

UK MINISTERS ACTING IN DEVOLVED AREAS

69 - The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019

Laid in the UK Parliament: 19 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	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 39
SICM under SO 30A (because amends primary legislation)	Paper 40

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 (affirmative procedure) Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21(b) of Schedule 7 of the European Union (Withdrawal) Act 2018. Section 8(1) of the European Union (Withdrawal) 2018 Act provides that a Minister of the Crown may by regulations make such provisions 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 UK from the EU.

These Regulations make changes to the following legislation:-

EU Regulations

1. Commission Regulation (EU) No 1103/2010 establishing, pursuant to Directive 2006/66/EC of the European Parliament and of the Council, rules as regards capacity labelling of portable secondary (rechargeable) and automotive batteries and accumulators

2. Council Regulation (EU) No 333/2011 establishing criteria determining when certain types of scrap metal cease to be waste under Directive 2008/98/EC of the European Parliament and of the Council
3. Commission Regulation (EU) No 493/2012 laying down detailed rules regarding the calculation of recycling efficiencies of the recycling processes of waste batteries and accumulators
4. Commission Regulation (EU) No 1179/2012 establishing criteria determining when glass cullet ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council
5. Commission Regulation (EU) No 715/2013 establishing criteria determining when copper scrap ceases to be waste under Directive 2008/98/EC of the European Parliament and of the Council

European Commission Decisions

1. Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of waste pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste.
2. Commission Decision 2001/171/EC establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste.
3. Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills.
4. Commission Decision 2009/292/EC establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in Directive 94/62/EC on packaging and packaging waste.
5. 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.
6. Commission Decision 2009/337/EC on the definition of the criteria for the classification of waste facilities in accordance with Annex III of Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries.
7. Commission Decision 2009/359/EC completing the definition of inert waste in implementation of Article 22(1)(f) of Directive 2006/21/EC of the European Parliament and the Council concerning the management of waste from extractive industries.
8. Commission Decision 2009/360/EC completing the technical requirements for waste characterisation laid down by Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries.
9. Commission Decision 2011/753/EU establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of Directive 2008/98/EC.

Domestic Legislation

1. Environmental Permitting (England and Wales) Regulations 2016
2. Environmental Protection Act 1990
3. Waste and Emissions Trading Act 2003
4. Control of Pollution (Amendment) Act 1989

As these regulations amend primary legislation within the legislative competence of the Assembly, the Welsh Government have laid a statutory instrument consent memorandum under Standing Order 30A.2. The Assembly has legislative competence in relation to waste and the environment, with the exception of regulations that relate to product standards and safety and technical standards in relation to products, which are reserved.

These changes are necessary to ensure that the above legislation continues to operate effectively after the UK leaves the EU. The instrument makes minor and technical amendments to the existing legislation described above. The changes include amending references to the EU, EU institutions and EU administrative processes to UK equivalents and updating legal references to refer to relevant UK legislation. The changes include the replacement of references to “Member States” with references to the UK or to an appropriate UK body, the replacement of references to “Community legislation” or “EU law” with references to “retained EU law”, and the replacement of requirements to notify or report to the Commission with requirements to report publicly. The changes also ensure that cross references to other EU legislation, will continue to work after exit.

Legal Advisers agree with the statement laid by the Welsh Government dated 19 December 2018 regarding the effect of these Regulations. Legal advisers are satisfied that the statement adequately summarises the purpose of the Regulations and accurately describes any impact on the Assembly’s competence and the Welsh Ministers’ executive competence and why consent has been sought. The statement confirms that there will be no divergence in policy within the UK on these technical amendments and it is therefore thought appropriate for the UK Parliament to legislate in these particular circumstances.

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.