serving as evidence for the permit issued by the competent authorities of the Member States. However that Regulation is not revoked by these Regulations;
4. The Welsh Government’s statement refers to these Regulations revoking Commission Delegated Regulation (EU) 2018/968 which specified the methodology for risk assessments for invasive alien species. However that Regulation is not revoked by these Regulations; and
5. We note the Welsh Government’s comments that these Regulations confer functions on the Controller of PVR, and that such functions would engage paragraph 10 of Schedule 7B to the Government of Wales Act 2006.

The Assembly has legislative competence on the subject of intellectual property relating to plant varieties and seeds. However, should the Assembly wish to legislate to modify or remove a function of the

Controller of PVR, which is a public authority for the purposes of paragraph 10 of Schedule 7B to the Government of Wales Act 2006, it will need consent from the UK government to do so.

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.

However given that these Regulations amend the Plant Varieties Act 1997, we would welcome clarification from the Welsh Government regarding the reason for it not laying a statutory instrument consent memorandum for these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (England and Wales) (EU Exit) Regulations 2018
DATE	10 December 2018
BY	Julie James AM, Leader of the House and Chief Whip

The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (England and Wales) (EU Exit) Regulations 2018

The Law which is being amended

Domestic legislation

The Marketing of Vegetable Plant Material Regulations 1995

The Marketing of Ornamental Plant Propagating Material Regulations 1999

The Forest Reproductive Material (Great Britain) Regulations 2002

The Seed Marketing Regulations 2011

The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

Plant varieties and seeds is a devolved policy area.

The majority of the Regulations apply to England alone and the provisions which apply to Wales neither transfer new nor impact directly on existing Welsh Ministers functions. The amendments that these Regulations make to the Marketing of Vegetable Plant Material Regulations 1995 and the Marketing of Ornamental Plant Propagating Material Regulations 1999 apply in relation to England and Wales. The amendments made to the Forest Reproductive Material (Great Britain) Regulations 2002, the Seed Marketing Regulations 2011 and the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 apply to England alone. A separate Wales only instrument will be drafted to introduce outstanding changes in relation to Wales.

The purpose of the amendments

The amendments made by this instrument do not amount to a change in policy. The provisions of these Regulations that apply to Wales remedy deficiencies that will arise in domestic marketing legislation, such as removing references to the Commission, Community and Member States and replacing references to “third countries”. To assure supplies of seed and propagating material on which the UK is currently dependent on the EU, they also provide for a temporary two year period when supplies of certified seed and propagating material from the EU may continue to be marketed in the UK.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

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 Marketing of Seeds and Plant Propagating Material (Amendment etc.) (England and Wales) (EU Exit) Regulations 2018

Laid in the UK Parliament: 5 December 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	18 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	7 January 2018
Written statement under SO 30C:	Paper 51
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 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations amend a number of domestic regulations relating to the marketing of seed and propagating material. Specifically, the Regulations make a number of amendments to the Marketing of Vegetable Plant Material Regulations 1995, the Marketing of Ornamental Plant Propagating Material Regulations 1999, and amendments to three other sets of regulations which apply to England only.

The effect of these Regulations is to enable the domestic regulations to continue to function following the UK's departure from the European

Union. These Regulations contain transitional provisions and make technical amendments, and do not implement new policy. Legal Advisers agree with the statement laid by the Welsh Government dated 10 December 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.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE 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

DATE 10 December 2018

BY Julie James AM, Leader of the House and Chief Whip

The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018

The Law which is being amended

The SI addresses the failure of retained EU law to operate effectively, and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In summary, the draft instrument removes references to Members of the European Parliament, European Parliament and European Parliamentary Elections from electoral legislation where these will no longer be applicable after exit day.

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.

The purpose of the amendments

The purpose of this SI is to correct deficiencies in UK legislation subject to exit from the European Union relating to European Parliamentary Elections etc.

In summary, this SI will remove references to Members of the European Parliament and European Parliamentary Elections where they will no longer be applicable after exit day.

The SI and accompanying Explanatory Memorandum, setting out the effect of this amendment is available here:

<http://www.legislation.gov.uk/uksi/2018/1310/contents/made>

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction and the original legislation predates devolution. Therefore, making separate SIs would lead to duplication, and unnecessary complication of the statute book. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

The Welsh Government will shortly be laying for Sifting Consideration the Elections (Wales) (Amendment) (EU Exit) Regulations 2018. Some provisions in this instrument are dependent on the European Parliamentary Elections etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 being made.

Consent for the SI to be laid for sifting was provided before changes to Standing Order 30C were agreed.

UK MINISTERS ACTING IN DEVOLVED AREAS

The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018

Laid in the UK Parliament: 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	7 January 2019
Written statement under SO 30C:	Paper 53
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 sections 8(1) and 23(1) and (6) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations repeal, revoke or amend legislation, including retained EU law, relating to European Parliamentary elections, European political parties and European political foundations and, where no longer appropriate, reference to other EU Member States.

These Regulations provide for the repeal or revocation of provisions relating to the franchise and the registration of electors in respect of European Parliamentary elections in the UK and Gibraltar and in relation to the conduct and administration of those elections, including provisions in respect of election expenditure in the UK and Gibraltar.

Legal Advisers agree with the statement laid by the Welsh Government dated 10 December 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 have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Invasive Non-Native Species (Amendment etc.) (EU Exit) Regulations 2019**

DATE **11 December 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Invasive Non-Native Species (Amendment etc.) (EU Exit) Regulations 2019

The law which is being amended

European legislation

- Regulation (EU) No 1143/2014
- Commission Implementing Regulation (EU) 2016/1141

The following implementing regulations are being revoked:

- Implementing Regulation (EU) 2017/1454 which specified the technical format for reporting by Member States.
- Implementing Regulation (EU) 2016/145 which adopted the format of the document serving as evidence for the permit issued by the competent authorities of Member States.
- Commission Delegated Regulation (EU) 2018/968 which specified the methodology for risk assessments for invasive alien species.

Domestic legislation

- Destructive Imported Animals Act 1932

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 invasive non-native species.

Functions under Regulation (EU) No 1143/2014 have been transferred to the "appropriate authority, meaning the Secretary of State in relation to England, the offshore marine area,

and the regulation of imports into, and exports from, the United Kingdom; the Welsh Ministers in relation to Wales and the Department of Agriculture, Environment and Rural Affairs in relation to Northern Ireland.

Permits for derogation and power to issue authorisation will be transferred from the Commission to the appropriate authority. However, due to the exceptional nature of applications for authorisations, there will be an obligation on the appropriate authority to consult and have regard to the opinions of the other responsible authorities as well as the UK replacement expert forum and committee.

In addition a range of measures in the EU Regulation will become the responsibility of the appropriate authority or the responsible authorities. These include the obligations to:

- establish a surveillance system;
- undertake official controls;
- establish action plans for priority pathways;
- undertake management or emergency measures;
- undertake rapid eradication measures; and
- make and publish a report every six years, including on the distribution of species, action plans and permits.

These regulations retain the criteria and principles currently set out in EU Regulation 1143/2014 for the species listing process and substitute the Commission's function to make implementing acts amending this list with a power for the Secretary of State to make regulations to change that list. This power can only be exercised with the consent of the relevant authorities, defined in relation to Wales as the Welsh Ministers.

The function of the Commission in specifying the type of evidence that is acceptable to support risk assessments will be transferred to the appropriate authority (Ministers) acting jointly. Similarly, a small number of other functions currently exercised by the Commission, such as specifying the technical format for reporting, will be undertaken jointly by the responsible authorities.

It is expected that Ministers acting jointly in this sense relates to an administrative function of agreeing the advice provided by the UK scientific committee. This will ensure consistency across the UK.

The functions of the EU's Invasive Alien Species Committee (a committee of Member States' representatives) and the Invasive Alien Species Scientific Forum (representatives of the scientific community appointed by Member States) will be transferred to expert UK/GB bodies.

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 purpose of the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019 is to ensure that legislation relating to the prevention and management of the introduction and spread of invasive non-native species remains operable after we leave the EU and that the strict protections that are in place for these species are maintained. This instrument makes corrections to one piece of directly applicable EU legislation and the implementing and delegated legislation under it, and also corrects an operability issue in the Destructive Imported Animals Act 1932. There is no change to policy.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages>

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 Invasive Non-Native Species (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 6 December 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	
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 55
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 the European Union (Withdrawal) Act 2018 and paragraph 21 of Schedule 7 to it.

The purpose of these Regulations is to ensure that legislation relating to the prevention and management of the introduction and spread of invasive non-native species remains operable outside the EU and that the strict protections that are in place for these species are maintained. This instrument makes 'corrections' to one piece of directly applicable EU legislation and the implementing and delegated legislation under it, and also 'corrects' an operability issue in the Destructive Imported Animals Act 1932.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 11 December 2018 regarding these Regulations:

These Regulations provide an useful example, in a limited policy area, of how post Brexit arrangements may operate in an area where some functions are devolved (but not others), and in different ways in respect of different parts of the United Kingdom. They introduce the concept of appropriate authorities for the different parts of the UK and set out how they will work together.

Subject to the observations above, 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.

Mark Drakeford AC/AM
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref
Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales

10 December 2018

Dear Mick,

In February 2018 your Committee published “UK governance post-Brexit”, which included a recommendation that the Welsh Government should enter into an agreement with your Committee to support the scrutiny of Welsh Government activity in respect of inter-governmental relations. Having previously confirmed the Welsh Government’s willingness to work with your Committee on such an agreement, we formally commenced this work via an exchange of correspondence earlier this year.

Our officials have been working since then to develop an agreement, and I am pleased to confirm that, based on the text provided by your Clerk to my officials in November, the Welsh Government is happy to formally enter into an agreement on this matter, and for you to table the agreement for debate before the Assembly.

Best wishes,

Mark Drakeford AC/AM
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance

Inter-Institutional relations agreement between the National Assembly for Wales and the Welsh Government

Background to this Agreement

1. In February 2018 the Constitutional and Legislative Affairs (CLA) Committee published its report *UK governance post-Brexit*. Recommendation 9 of that report stated:

“We recommend that the Welsh Government enters into an inter-governmental relations agreement with this Committee to support the scrutiny of Welsh Government activity in this area.”

2. During the Plenary debate on the report on 28 February 2018, the Counsel General said the Welsh Government is happy to discuss with the CLA Committee the content of an agreement on inter-governmental relations. He added that, in doing so, the Welsh Government would want to consider the agreement between the Scottish Parliament and Scottish Government.

3. The Welsh Government's Cabinet Secretary for Finance attended meetings of the CLA Committee on 23 and 30 April 2018, at which future inter-governmental relations and the Committee's report on UK governance post-Brexit were discussed.

4. On 30 April 2018, the Cabinet Secretary for Finance reiterated the Welsh Government's willingness to work with the CLA Committee in developing the arrangements that will be needed on the part of the legislature to oversee the actions that will flow from the Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks.

5. Following an exchange of correspondence between the Chair of the CLA Committee (25 May 2018) and the Cabinet Secretary for Finance (4 June 2018), it was agreed that this work should be taken forward formally.

Purpose of the Agreement

6. This Written Agreement represents the agreed position of the National Assembly for Wales and the Welsh Government on the information that the Welsh Government will, where appropriate (see paragraph 7 below), provide to the National Assembly with regard to its own participation in formal, ministerial level inter-governmental meetings, concordats, agreements and memorandums of understanding.

7. In reaching this Agreement, the Welsh Government recognises the National Assembly's primary purpose of scrutinising the activity of the Welsh Government within formal inter-governmental structures. The National Assembly also recognises and respects the need for confidential inter-governmental discussion between the administrations within the United Kingdom, for example, in situations where negotiations on particular issues are taking place.

8. This Agreement recognises the increased complexity of the devolution settlement and the implications this has for appropriate discussions between the

Welsh and UK Governments. As a consequence, it further recognises that the interdependence between devolved and reserved competences will be managed mainly in inter-governmental relations. This Agreement seeks to ensure that the principles of the Welsh Government's accountability to the National Assembly for Wales and transparency with regard to these relationships are built into the revised inter-governmental mechanisms.

9. This Agreement establishes three principles which will govern the relationship between the National Assembly for Wales and the Welsh Government with regard to inter-governmental relations. These are:

- Transparency
- Accountability
- Respect for, and recognition of, the part confidential discussions play between governments, particularly when developing policy.

Scope of this Agreement

10. This Agreement applies to the participation of Welsh Ministers in formal, inter-governmental structures. This means, in practice, discussions and agreements of, or linked to, the Joint Ministerial Committee (in all its functioning formats); the Ministerial Forum on the future relationship between the UK and the EU; the British Irish Council and other standing or ad hoc multilateral and bilateral inter-ministerial forums of similar standing that exist or as may be established. This Agreement does not cover other engagement between the governments, although the Annual Report (referred to in paragraph 17) will comment upon the range and scale of such activity.

11. This Agreement is intended to support the National Assembly's capacity to scrutinise Welsh Government activity and to hold Welsh Ministers to account in the intergovernmental arena only. The Agreement in no way places obligations on other administrations and legislatures involved with inter-governmental relations and the groups and agreements described here. In line with the principle of respect for the confidentiality of discussions between administrations, the Agreement recognises that the release of details of discussions directly involving intergovernmental partners is subject to their consent.

12. Subject to the above, the Welsh Government agrees to provide, to the National Assembly's CLA Committee and any other relevant committee of the National Assembly, as far as practicable, advance written notice at least one month prior to scheduled relevant meetings, or in the case of meetings with less than one month's notice, as soon as possible after meetings are scheduled. This will enable the Committee(s) to express a view on the topic and, if appropriate, to invite the Minister responsible to attend a committee meeting in advance of the intergovernmental meeting. Advance written notice will include agenda items and a broad outline of key issues to be discussed, with recognition that agenda items, from time to time, may be marked as "private" in recognition of the need for confidentiality.

13. Paragraph 12 of this Agreement does not apply in cases where the Welsh Government's attendance at relevant meetings is at short notice. In such circumstances, written notice including agenda items and outline key issues to be discussed must be provided as soon as possible and in advance of the meeting.

14. After each inter-governmental ministerial meeting within the scope of this Agreement, the Welsh Government will provide the CLA Committee and any other relevant committee of the National Assembly with a written summary of the issues discussed at the meeting as soon as practicable and, if possible, within two weeks. Such a summary will include any joint statement released after the meeting, information pertaining to who attended the meeting, when the meeting took place, and where appropriate, subject to the need to respect confidentiality, an indication of key issues and of the content of discussions and an outline of the positions advanced by the Welsh Government.

15. The Welsh Government also agrees to provide to the CLA Committee and any other relevant committee of the National Assembly the text of any multilateral or bilateral intergovernmental agreements, memorandums of understanding or other resolutions within the scope of this Agreement.

16. In line with the provisions of paragraph 11 above, in circumstances where the Welsh Government intends to establish new arrangements with the aim of reaching an intergovernmental agreement the Welsh Government will provide advance notice to the National Assembly for Wales of its intention to do so.

17. The Welsh Government also agrees to maintain a record of all relevant formal intergovernmental agreements, concordats, resolutions and memorandums that the Welsh Government has entered into and to make these accessible on the Welsh Government's website.

[Annual Report](#)

18. The Welsh Government will prepare an Annual Report on intergovernmental relations. This will be laid before the National Assembly and submitted to the CLA Committee. This report will summarise the key outputs from activity that is subject to the provisions of this agreement, including any reports issued by relevant inter-governmental forums. It will also comment upon the range of broader inter-governmental relations work undertaken during the year, including dispute resolution. That report will also, provide as much information as is practicable and appropriate of issues expected to emerge in the year that follows.

[Appearances before committees](#)

19. Welsh Ministers will attend, as appropriate, meetings of the relevant committee of the National Assembly when invited.

[Monitoring](#)

20. The lead committee for monitoring the implementation of this agreement is the CLA Committee.

Agenda Item 8.1

Kirsty Williams AM
Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-(P)-KW-4504-18

Lynne Neagle AM
Chair, Children, Young People and Education Committee
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cc Llyr Griffiths AM
Chair
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cc Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
SeneddCLA@assembly.wales

12th December 2018

Dear Lynne,

During your committee's scrutiny of the Additional Learning Needs and Education Tribunal (Wales) Bill, a commitment was made to provide regular updates on the Additional Learning Needs (ALN) transformation programme. This letter is the fifth of these updates.

1. Legislation and statutory guidance

In my previous update, I informed you that the next iteration of the draft Additional Learning Needs Code ("the ALN Code") would be available for consultation later this year. I am therefore pleased to have written to you earlier this week as a statutory consultee announcing the launch of a public consultation on the draft ALN Code under the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the Act"). The consultation also seeks views on draft regulations relating to the Education Tribunal for Wales and ALN Co-ordinators, and the policy intent for a number of other proposed regulations. In addition, it seeks views on proposed

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Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Kirsty.Williams@llyw.cymru
Correspondence.Kirsty.Williams@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.

revisions to the Social Services and Well-being (Wales) Act 2014 Part 6 Code of Practice – Looked After and Accommodated Children, that have been primarily made relating to looked after children with ALN.

As per my previous letter, it is crucial that you provide your views to ensure that our proposals are manageable and fair to those who must discharge functions under the new legislative framework, as well as just and equitable for learners with ALN who need the right support to help them achieve their full potential.

In January 2019 both a children/young people's version and an easy read version of the consultation will be published. This will provide children and young people, and those who may benefit from an easy read version with an opportunity to engage with the consultation.

2. Implementation/ transition support

In September 2018, the ALN Transformation Leads submitted their regional and further education implementation plans. The plans set out how each region are supporting the early years sector, local authorities, health boards and further education institutions in Wales, to prepare for implementation of the new system. Funding is being used to roll out multi agency training programmes, create post 16 provision maps across Wales, scope the role of the Early Years ALN lead officer, support the role of the Designated Education Clinical Lead Officer (DECLO) and help raise awareness of the ALN transformation programme amongst stakeholders.

Progress and review sessions will take place in January to monitor the development of all projects across Wales.

We are continuing to meet with the ALN transformation leadership group on a bi-monthly basis. The group are helping to develop and consistently apply implementation approaches across Wales and are crucial in driving forward the work of the transformation leads and wider transformation programme. .

3. Workforce Development

The consultation on the draft Code seeks your views on the draft ALNCo regulations (in part 3 of the consultation document). The intention is to use the regulation making power under section 60 of the 2018 Act to ensure that the ALNCo role is undertaken in a consistent and effective way in every school and further education institution in Wales, and supports the delivery of the ALN system and the overarching objectives of the 2018 Act.

The ALNCo role is fundamental to the success of the new ALN system and we are committed to supporting this workforce through professional learning. Officials continue to work with local authorities and regional education consortia to develop an ALNCo professional learning offer.

The Welsh Government currently awards a grant to Cardiff University, which pays fees and bursaries for 10 students per year on their three year Doctorate in Educational Psychology professional training programme. I have decided to continue

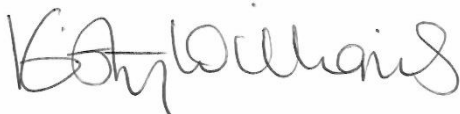
with this arrangement and strengthen it by linking a minimum number of bursaries to students who can already, or have the potential to work through the medium of Welsh, and by encouraging students to stay and work in Wales immediately after graduation.

4. Awareness Raising

In February, we will be hosting a series of stakeholder events across Wales. Each event will provide stakeholders with an update on the ALN transformation programme and will include workshops on specific aspects of the draft ALN Code. Details of the events will be available in due course.

We will also be organising workshops specifically for children, young people and their families, to contribute their views on these proposals.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsty Williams'.

Kirsty Williams AC/AM

Ysgrifennydd y Cabinet dros Addysg
Cabinet Secretary for Education

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA - L/JJ/0825/18

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

SeneddCLA@assembly.wales

10 December 2018

Dear Mick,

Thank you for your letter dated 15 November 2018 in relation to the scrutiny of regulations arising from the European Union (Withdrawal) Act 2018. As you can appreciate, the UK's withdrawal from the European Union has created an unprecedented legislative programme across all the Governments in the UK and we are all working to ensure that we will be ready for exit day on 29 March 2019.

I am currently expecting 140-150 UK Government EU Exit SIs to legislate in areas devolved to Wales ahead of exit day, though this number is subject to change as SIs are merged or disaggregated and new ones emerge. Almost all of these will require the consent of the Welsh Ministers through the process set out in the Intergovernmental Agreement.

The Welsh Ministers have given formal consent to 71 SIs and have notified the National Assembly under Standing Order 30C of 51 SIs (the outstanding 20 are yet to be laid in Parliament). Of the 71, six have required a Statutory Instrument Consent Memorandum under Standing Order 30A.2. Our current estimate is that around 20 will be subject to SO30A, though this figure is subject to change as officials consider the detail of the outstanding draft SIs which the UK Government will be sharing with us during the coming weeks.

The Welsh Ministers are expecting to lay around 50 Welsh EU Exit SIs in the National Assembly. There has been a delay in the Welsh SI programme, with several causes. In many cases, the Welsh SIs must follow the UK SIs and the UK SI programme has itself been delayed. Often the Welsh SIs must follow the UK SIs because the UK SIs are amending legislation to which the Welsh SIs are then making subsequent amendments. In some cases, the Welsh SIs will form part of a UK wide agreed approach to delivery that requires our SIs to co-ordinate with the SIs laid in Parliament.

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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.

More generally, the Welsh Government has also had to prioritise work on the UK SI programme given the high volume of SIs that are being brought forward which are making provision on the Welsh Ministers' behalf. As I have explained above, the Welsh Ministers have already consented to 71 separate UK Government SIs. In order to reach a position where the Welsh Ministers have been able to consent to the final versions of these SIs, there have been extensive discussions with relevant UK Government departments on the proposed solutions and drafting approaches in order to ensure that each SI properly protects our devolved interests. The agreements that are being reached on UK SIs which make amendments to directly applicable EU law and provisions in UK legislation which are within the Assembly's competence to amend are vitally important to ensure that there is a properly functioning statute book on exit day.

As a result of the agreements that have been reached on UK SIs to date, we anticipate that our SI programme will be confined to SIs which amend Welsh domestic regulations and Welsh primary legislation. None of these Welsh SIs amend directly applicable EU law. We are anticipating that 77 UK EU Exit SIs will amend directly applicable EU law in areas devolved to Wales. These SIs are included in the figure of 140-150 UK EU Exit SIs which we estimate will legislate in devolved areas.

We anticipate that the UK SI programme will continue at the current pace until March. Providing there is no further slippage in the UK SI programme, we expect that the Welsh SIs will be laid from December to March. We are anticipating three SIs to be laid before the Christmas recess, all proposed negative procedure SIs for sifting. We are expecting the remaining SIs to be laid from the recess to March, of which around 5% are currently anticipated to be subject to the affirmative procedure. I fully expect that January will be particularly busy as the Welsh EU Exit SI programme will be operating in earnest and the UK SI programme will be continuing.

The bases on which the Welsh Ministers are consenting to the UK SIs are that there is no divergence on policy between Wales and the UK, and that the SIs are not politically sensitive. These SIs are for the purpose of making the corrections so that the statute book will be operable and are being made by the UK Government, with the consent of the Welsh Ministers, for reasons of administrative efficiency.

Officials in all four administrations are working closely together on the drafting of the SIs and the accompanying material for inclusion in the explanatory memorandums. Decisions on who should exercise powers currently conferred on EU entities after exit are being considered in the context of each SI, depending on the nature of the power in question, and whether factors exist that mean that it is not desirable for an administration to exercise that power without the involvement of another administration. Our default position is that where there is a function within an area devolved to Wales, the relevant function should be conferred on the Welsh Ministers or on an appropriate public body in Wales. However, there are a number of circumstances where the default position may not be appropriate or practical. These are likely to arise in the following cases:

- Where the cross-border nature of service provision requires close co-operation across both nations, for the benefit of citizens or to avoid placing unnecessary burdens on organisations. This could be due to the way people or goods travel across the border, or the particular geographical features of the border.
- Where the devolved and non-devolved aspects of policy delivery are so intertwined, that it is not workable for the devolved elements to be delivered without reference to the non-devolved elements, or vice versa.
- Where the operational delivery of the policy is constrained by international agreements that will apply beyond Brexit so there is limited flexibility in policy decisions.

In these cases, there are a range of options for how functions can be exercised, and Ministers are reaching a decision on each individual UK Government SI following a full consideration of all of the relevant issues.

In circumstances where consent is given to a UK Government SI, our position is that consent is provided for the entire SI, rather than consenting to specific parts of the SI. Where provision is made in relation to devolved and reserved matters in a single SI, the approach that is taken towards reserved matters will often have an impact on devolved matters. For that reason, we consider it appropriate that Welsh Ministers consider and consent to the SI as a whole, rather than confine their consideration to the devolved areas only.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Julie', with a large, sweeping initial 'J'.

Julie James AC/AM

Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Julie James AM
Leader of the House and Chief Whip
Welsh Government

15 November 2018

Dear Julie

Scrutiny of regulations arising from the European Union (Withdrawal) Act 2018

Further to our recent correspondence and meetings, I am writing to seek an update on the position regarding the scrutiny of regulations to correct deficiencies in UK law as a result of our exit from the European Union.

In a letter to the External Affairs and Additional Legislation Committee on 2 November, the First Minister indicated that the Welsh Government is currently anticipating around 55 exit regulations to be laid between November and February and around 150 regulations to be laid in Parliament to legislate in devolved areas (subject to any changing circumstances). It would be helpful if as well as confirming these figures, you could:

- confirm that delays in the Welsh Ministers laying any of the 55 are solely due to interdependencies with UK made legislation that is itself being delayed;
- indicate how many of the 150 regulations will be subject to the requirements of Standing Order 30A;
- whether you are able to provide a broad indication of the likely pressure points over the next few months for all 205 regulations, given that those laid before the UK Parliament are not subject to our recently agreed protocol (we would welcome the kind of information recently supplied by the Rt Hon Andrea Leadsom MP, Leader of the House of Commons to the House of Commons European Statutory Instruments Committee (ESIC) on 26 October and by Mr Chris Heaton-Harris MP, Parliamentary Under Secretary of State for



Exiting the European Union to House of Lords Secondary Legislation Scrutiny Committee on 25 October);

- give an indication of how many regulations the Welsh Ministers will need to make to correct deficiencies in directly applicable EU regulations and the timetable for making them, following on from your letter of 20 July and my request in plenary on 3 October;
- whether any instruments to correct deficiencies in directly applicable EU regulations will be made by the UK Government in devolved areas and if so, how many and the likely timetable for making them (and are these accounted for the in 150 regulations referred to by the First Minister).

While we appreciate the difficulties that exist in correcting the statute book, we remain concerned not only that the Welsh Ministers have not laid any exit regulations but the extent to which UK Ministers are acting in devolved areas.

In particular, it would be helpful to receive your assurance that the 150 regulations referred to by the First Minister will not change policy and will be restricted to making corrections to ensure the statute book functions effectively and for the purpose of administrative efficiency, as outlined in the intergovernmental agreement.

We would also welcome information about how decisions to allow UK Ministers to act in devolved areas are made, following on from the information provided to ESIC on 26 October by the UK Government. In particular, we would welcome information about whether the Welsh Government, as part of that process, provides material for inclusion in explanatory memorandums to facilitate scrutiny by the UK Parliament, not least given its unfamiliarity with the devolution settlement.

Finally, during our meeting this week we considered written statements prepared under Standing Order 30C. It was unclear which provisions of the regulations the Welsh Government had given their consent to (in particular relating to maritime and tobacco regulations). We believe that in the interest of legislative transparency, it would be appropriate for future written statements to state the relevant provisions to which the Welsh Government has given consent, in a way similar to the approach usually adopted on Legislative and Statutory Instrument Consent Memorandums.



I look forward to hearing from you as soon as possible.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Ein cyf/Our ref: MA - L/FM -/0827/18

Llywodraeth Cymru
Welsh Government

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

SeneddCLA@assembly.wales

7 December 2018

Dear Mick

The Animal Welfare (Amendment) (EU Exit) Regulations 2018

I am writing in response to your letter of 28 November in which you raised your concerns in relation to the above statutory instrument.

As you are aware, we are undertaking a large legislative programme to address deficiencies in retained EU legislation by using powers pursuant to the European Union (Withdrawal) Act 2018 (the "Withdrawal Act"). In order to ensure we have a functioning statute book on exit day, it has been agreed, where there is no policy divergence, for UK EU Exit statutory instruments to apply in relation to Wales with the consent of the Welsh Ministers under the terms of the Intergovernmental Agreement.

The enabling power within the Withdrawal Act cannot be used to introduce new policies, but is to be used to address deficiencies within retained EU law. This is reflected in the text of the Intergovernmental Agreement which says that the UK's use of the power to correct deficiencies will not be used to enact new policy in devolved areas and adds that the primary purpose of such powers will be administrative efficiency.

In relation to this particular instrument the amendments address deficiencies in animal welfare legislation, which will arise as a result of the UK exiting the EU. The amendments concerned address a deficiency relating to the recognition, in the UK after exit day, of certificates of competence for slaughterers issued in EU Member States. With continuing recognition of certificates issued in other Member States post exit it would not be possible to enforce the requirements of legislation by revoking or suspending these certificates and the amendments remove this recognition to facilitate enforcement. As such this is not a new policy but a necessary correction to address a deficiency that would otherwise arise.

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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.

The Food Standards Agency has confirmed that, in Wales, this change would affect only five individuals, across two slaughterhouses, who would need to obtain UK certificates of competence post exit.

While this change could have been enacted by the Welsh Ministers it was judged that, in the absence of policy divergence and for reasons of administrative efficiency, the change could be implemented via a UK correcting SI.

I am copying my response to Mark Drakeford AM, the Cabinet Secretary for Finance, Lesley Griffiths AM, the Cabinet Secretary for Energy, Planning and Rural Affairs, and Julie James AM, Leader of the House and Chief Whip, as copied in to your original correspondence dated 28 November.

I trust my response is sufficient to resolve your concerns.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES

Rt Hon Carwyn Jones AM
First Minister of Wales
Welsh Government

28 November 2018

Dear Carwyn

The Animal Welfare (Amendment) (EU Exit) Regulations 2018

The Animal Welfare (Amendment) (EU Exit) Regulations 2018 were laid before the UK Parliament on 13 November 2018. On 16 November 2018, Julie James AM, Leader of the House and Chief Whip, laid before the National Assembly an accompanying written statement as required by Standing Order 30C.

The Regulations are proposed to be made by the UK Government under section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 (the Act).

The Constitutional and Legislative Affairs Committee considered the Welsh Government's written statement at its meeting on 26 November 2018. The final paragraph of the statement states:

"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".

The Explanatory Memorandum to the Regulations, prepared by the UK Government, notes that the Regulations make a policy change in respect of the recognition of certificates of competence for slaughterers. Paragraphs 10.1 and 2.17 of the Explanatory Memorandum state:



"10.1 ... this instrument makes mainly technical amendments...it does not change the substantive policy with the exception of the proposal to no longer recognise EU27 certificates of competence for slaughterers..."

"2.17 ... As well as these technical changes to ensure operability of the regulation after exit, the instrument also introduces a policy change. Currently, certificates of competence, issued to slaughterers by other Member States, must be recognised in the UK. Certificates of competence are required by slaughterhouses in the EU to demonstrate that an individual has been trained and successfully assessed as DExEU/EM/7-2018.2 4 reaching a sufficient level of competence to undertake the animal handling, stunning and killing and related operations required of them. The amendments made to Article 21(4) of Council Regulation (EC) 1099/2009 removes this recognition requirement..."

Paragraph 2.18 of the Explanatory Memorandum notes that there could be enforcement issues if certificates continued to be recognised:

"2.18 Continued recognition of certificates issued in other Member States would open up potential enforcement issues as we would be unable to suspend or revoke a certificate issued in another Member State in the event a slaughterer breached the requirements of the retained EU legislation or domestic legislation. The European Commission has already confirmed that certificates of competence issued in the UK will not be recognised in other Member States after the UK has left the EU."

The Welsh Government's written statement does not explain the reasoning for deciding that it was appropriate for the UK Government to provide for this policy change in a UK statutory instrument, nor how many people in Wales will be affected by this provision.

Paragraph 8 of the Intergovernmental agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that the powers in sections 7, 8 and 9 of the European Union (Withdrawal) Act 2018 will not be used to enact new policy in devolved areas.

For that reason, I draw your attention to these Regulations, the Explanatory Memorandum and the Welsh Government written statement and ask for an explanation as to why the Welsh Government has adopted this approach and chosen to allow the UK Ministers to make the Regulations on its behalf.



I am copying this letter to Mark Drakeford AM, the Cabinet Secretary for Finance, Lesley Griffiths AM, the Cabinet Secretary for Energy, Planning and Rural Affairs, and Julie James AM, Leader of the House and Chief Whip.

I would be grateful for a response by 7 December 2018.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.



Agenda Item 10

By virtue of paragraph(s) vi of Standing Order 17.42

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