



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019**

DATE **3 June 2019**

BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019 (“2019 Regulations”)

The Law which is being amended

- The Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/25) (“the EIA (EU Exit) Regulations”).
- The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/39) (“the EPR (EU Exit) Regulations”).
- The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188) (“Waste (EU Exit) (No. 2) Regulations”).
- The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/620) (“the Waste (EU Exit) Regulations”).

The purpose of the amendments

The four instruments listed above are made under section 8(1) of the European Union (Withdrawal) Act 2018. Amendments to these instruments are necessary to correct minor errors and/or to ensure consistency with other EU exit related amendments in order to ensure the appropriate functioning of the legislation amended by those other instruments after the UK leaves the EU.

The EIA (EU Exit) Regulations correct EU exit related deficiencies in the domestic regulations that implemented the EIA Directive in the field of: land drainage improvement works, forestry, water resources, agriculture and marine works.

The EPR (EU Exit) Regulations correct EU exit related deficiencies in the Environmental Permitting (England and Wales) Regulations 2016 to ensure that relevant permitting requirements are delivered as intended via conditions in environmental permits, and give regulators the power to ensure compliance with those conditions.

The Waste (EU Exit) (No. 2) Regulations and the Waste (EU Exit) Regulations were part of three EU Exit instruments (along with the International Waste Shipments (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/590)) which taken together ensure that the UK waste legislation continues to operate as intended after the UK leaves the EU.

Regulation 2 of this instrument corrects a minor error in the EIA (EU Exit) Regulations. In that instrument the definition of “public” as contained in the EIA Directive has been inserted, with amendment, into the principal regulations being amended by that instrument. It has since been reported that the definition of “public” differs across the individual regulations. The definition of “public” in regulations 5(2)(a)(ii) (for agriculture) and 6(2)(b) (for marine works) is, therefore, being amended so that it is consistent with the clearer definition in regulations 2(2)(a)(ii) (for land drainage improvement works) and 4(2)(c) (for water resources).

Regulation 3 of this instrument makes amendments to the EPR (EU Exit) Regulations. It updates cross-references to the Medical Devices Regulations 2002 (S.I. 2002/618). The Medical Devices (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/791) created additional definitions of “medical device”, “in vitro diagnostic medical device” and “active implantable medical device” in the 2002 Regulations. Regulation 3 of this instrument updates the cross-references in those definitions in the new Schedule 1A to the Environmental Permitting (England and Wales) Regulations 2016 that is inserted by the EPR (EU Exit) Regulations so that in each case both definitions in the 2002 Regulations are referenced. This is consistent with regulation 4T of the Medical Devices Regulations 2002 as inserted by S.I. 2019/791, which modifies the same definitions in regulation 2(1) of the Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113) in the same way.

Regulation 4 of this instrument makes minor amendments to the Waste (EU Exit) (No. 2) Regulations as follows:

- Regulation 4(2) of this instrument amends regulation 9(10) of the Waste (EU Exit) (No. 2) Regulations. Regulation 9(10) amends regulation 33 of the End of Life Vehicle Regulations 2003 (S.I. 2003/2635). Regulation 4(2) of this instrument inserts new amendments into regulation 9(10) in order to correct additional deficiencies resulting from EU Exit in regulation 33 of the 2003 Regulations;
- Regulation 4(3) of this instrument omits regulation 13(3) of the Waste (EU Exit) (No. 2) Regulations. Regulation 13(3) amends regulation 3(1) of the Batteries and Accumulators (Placing on the Market) Regulations 2008 by inserting a reference to “regulation 2A”. However, regulation 13(3) was included in error and is to be omitted;
- Similarly, regulation 4(3) of this instrument omits regulation 14(2)(b) of the Waste (EU Exit) (No. 2) Regulations. Regulation 14(2)(b) purports to amend the definition of “the Waste Directive” in regulation 2 of the Waste Batteries and Accumulators Regulations 2009. However, there is no such definition. Regulation 14(2)(b) was included in error and is to be omitted.
- Regulation 4(4) of this instrument amends regulation 16 of the Waste (EU Exit) (No. 2) Regulations. Regulation 16 amends the Waste (England and Wales) Regulations 2011.

- Regulation 4(4)(b) of this instrument inserts new provisions that amend paragraph 4 of Part 1 of Schedule 1 to the 2011 Regulations to correct deficiencies resulting from EU exit in that paragraph. Following exit from the EU, it is no longer appropriate for the objectives relating to the principles of self-sufficiency and proximity in national waste management plans to refer to the EU. Therefore the amendments ensure that the principles of self-sufficiency and proximity will continue to apply at a UK level.
- Regulation 4(4)(a) amends regulation 16(3) of the Waste (EU Exit) No. 2 Regulations by replacing the text of the new regulation 3D(8)(b)(i) that is inserted into the 2011 Regulations. This amendment is necessary to ensure a consistent approach between the text of the modification of Article 16 of the Waste Framework Directive (Article 16 contains the principle of self-sufficiency and proximity is derived) and the text of the amendment made by regulation 4(4)(b) of this instrument.
- Regulation 4(5) of the instrument amends regulation 18(25)(c) of the Waste (EU Exit) (No. 2) Regulations. Regulation 18(25)(c) inserts a new Part 4 into Schedule 1 to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012. Paragraph 26(c)(vi) of that new Part 4 is unnecessary in light of paragraphs 26(c)(iv) and 26(c)(v) of that Part. The new paragraph 26(c)(vi) was included in error and is to be omitted.

Regulation 5 of the instrument amends regulation 17(3) of the Waste (EU Exit) Regulations. Regulation 17(3) inserts new Articles 1A to 1F into Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries. Regulation 5 of this instrument replaces new Article 1B(8)(b)(i), which modifies Article 16 of the Waste Framework Directive, to ensure a consistent approach with the amendments made by regulation 4(4) of the instrument as outlined above.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://beta.parliament.uk/work-packages/LSVBijTm>

Any impact the SI may have on the Welsh Ministers' executive competence

The 2019 Regulations do not impact on the Welsh Ministers ability to exercise functions in relation to Wales and this will continue without encumbrance.

Any impact the SI may have on the legislative competence of the National Assembly for Wales

The 2019 Regulations have no impact on the National Assembly for Wales' legislative competence.

Why consent was given

As set out above, the 2019 Regulations are being made in order to correct minor errors and/or to ensure consistency between those instruments and other EU Exit SIs, to ensure the effectiveness and continuity of UK legislation following our exit from the EU.