

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – The Senedd	Gareth Williams
Meeting date: 30 April 2018	Committee Clerk
Meeting time: 14.45	0300 200 6362
	SeneddCLA@assembly.wales

- 1 Introduction, apologies, substitutions and declarations of interest
14.45

- 2 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3
14.45 (Page 1)
CLA(5)–13–18 – Paper 1 – Statutory instruments with clear reports
Negative Resolution Instruments
- 2.1 SL(5)209 – The Safeguarding Boards (General) (Wales) (Amendment)
Regulations 2018

- 3 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3
14.45
Composite Negative Resolution Instruments
- 3.1 SL(5)206 – The Environmental Permitting (England & Wales) (Amendment)
(No. 2) Regulations 2018
(Pages 2 – 28)
CLA(5)–13–18 – Paper 2 – Regulations
CLA(5)–13–18 – Paper 3 – Transposition Note
CLA(5)–13–18 – Paper 4 – Explanatory Memorandum
CLA(5)–13–18 – Paper 5 – Report



4 Papers to note

14.50

4.1 Scrutiny of regulations made under the EU (Withdrawal) Bill

(Pages 29 – 32)

CLA(5)–13–18 – Paper 6 –Letter from the First Minister, 25 April 2018

CLA(5)–13–18 – Paper 7 –Letter from Llywydd, 25 April 2018

CLA(5)–13–18 – Paper 8 –Letter from the First Minister to the External Affairs and Additional legislation Committee, 25 April 2018

4.2 Letter to UK Government – Civil Service

(Pages 33 – 36)

CLA(5)13–18 – Paper 9 – Final letter

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

14.55

6 Commission on Justice in Wales

(Pages 37 – 41)

CLA(5)–13–18 – Paper 10 – Letter from the Chair

CLA(5)–13–18 – Paper 11 – Welsh Government Statement: Commission on Justice in Wales

7 Consideration of Subordinate Legislation other than Statutory Instruments

(Pages 42 – 43)

CLA(5)–13–18 –Paper 12 – Draft letter to the Welsh Government

8 Resourcing for Brexit Scrutiny

(Pages 44 – 48)

CLA(5)–13–18 – Paper 13 – Amended draft response

9 Letter from the Business Committee: Section 116C Orders in Council

(Pages 49 – 50)

CLA(5)–13–18 – Paper 14 – Letter from the Llywydd, as Chair of the Business Committee

10 Forward Work Programme

No paper

Public Session

15.30

11 The EU (Withdrawal) Bill: Evidence session 2 – Cabinet Secretary for Finance

15.30

(Pages 51 – 60)

Mark Drakeford AM, Cabinet Secretary for Finance

CLA(5)–13–18 – Paper 15 – Letter from Mark Drakeford to the Chancellor of the Duchy of Lancaster

CLA(5)–13–18 – Paper 16 – Letter from the Chancellor of the Duchy of Lancaster to Mark Drakeford

CLA(5)–13–18 – Paper 17 – Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks

House of Lords Third Marshalled List of Amendments to be moved on Report, 23 April 2018

<https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-R-III.pdf>

European Union (Withdrawal) Bill: Supplementary Delegated Powers

Memorandum (3), 23 April 2018

<https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-supplementaryDPM3.pdf>

House of Lords Amendments to be moved on Report [Supplementary to the Third Marshalled List], 25 April 2018

[https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-R-III\(a\).pdf](https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-R-III(a).pdf)

European Union (Withdrawal) Bill: Supplementary Delegated Powers
Memorandum (4), 25 April 2018

<https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-supplementaryDPM4.pdf>

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

16.30

13 Consideration of evidence: EU (Withdrawal) Bill

16.30

Date of the next meeting

14 May 2018

Statutory Instruments with Clear Reports

30 April 2018

SL(5)209 – The Safeguarding Boards (General) (Wales) (Amendment) Regulations 2018

Procedure: Negative

These Regulations relate to the Safeguarding Children Boards established under section 134(4) of the Social Services and Well-being (Wales) Act 2014 and Safeguarding Adults Boards established under section 134(5) of that Act.

Regulation 2 amends the lead partner for the North Wales Safeguarding Board Area, by changing the lead partner from Conwy County Borough Council to Denbighshire County Council.

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

Date Made: 17 April 2018

Date Laid: 20 April 2018

Coming into force date: 25 May 2018



Agenda Item 3.1

STATUTORY INSTRUMENTS

2018 No. 428

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

**The Environmental Permitting (England and Wales)
(Amendment) (No. 2) Regulations 2018**

<i>Made</i>	- - - -	<i>21st March 2018</i>
<i>Laid before Parliament</i>		<i>28th March 2018</i>
<i>Laid before the National Assembly for Wales</i>		<i>28th March 2018</i>
<i>Coming into force</i>	- -	<i>2nd May 2018</i>

The Secretary of State and the Welsh Ministers make these Regulations in exercise of the powers conferred by sections 2 and 7(9) of and Schedule 1 to the Pollution Prevention and Control Act 1999(a) (“the 1999 Act”).

In accordance with section 2(4) of the 1999 Act, the Secretary of State and the Welsh Ministers have consulted—

- (a) the Environment Agency;
- (b) the Natural Resources Body for Wales;
- (c) such bodies and persons as appear to them to be representative of the interests of local government, industry, agriculture and small business as they considered appropriate; and
- (d) such other bodies or persons as they considered appropriate.

Citation and commencement

1. These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018 and come into force on 2nd May 2018.

Amendment of the Environmental Permitting (England and Wales) Regulations 2016

2. The Environmental Permitting (England and Wales) Regulations 2016(b) are amended as set out in regulations 3 to 7.

(a) 1999 c. 24. Amendments to section 2 were made by S.I. 2013/755. The functions of the Secretary of State under or in relation to section 2, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales (except in relation to offshore oil and gas exploration and exploitation) by article 3 of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). A further amendment was made to section 2 which is not relevant to this instrument. Schedule 1 was amended by S.I. 2011/1043. See also S.I. 2017/1248 designating Council Directive 2013/59/Euratom for the purposes of paragraph 20(1)(b) of Schedule 1. Further amendments to Schedule 1 were made which are not relevant to this instrument.

(b) S.I. 2016/1154. Amendments have been made to these Regulations which are not relevant to this instrument.

Amendment of regulation 3 (interpretation: Directives)

3. In regulation 3—

- (a) for the definition of the Basic Safety Standards Directive substitute—
“the Basic Safety Standards Directive” means Council Directive 2013/59/Euratom laying down basic safety standards for the protection against the dangers arising from exposure to ionising radiation^(a)”; and
- (b) omit the definition of the HASS Directive.

Amendment of regulation 14 (content and form of an environmental permit)

4. In regulation 14(6), after sub-paragraph (a), insert—

- “(aa) the keeping of radioactive material or the accumulation or removal of radioactive waste under paragraph 11(2) of Part 2 of Schedule 23, where—
 - (i) the activity is described in standard rules published under regulation 26(5); and
 - (ii) the permit authorises the carrying on of that activity at more than one site; or”.

Amendment of regulation 80 (review: England)

5. In regulation 80(2), omit sub-paragraph (g).

Amendment of Schedule 8 (Part B mobile installations and Part B mobile plant etc.)

6. In Schedule 8, in paragraph 5(3)(a), for “Article 1” substitute “Article 4”.

Amendment of Schedule 23 (radioactive substances activities)

7. Schedule 23 is amended as set out in the Schedule to these Regulations.

21st March 2018

Richard Harrington
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

21st March 2018

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

SCHEDULE

Regulation 7

Amendment of Schedule 23

Amendment of Part 2 (interpretation)

1. Part 2 is amended as follows.
2. In paragraph 1(2), for “or either of Tables 5 and 7” substitute “or any of Tables 4A, 5 or 7”.

(a) OJ No L 13, 17.01.2014, p. 1.

3. In paragraph 2(1), in the definition of “type 2 NORM industrial activity”, after paragraph (k) omit “or” and insert—

“(ka) geothermal energy production, or”.

4. In paragraph 3(1), after “9” insert “, 9A”.

5. After paragraph 6 insert—

“Dilution to reduce concentration of radioactivity

6A. For the purposes of paragraphs 4, 5 and 6, a substance or article is to be treated as having a concentration of radioactivity which exceeds the value referred to in paragraph 4(2), 5(c)(i) or 6(a), if a person has diluted the substance or article with the intention of ensuring that its concentration of radioactivity does not exceed that value.”.

6. After paragraph 9 insert—

“Historic radium contamination

9A. A substance or article is not radioactive material or radioactive waste where the substance or article arises from the remediation of land contaminated by radium and—

- (a) the substance or article contains Ra-226 or its progeny;
- (b) in the absence of Ra-226 or its progeny, the substance or article would not otherwise be radioactive material or radioactive waste under this Schedule;
- (c) the contamination occurred prior to 13th May 2000; and
- (d) the concentration of Ra-226 or any of its progeny does not exceed the following values—
 - (i) for a substance or article which is a solid or a substance which is a relevant liquid, 1 Bq/g;
 - (ii) for a substance which is any other liquid, 1 Bq/l; or
 - (iii) for a substance which is a gas, 0.01 Bq/m³.”.

Amendment of Part 3 (tables of radionuclides and summation rules)

7. Part 3 is amended as follows.

8. In paragraph 1(1), in Table 1, in the entries for U-238sec, Ra-226+, Th-232sec and Th-228+, in the second column of each entry for “0.5” substitute “1”.

9. In paragraph 2(1), for Table 2 substitute—

<i>“Radionuclide</i>	<i>Concentration in becquerels per gram (Bq/g)</i>
H-3	10 ²
Be-7	10
C-14	10
F-18	10
Na-22	0.1
Na-24	1
Si-31	10 ³
P-32	10 ³
P-33	10 ³
S-35	10 ²
Cl-36	1
Cl-38	10
K-42	10 ²

K-43	10
Ca-45	10 ²
Ca-47	10
Sc-46	0.1
Sc-47	10 ²
Sc-48	1
V-48	1
Cr-51	10 ²
Mn-51	10
Mn-52	1
Mn-52m	10
Mn-53	10 ²
Mn-54	0.1
Mn-56	10
Fe-52+	10
Fe-55	10 ³
Fe-59	1
Co-55	10
Co-56	0.1
Co-57	1
Co-58	1
Co-58m	10 ⁴
Co-60	0.1
Co-60m	10 ³
Co-61	10 ²
Co-62m	10
Ni-59	10 ²
Ni-63	10 ²
Ni-65	10
Cu-64	10 ²
Zn-65	0.1
Zn-69	10 ³
Zn-69m+	10
Ga-72	10
Ge-71	10 ⁴
As-73	10 ³
As-74	10
As-76	10
As-77	10 ³
Se-75	1
Br-82	1
Rb-86	10 ²
Sr-85	1
Sr-85m	10 ²
Sr-87m	10 ²
Sr-89	10 ³
Sr-90+	1
Sr-91+	10
Sr-92	10
Y-90	10 ³
Y-91	10 ²

Y-91m	10 ²
Y-92	10 ²
Y-93	10 ²
Zr-93	10
Zr-95+	1
Zr-97+	10
Nb-93m	10
Nb-94	0.1
Nb-95	1
Nb-97+	10
Nb-98	10
Mo-90	10
Mo-93	10
Mo-99+	10
Mo-101+	10
Tc-96	1
Tc-96m	10 ³
Tc-97	10
Tc-97m	10 ²
Tc-99	1
Tc-99m	10 ²
Ru-97	10
Ru-103+	1
Ru-105+	10
Ru-106+	0.1
Rh-103m	10 ⁴
Rh-105	10 ²
Pd-103+	10 ³
Pd-109+	10 ²
Ag-105	1
Ag-108m+	0.1
Ag-110m+	0.1
Ag-111	10 ²
Cd-109+	1
Cd-115+	10
Cd-115m+	10 ²
In-111	10
In-113m	10 ²
In-114m+	10
In-115m	10 ²
Sn-113+	1
Sn-125	10
Sb-122	10
Sb-124	1
Sb-125+	0.1
Te-123m	1
Te-125m	10 ³
Te-127	10 ³
Te-127m+	10
Te-129	10 ²
Te-129m+	10

Te-131	10 ²
Te-131m+	10
Te-132+	1
Te-133+	1
Te-133m+	1
Te-134	10
I-123	10 ²
I-125	10 ²
I-126	10
I-129	0.01
I-130	10
I-131+	1
I-132	10
I-133	10
I-134	10
I-135	10
Cs-129	10
Cs-131	10 ³
Cs-132	10
Cs-134	0.1
Cs-134m	10 ³
Cs-135	10 ²
Cs-136	1
Cs-137+	1
Cs-138	10
Ba-131	10
Ba-140	1
La-140	1
Ce-139	1
Ce-141	10 ²
Ce-143	10
Ce-144+	10
Pr-142	10 ²
Pr-143	10 ³
Nd-147	10 ²
Nd-149	10 ²
Pm-147	10 ³
Pm-149	10 ³
Sm-151	10 ³
Sm-153	10 ²
Eu-152	0.1
Eu-152m	10 ²
Eu-154	0.1
Eu-155	1
Gd-153	10
Gd-159	10 ²
Tb-160	1
Dy-165	10 ³
Dy-166	10 ²
Ho-166	10 ²
Er-169	10 ³

Er-171	10 ²
Tm-170	10 ²
Tm-171	10 ³
Yb-175	10 ²
Lu-177	10 ²
Hf-181	1
Ta-182	0.1
W-181	10
W-185	10 ³
W-187	10
Re-186	10 ³
Re-188	10 ²
Os-185	1
Os-191	10 ²
Os-191m	10 ³
Os-193	10 ²
Ir-190	1
Ir-192	1
Ir-194	10 ²
Pt-191	10
Pt-193m	10 ³
Pt-197	10 ³
Pt-197m	10 ²
Au-198	10
Au-199	10 ²
Hg-197	10 ²
Hg-197m	10 ²
Hg-203	10
Tl-200	10
Tl-201	10 ²
Tl-202	10
Tl-204	1
Pb-203	10
Pb-210+	0.01
Pb-212+	1
Bi-206	1
Bi-207	0.1
Bi-210	10
Bi-212+	1
Po-203	10
Po-205	10
Po-207	10
Po-210	0.01
At-211	10 ³
Ra-223+	1
Ra-224+	1
Ra-225	10
Ra-226+	0.01
Ra-227	10 ²
Ra-228+	0.01
Ac-227+	0.01

Ac-228	1
Th-226+	10 ²
Th-227	1
Th-228+	0.1
Th-229+	0.1
Th-230	0.1
Th-231	10 ²
Th-232	0.01
Th-232+	0.01
Th-232sec	0.01
Th-234+	10
Pa-230	10
Pa-231	0.01
Pa-233	10
U-230+	1
U-231	10 ²
U-232+	0.1
U-233	1
U-234	1
U-235+	1
U-235sec	0.01
U-236	10
U-237	10 ²
U-238+	1
U-238sec	0.01
U-239	10 ²
U-240+	10 ²
Np-237+	1
Np-239	10 ²
Np-240	10
Pu-234	10 ²
Pu-235	10 ²
Pu-236	1
Pu-237	10 ²
Pu-238	0.1
Pu-239	0.1
Pu-240	0.1
Pu-241	10
Pu-242	0.1
Pu-243	10 ³
Pu-244+	0.1
Am-241	0.1
Am-242	10 ³
Am-242m+	0.1
Am-243+	0.1
Cm-242	10
Cm-243	1
Cm-244	1
Cm-245	0.1
Cm-246	0.1
Cm-247+	0.1

Cm-248	0.1
Bk-249	10 ²
Cf-246	10 ³
Cf-248	1
Cf-249	0.1
Cf-250	1
Cf-251	0.1
Cf-252	1
Cf-253	10 ²
Cf-253+	1
Cf-254	1
Es-253	10 ²
Es-254+	0.1
Es-254m+	10
Fm-254	10 ⁴
Fm-255	10 ²
Any other solid or relevant liquid radionuclide that is not of natural terrestrial or cosmic origin	0.01 or that concentration which gives rise to a dose to a member of the public of 10 microsieverts per year calculated by reference to the International Atomic Energy Agency publication “Application of the Concepts of Exclusion, Exemption and Clearance”, IAEA Safety Standards Series No. RS-G-1.7(a).”

Amendment of Part 4 (the Basic Safety Standards Directive)

10. Part 4 is amended as follows.

11. In paragraph 1(b)—

- (a) for “Article 13” substitute “Article 12”; and
- (b) for “Article 6(4) substitute “Article 5(c)”.

12. In paragraph 2—

- (a) in sub-paragraph (1)(a) omit “from which radioactive discharges are first made on or after 13th May 2000”; and
- (b) for sub-paragraph (2) substitute—
 - “(2) In exercising those relevant functions, the regulator must observe the requirements of the following provisions—
 - (a) when estimating effective dose and equivalent dose—
 - (i) from external exposure, chapters 4 and 5 of International Commission on Radiological Protection Publication 116(b); and
 - (ii) from internal exposure, chapter 1 of International Commission on Radiological Protection Publication 119(c); and

(a) Available from www-pub.iaea.org. A hard copy of this publication can be obtained by writing to: Nuclear Decommissioning and Radioactive Waste Policy Team, Department for Business, Energy & Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

(b) Available from www.icpr.org. A hard copy of this publication can be obtained by writing to: SAGE Publications Ltd, 1 Oliver’s Yard, 55 City Road, London, EC1Y 1SP.

(c) Available from www.icpr.org. A hard copy of this publication can be obtained by writing to: Nuclear Decommissioning and Radioactive Waste Policy Team, Department for Business, Energy & Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

- (b) in estimating population doses, Article 66 of the Basic Safety Standards Directive.

13. After Section 2 insert—

“SECTION 3

Miscellaneous duties of the regulator

Inspection programmes

5. When establishing an inspection programme for the purposes of regulation 34(2) (periodic inspections of regulated facilities) in relation to radioactive substance activities, the regulator must take into account the potential magnitude and nature of the hazard associated with such activities, a general assessment of radiation protection issues in the activities, and the state of compliance with the requirements of these Regulations.

Inspection findings

6. Where a regulator makes an inspection of a regulated facility that is a radioactive substances activity, the regulator must—

- (a) record the findings of that inspection; and
- (b) communicate those findings to the operator of the regulated facility.

Radioactive waste: requirements to be imposed on permit holders

7.—(1) The regulator must require a person who holds an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(b) (disposing of waste) or (c) (accumulating waste) of Part 2 of this Schedule to—

- (a) achieve and maintain an optimal level of protection of members of the public;
- (b) accept into service adequate equipment and procedures for measuring and assessing exposure of members of the public and radioactive contamination of the environment;
- (c) check the effectiveness and maintenance of equipment as referred to in paragraph (b) and ensure the regular calibration of measuring instruments; and
- (d) seek advice from a radioactive waste adviser in the performance of the tasks referred to in paragraphs (a), (b) and (c).

(2) In this paragraph “radioactive waste adviser” means an individual, or group of individuals, with the knowledge, training and experience needed to give radioactive waste management and environmental radiation protection advice in relation to radioactive waste in order to ensure the effective protection of members of the public, and whose competence in that respect is recognised by the regulator.

Dilution of radioactive material and radioactive waste

8. In exercising its relevant functions in relation to a radioactive substances activity, the regulator must observe the requirements of Article 30(4) of the Basic Safety Standards Directive.

Monitoring of discharges

9.—(1) This paragraph applies where the regulator is exercising relevant functions in relation to a radioactive substances activity where there are radioactive discharges authorised by an environmental permit.

- (2) The regulator must impose appropriate environmental permit conditions concerning—

- (a) the monitoring, or the evaluation, of radioactive airborne or aqueous discharges into the environment; and
- (b) the reporting to the regulator of the results of such monitoring or evaluation.

(3) For the purposes of sub-paragraph (2), where the regulator is exercising relevant functions in relation to a nuclear power station or nuclear reprocessing plant, the environmental permit conditions imposed must require the monitoring of radioactive discharges and reporting to the regulator of such information on radioactive discharges as the appropriate authority directs.”.

Amendment of Part 5 (the HASS Directive)

14. Part 5 is amended as follows.

15. For the heading to Part 5 substitute “The control of high-activity and other sources”.

16. In paragraph 1—

- (a) for the definition of “high-activity source” substitute—
 - ““high-activity source” means a sealed source for which the activity of the contained radionuclide is equal to or exceeds the relevant activity value laid down in Annex III of the Basic Safety Standards Directive;”;
- (b) in the definitions of “orphan source” and “sealed source”, for “HASS Directive” substitute “Basic Safety Standards Directive”.

17. In the heading to section 3, omit “orphan”.

18. For paragraph 5 substitute—

“5. In exercising relevant functions in relation to a radioactive substances activity, the regulator must comply with Articles 85 to 89 and 91 of the Basic Safety Standards Directive.”.

19. For paragraph 6 substitute—

- “6. In relation to a high-activity source, the regulator must keep records of those matters—
- (a) required by Article 90 of the Basic Safety Standards Directive, and
 - (b) notified to it under Article 91(1) of that Directive.”.

20. In paragraph 8, in sub-paragraph (1)(a), before “recover”, insert “control and”.

Amendment of Part 6 (radioactive substances activity exemptions)

21. Part 6 is amended as follows.

22. In paragraph 1—

- (a) after the definition of “gaseous tritium light device”, insert—
 - ““high-activity or similar source” means—
 - (a) a high-activity source, or
 - (b) such other sealed source which, in the opinion of the regulator, is of a similar level of potential hazard to a high-activity source;
- “high-activity source” means a sealed source for which the activity of the contained radionuclide is equal to or exceeds the relevant activity value laid down in Annex III of the Basic Safety Standards Directive;”;
- (b) for the definition of “sealed source”, substitute—

““sealed source” has the same meaning as in the Basic Safety Standards Directive, excluding such a source where it is an electrodeposited source or a tritium foil source;” and

(c) in the definition commencing ““Table 4””, after ““Table 4””, insert ““Table 4A””,.

23. For paragraph 2 substitute—

“2.—(1) In this Part “NORM waste” means a substance or article which—

- (a) is solid radioactive waste under—
 - (i) paragraph 4 of Part 2 of this Schedule (NORM industrial activities); or
 - (ii) paragraph 5 of that Part (processed radionuclides of natural terrestrial or cosmic origin) where the waste arises from the remediation of land contaminated by radium and the contamination occurred prior to 13 May 2000;
- (b) contains one or more of the radionuclides which are listed in column 1 of Table 4A;
- (c) has a concentration of radioactivity that does not exceed the value specified in column 5 of Table 4A in respect of that radionuclide; and
- (d) is not waste to which sub-paragraph (3) applies.

(2) In this Part—

“type 1 NORM waste” means NORM waste which—

- (a) has a concentration of radioactivity that does not exceed the value specified in column 2 of Table 4A; and
- (b) is not waste to which sub-paragraph (4) applies;

“type 2 NORM waste” means NORM waste which has a concentration of radioactivity that exceeds the value specified in column 2 of Table 4A.

(3) This sub-paragraph applies to waste where, prior to the disposal of that waste, a person has diluted it with the intention of ensuring that the concentration of radioactivity does not exceed the value specified in column 5 of Table 4A.

(4) This sub-paragraph applies to waste where, prior to the disposal of that waste, a person has diluted it with the intention of ensuring that the concentration of radioactivity does not exceed the value specified in column 2 of Table 4A.”.

24. In paragraph 4, at the end insert—

“(8) D is not exempt under sub-paragraph (7) from the requirement for an environmental permit where the waste accumulated is or contains a high-activity or similar source.”.

25. In paragraph 5(2) omit “with a NORM waste concentration which is less than or equal to 10 Bq/g”.

26. In paragraph 7—

(a) for sub-paragraph (1) substitute—

“(1) This paragraph applies to the following radioactive substances activities—

- (a) the activity described in paragraph 11(2)(c) of Part 2 of this Schedule (“Activity A”);
 - (b) the activity described in paragraph 11(4) of Part 2 of this Schedule (“Activity B”);
- (b) in sub-paragraphs (2) and (3)—
- (i) omit “Subject to sub-paragraph (5) where it applies,” in both places it appears;
 - (ii) for “Qualifying NORM Waste” substitute “NORM waste” in both places it appears; and

(c) omit sub-paragraphs (4) and (5).

27. In paragraph 16—

- (a) for sub-paragraph (1)(a) substitute—
 - “(a) subject to sub-paragraph (2)—
 - (i) solid radioactive waste described in an entry in column 1 of Table 6 which does not contain a concentration of radionuclides that exceeds the value specified in column 2 of that table in respect of that kind of waste, or
 - (ii) a broken or damaged individual sealed source of the type described in the fourth entry in Table 6 (individual sealed sources which are solely radioactive waste because they contain tritium), which would not have exceeded the value specified in column 2 when the source was intact, or”.
- (b) in sub-paragraph (2)(b) omit “with a NORM waste concentration which is less than or equal to 10 Bq/g”.

28. For paragraph 17(2)(d) substitute—

“(d) where the waste is a high-activity or similar source, notify the details of the disposal to the regulator within 14 days of the disposal (including, for a high-activity source, the information required by Annex XIV of the Basic Safety Standards Directive), in such form as may be required by the regulator, and”.

29. In paragraph 18—

- (a) for sub-paragraph (1) substitute—
 - “(1) This paragraph applies to the following radioactive substances activities carried on in respect of NORM waste—
 - (a) the activity described in paragraph 11(2)(b) of Part 2 of this Schedule (“Activity A”); and
 - (b) the activity described in paragraph 11(4) of Part 2 of this Schedule (“Activity B”).”
- (b) in sub-paragraph (2)—
 - (i) at the beginning omit “Subject to sub-paragraph (6),”; and
 - (ii) omit “type 1 NORM waste or type 2”;
- (c) in sub-paragraph (4)—
 - (i) in both places it appears, for “5 x 10¹⁰ Bq” substitute “the value specified in column 3 of Table 4A”; and
 - (ii) at the beginning of paragraph (b) omit “subject to sub-paragraph (6),”;
- (d) at the beginning of sub-paragraph (5) omit “Subject to sub-paragraph (6),”; and
- (e) omit sub-paragraphs (6) and (7).

30. After paragraph 18 insert—

“Exemption for disposing of gaseous NORM waste from oil and gas production

18A. A person is exempt from the requirement for an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(b) (disposing of waste) of Part 2 of this Schedule where the only radioactive waste disposed of is gaseous NORM waste released in the production of oil and gas.”.

31. In paragraph 19(2)(b)(i) for “1 x 10⁸ Bq” substitute “the value in column 4 of Table 4A”.

32. In paragraph 25, in Table 4, in the final row, in the second column for the words from “in respect” to the end, substitute “2 x 10⁸ Bq of all other radionuclides, (no more than 1 x 10⁸ Bq of which is contained in radioactive material)”.

33. After paragraph 25 insert—

“Table 4A

25A.—(1) The Table 4A referred to in Sections 2, 5 and 6 of this Part is—

Table 4A

NORM waste concentrations and maximum disposal quantities

<i>Radionuclide</i>	<i>Type 1 NORM concentration (Bq/g)</i>	<i>Type 1 NORM total activity for landfill (GBq/year)</i>	<i>Type 1 NORM total activity for incineration (MBq/year)</i>	<i>Type 2 NORM concentration (Bq/g)</i>
U-238sec	5	50	100	10
U238+	5	50	100	10
U-234	5	50	100	10
Th-230	5	50	100	10
Ra-226+	5	50	100	10
Pb-210+	100	1000	100	200
Po-210	100	1000	100	200
U-235sec	5	50	100	10
U-235+	5	50	100	10
Pa-231	5	50	100	10
Ac-227+	5	50	100	10
Th-232sec	5	50	100	10
Th-232	5	50	100	10
Ra-228+	5	50	100	10
Th-228+	5	50	100	10

(2) The summation rule in respect of columns 2 and 5 of Table 4A is the sum of the quotients A/B where—

- (a) “A” means the concentration of each radionuclide listed in column 1 of Table 4A that is present in the substance or article; and
- (b) “B” means the concentration of that radionuclide specified in column 2 or 5 (as appropriate) of Table 4A.

(3) The summation rule in respect of columns 3 and 4 of Table 4A is the sum of the quotients C/D where—

- (a) “C” means the quantity of each radionuclide listed in column 1 of Table 4A that is present in the substance or article; and
- (b) “D” means the quantity of that radionuclide specified in column 3 or 4 (as appropriate) of Table 4A.”.

34. In paragraph 26—

- (a) in sub-paragraph (1), in Table 5, in the final row of column 2 for “Health Protection Agency’s” substitute “Public Health England”;
- (b) in sub-paragraph (3), for “column 2” substitute “column 3”.

35. In paragraph 30, in Table 8—

- (a) in the entry for Ra-226+—
 - (i) before “Table 5” insert “Table 4A and”; and
 - (ii) for “Pb-210, Bi-210, Po-210, Po-214” substitute “Po-214, Pb-210, Bi-210, Po-210”;
- (b) in the entry for U-238 sec for “Pb-210, Bi-210, Po-210, Po-214” substitute “, Po-214, Pb-210, Bi-210, Po-210”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are part of a package of measures to transpose Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing Council Directive 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (the Basic Safety Standards Directive). Most of the transposition measures are being dealt with by amending or replacing existing statutory instruments. These Regulations transpose provisions of the Basic Safety Standards Directive relevant to the environmental permitting regime as it applies to radioactive substances activities, by amending the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154) (the 2016 Regulations). These Regulations also make amendments not required for transposition but which removes unnecessary regulatory burdens.

Schedule 23 to the 2016 Regulations concerns radioactive substances activities. Where a radioactive substances activity is in scope (Part 2 of Schedule 23) of the environmental permitting regime a permit is required, unless an exemption (Part 6 of Schedule 23) applies. Amendments to Schedule 23 are set out in the Schedule to these Regulations.

These Regulations also amend existing references to and definitions from directives repealed by the Basic Safety Standards Directive.

Regulation 4 amends regulation 14 of the 2016 Regulations, to except certain radioactive substances activities from the requirement that a permit includes a site map or plan. The exception only applies to standard rules permits covering multiple sites.

Paragraph 3 of the Schedule adds geothermal energy production to the list of NORM industrial activities (that is, industrial activities involving naturally occurring radioactive material where the radioactivity is incidental to the activity), bringing such activity within scope of the environmental permitting regime.

Paragraph 5 adds a new provision disallowing dilution: where the concentration of radioactivity in a substance or article is reduced by diluting it to make it out of scope, it will remain in scope.

Paragraph 6 adds a new out of scope provision for historic radium contamination. Radioactive material or waste generated when contaminated land is remediated will be out of scope if the radium concentration is below the specified limit and the contamination occurred before 13 May 2000.

Paragraph 8 substitutes new out of scope concentration values for some radionuclides arising from NORM industrial activities (column 2 of Table 1 in Part 3), and paragraph 9 replaces the table of out of scope concentration values, inserting new values for some radionuclides for the purposes of the definitions of radioactive material and waste (Table 2 in Part 3).

Paragraph 13 inserts new Section 3 in Part 4, imposing miscellaneous duties on the regulator (the Environment Agency, for England, and the Natural Resources Body for Wales). Requirements are imposed in relation to the inspection programme the regulator establishes, and the regulator must record and communicate inspection findings. The regulator must require permit holders to undertake certain tasks, and to seek advice on those tasks from a radioactive waste adviser. The regulator must not allow the dilution of radioactive material for the purpose of it being released from regulatory control. The regulator must require permit holders to monitor and report on authorised radioactive discharges. Where the monitoring relates to a nuclear power station or nuclear reprocessing plant, the regulator must require monitoring in accordance with a direction issued by the appropriate authority (the Secretary of State, in relation to England, or the Welsh Ministers).

Paragraph 16 substitutes a new definition of high-activity sealed source, by reference to Annex III of the Basic Safety Standards Directive which sets out new radioactivity values for radionuclides contained in a sealed source.

Paragraph 20 inserts a new requirement on the regulator to be prepared or have made provision for the control of any orphan source (that is, a radiation source which should be but is not under regulatory control because, for example, it has been lost or stolen).

Paragraphs 23, 25, 26, 27(b), 29 and 31 to 33 make a series of amendments to the definitions of Type 1 and Type 2 NORM waste for the purposes of exemptions for accumulating radioactive waste, disposing of solid radioactive waste and disposing of NORM waste. New radioactivity concentration limits are imposed (new Table 4A). Specific provision is made disallowing dilution for the purposes of reducing the concentration of radioactivity in waste to bring it within the NORM waste exemption.

Paragraph 24 inserts a new provision disallowing the exemption for accumulating waste where the waste is or contains a high-activity sealed source.

Paragraph 27 inserts a new provision allowing the solid radioactive waste exemption to be claimed for broken sealed sources containing tritium (known as gaseous tritium light devices).

Paragraph 30 inserts a new provision to create an exemption for the disposal of gaseous NORM waste released in oil and gas production (known as venting or flaring).

An updated transposition note is submitted with the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

TRANSPOSITION NOTE

IMPLEMENTATION OF THE JUSTIFICATION OF PRACTICES AND PUBLIC EXPOSURES ASPECTS OF THE BASIC SAFETY STANDARDS DIRECTIVE 2013/59/EURATOM (BSSD)

Environmental Permitting (England and Wales) Regulations 2016

The Department for Business, Energy and Industrial Strategy (BEIS) has overall responsibility for coordinating UK transposition of the BSSD. A number of government departments, and the devolved administrations, are making regulations to transpose various aspects of the BSSD and each will complete a Transposition Note relating to the regulations they are making.

BEIS is implementing the **justification of practices** and **public exposures** aspects of the BSSD through four sets of regulations:

- the Justification of Practices Involving Ionising Radiation (Amendment) Regulations 2018, which amend the Justification of Practices Involving Ionising Radiation Regulations 2004 (S.I. 2004/1769) which set out a UK-wide framework for the making of justification decisions;
- the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018, which amend the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154) which set out the environmental permitting regime for radioactive substances activities;
- the Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (Amendment) (England) Regulations 2018, which amend the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (S.I. 2005/3467) and the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (S.I. 2006/1379); and
- the Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018¹, which makes UK-wide provision for matters not covered by existing statutory regimes.

The table below sets out how articles in the BSSD are transposed by the **Environmental Permitting (England and Wales) Regulations 2016 as amended by the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018**. Unless otherwise stated, the references in the table refer to the 2016 Regulations.

Article	Objective	Implementation
2.1	Scope Directive applies to planned and existing exposure situations involving members of the public,	EPR 2016
2.2 (a), (c)		Regulation 8, 12, 35 and Schedule 23 Part 2, Part 6

¹ This instrument will be made on a separate date.

and (c)(ii)	including in particular transport, storage, use, and disposal of radioactive material; processing of materials with naturally occurring radionuclides.	
4	Definitions Sets out relevant definitions.	Regulation 8, 12, 35 and Schedule 23 Part 2, Part 6
5 (b)	General principles of radiation protection	Schedule 23 Part 4, paragraph 1
5 (c)	Protection to be optimised when members of the public are exposed to ionising radiation (public exposures). Dose limits to apply.	Schedule 23 Part 4, paragraph 1 & 2
6.1 (b)	Dose constraints for occupational, public and medical exposure	Schedule 23 Part 4, paragraph 2
6.2	Dose constraints to be established to optimise protection in public exposure situations.	Schedule 23 Part 4, paragraph 2
12	Dose limits for public exposure Effective dose and equivalent dose limits to apply for public exposures from authorised practices.	Schedule 23 Part 4, paragraph 1
13	Estimation of the effective and equivalent dose Standard values and relationships to be used to estimate effective and equivalent doses.	Schedule 23 Part 4, paragraph 2(2)
14.2	Requirements for radiation protection education, training and information Arrangements to be made for education, training and re-training to allow for recognition of radiation protection experts.	Radioactive waste advisers: Schedule 23 Part 4, paragraph 7 <u>statement on radioactive waste advisers</u>
23	Identification of practices involving naturally-occurring radioactive material Identification of classes or types of practice involving naturally-occurring radioactive materials leading to exposure.	Schedule 23, Part 2, paragraphs 2 & 4
24.1	Graded approach to regulatory control	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6

	Practices to be subject to regulatory control for the purposes of radiation protection, by way of notification, authorisation and inspection.	
25.1 and 25.2	Notification Practices to be notified, including existing exposure situations managed as planned exposure situations.	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
26.1 (a) – (c)	Exemption from notification Practices which may be exempted from being notified. Exemption limits expressed as quantities or activity concentrations. General exemption criteria to be followed.	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
26.2		Regulation 8, 12 and 35 and Schedule 23 Part 6
27.1 (a)	Registration or licensing Practices requiring registration or licensing.	Regulated as a “use” of radioactive substances: Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
28 (b)- (f)	Licensing Practices requiring licensing.	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
29.1 and 29.2	Authorisation procedures Information to be provided on the nature of the practice and the radiological risk involved. Conditions to be included in a licence, including on radioactive discharges.	Schedule 5 paragraphs 2 & 4: <u>application forms</u> and Schedule 23 Part 4, Section 1
29.3		Schedule 5 paragraph 12 and Schedule 23 Part 4, Section 1
29.4		Schedule 5 paragraph 12 and <u>Statutory Guidance re discharges</u>
30.1	Release from regulatory control The disposal, recycling or reuse of radioactive materials to be authorised or otherwise meet the specified criteria for release from regulatory control. Clearance levels expressed as activity concentrations. Dilution not to be allowed.	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
30.2 (a)		Schedule 23 Part 2, paragraphs 5 & 6
30.2 (b)		Schedule 23 Part 2, Part 6
30.3		Schedule 23 Part 2, paragraphs 5 & 6
30.4		Schedule 23 Part 2 paragraph 6A, Part 4 paragraph 8, Part 6 paragraphs 2, 6 & 21
65.1	Operational protection of members of the public Criteria for operational protection of members of public in normal circumstances for practices subject to licensing, including criteria for discharges.	Regulation 8, 12 and 35
65.2		Schedule 23 Part 4, Section 1, <u>Statutory Guidance re discharges</u> and <u>public dose assessment principles</u>
65.3		Regulation 8, 12 and 35 and Schedule 23 Part 4, Section 1

66	Estimation of doses to the members of the public Arrangements to be made for estimating doses to members of the public from authorised practices.	Schedule 23 Part 4, paragraph 2(2)
67	Monitoring of radioactive discharges Where an undertaking is authorised to make radioactive airborne or liquid discharges, it must monitor, evaluate and report.	Schedule 23 Part 4, paragraph 9
68	Tasks for the undertaking Undertakings are to optimise protection to members of public and the environment, to check equipment and to take expert advice.	Schedule 23 Part 4, paragraph 7
76.1	Competent authority Independent competent authority to be designated to carry out tasks of Directive.	EPR16
77	Transparency Information on practices and regulation of radiation sources and radiation protection to be made available to members of the public.	Regulation 46 and Schedule 27
79	Recognition of services and experts Recognition of radiation protection experts (79.1(c)).	Radioactive waste advisers: Schedule 23 Part 4, paragraph 7 and <u>statement on radioactive waste advisers</u>
82.1	Radiation protection expert Radiation protection experts to give competent advice to operators, and criteria the advice should cover.	Schedule 23 Part 4, paragraph 7
82.2 (f)		Schedule 23 Part 4, paragraph 7
82.2 (h)		Schedule 23 Part 4, paragraph 9
82.2 (i)		Schedule 23 Part 4, paragraph 7
85	General requirements for unsealed sources Arrangements for managing, transferring, recycling and disposing of unsealed sources, including notification of loss.	Schedule 23 Part 5, paragraph 5

86	<p>General requirements for sealed sources Arrangements for managing, transferring, recycling and disposing of sealed sources, including notification of loss.</p>	Schedule 23 Part 5, paragraph 5
87	<p>Requirements for control of high-activity sealed sources Arrangements for the safe management and disposal of high-activity sealed sources, including financial security.</p>	Schedule 23 Part 5, paragraph 5
88	<p>Specific requirements for licensing of high-activity sealed sources Criteria for licensing of high-activity sealed sources.</p>	Schedule 23 Part 5, paragraph 5
89	<p>Record keeping by the undertaking Record keeping requirements for operators for high-activity sealed sources.</p>	Schedule 23 Part 5, paragraph 5
90	<p>Record keeping by the competent authority Record keeping requirements of the competent authority for high-activity sealed sources.</p>	Schedule 23 Part 5, paragraph 6
91	<p>Control of high-activity sealed sources Criteria that activities involving high-activity sealed sources are to comply with.</p>	Schedule 23 Part 5, paragraph 5
92.3	<p>Detection of orphan sources Advice and assistance to be made available to persons who suspect the presence of an orphan source.</p>	Schedule 23 Part 5, paragraph 4
93.2	<p>Metal contamination Management of metal scrap installation to inform competent authority if orphan source is processed.</p>	Regulation 8, 12 and 35 and permit conditions
94.1	<p>Recovery, management, control and disposal of orphan sources Competent authority to make provision to control and recover orphan sources.</p>	Schedule 23 Part 5, paragraph 8

95	Financial security for orphan sources Financial means to be in place to cover intervention costs relating to recovery of orphan sources.	Schedule 23 Part 5, paragraph 8
96	Notification and recording of significant events Arrangements for recording, reporting and investigating significant exposure events.	Schedule 23 Part 5, Part 1, paragraph 20
100.3	Programmes on existing exposure situations Existing exposures where legal responsibility can be assigned to be dealt with as planned exposures.	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
104.1	Inspections Systems of inspection to be established to enforce provisions of the Directive and to take corrective action where necessary. Requirements for inspection programmes and findings from inspections.	Regulation 34(2) and Schedule 23 Part 5, paragraph 2 & 6
104.2		Schedule 23 Part 4, paragraph 5
104.3		Schedule 23 Part 4, paragraph 6
104.4		Regulation 46 and Schedule 27, paragraph 1
105	Enforcement Competent authority to have power to require individual or legal person to take action to remedy deficiencies where exposure situation is not compliant with provisions of Directive.	Regulations 36 to 44

Explanatory Memorandum to the Environmental Permitting (England & Wales) (Amendment) (No. 2) Regulations 2018

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

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Permitting (England & Wales) (Amendment) (No. 2) Regulations 2018.

Lesley Griffiths
Cabinet Secretary for Environment, Planning & Rural Affairs

28 March 2018

1. Description

The primary purpose of the instrument is to amend the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154, “the 2016 Regulations”), so as to transpose parts of Council Directive 2013/59/EURATOM of 5 December 2013 (BSSD) on laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation.

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

With regards radioactivity, it is highly desirable, where possible, to ensure similar provision across the four UK administrations as this makes the regulatory landscape simpler and more transparent which is of benefit to regulators, Industry, Government and the public and avoids potential cross border issues within the UK.

Many of the changes required to transpose BSSD will be made by amending Schedule 23 of the 2016 Regulations. The 2016 regulations are on an England and Wales basis and it is therefore appropriate to transpose the necessary changes arising from BSSD on the same basis. Similar changes will be made to the equivalent legislation affecting Scotland and Northern Ireland.

Late transposition of an EU obligation

Article 106 of BSSD requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 February 2018. Delays to finalising these composite regulations following consultation have meant this deadline will not be met.

3. Legislative background

Powers

The power to make these regulations is section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 (“the 1999 Act”). Section 1 of that Act states that section 2 may be used to make provision for or in connection with regulating activities that are capable of causing any environmental pollution (this includes radioactive substances activities), or for otherwise preventing or controlling emissions capable of causing any such pollution. The Environmental Permitting (England and Wales) Regulations 2016 were made under this power.

Section 2(1) of the 1999 Act provides that regulations may make provision for any or the purposes listed in Part 1 of Schedule 1 to that Act. Paragraphs 1-19 contain purposes relevant to a permitting regime.

Paragraph 20(1)(b) of Schedule 1 to the 1999 Act also enables regulations made under Section 2 of that Act to make any provision made, or capable of being made under section 2(2) European Communities Act 1972 in connection with “a relevant directive”.

Paragraph 20(2)(c) enables the Welsh Ministers to, by order, designate any EU Directive as a 'relevant directive'. In order to make use of the wider purpose in paragraph 20(1)(b) of Schedule 1 to the 1999 Act, the BSSD 2013 has been designated as a 'relevant directive' - the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2017.

Originally powers of the Secretary of State, functions under or in relation to section 2 of the 1999 Act were, in relation to Wales, transferred to the then National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, by the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

The Environmental Permitting (England & Wales) (Amendment) (No. 2) Regulations 2018 are being made on a composite basis and under the negative procedure.

4. Purpose & intended effect of the legislation

This Instrument amends the 2016 Regulations so as to transpose the revised requirements contained in the Directive, laying down basic safety standards for the protection against the dangers arising from exposure to ionising radiation. The Instrument ensures the highest standards of protection for members of the public from the dangers arising from ionising radiation, whilst also implementing some additional measures to streamline and clarify existing legislation.

Transposing BSSD requirements with regards public radiation exposures into domestic legislation will bring Wales into line with international standards (agreed at the IAEA and in the Euratom BSSD Directive) and will comply with Welsh Government's obligation under the Government of Wales Act 2006 to fully implement EU legislation.

5. Consultation

A UK-wide public consultation on the proposals for transposing the public exposures and justification requirements in the Directive took place between 5 October and 15 November 2017 (six weeks). The consultation included a draft of the proposed amendments to the 2016 Regulations. The consultation asked 12 substantive questions, of which 7 focused on the proposed amendments to radioactive substances regulation.

48 consultation responses were received from professional bodies, industry associations, private and public sector organisations engaged in radioactive substances activities and from individual respondents from across the UK. The majority of consultees supported the proposals. Below is an overview of the general responses from consultees on the proposed changes:

- In relation to the removal of the requirement for information about High Activity Sealed Sources (HASS) to be reported on an annual basis, 57%

of respondents agreed that annual reporting was unnecessary and the frequency of reporting should be reduced. Following consultation, it has decided that the appropriate interval for reporting is 5 years.

- 88% of people agreed with the proposed changes for Naturally Occurring Radioactive Material (NORM) waste, as long as the changes do not impact on public safety. All landfill sites are required to follow the As Low as Reasonably Practicable (ALARP) principle^[1], so the proposed changes do not increase public exposure.
- 84% of consultees agreed that geothermal energy production should be subject to radioactive substances regulation.
- 92% of respondents agreed that changes to reduce the regulatory burden for the remediation of sites contaminated with radium from legacy activities are proportionate. 36% of respondents thought “legacy” should not be defined by reference to a date, but by a description. It was agreed that, if a date were used, this should be the commencement date of the relevant legislation. Prior to the 1996 BSSD coming into force on 13 May 2000, activities involving radioactive substances were subject to less stringent regulation, so this is an appropriate date to use.
- 90% of respondents agreed that it would be proportionate to exempt accumulation and disposal of NORM wastes where flaring and venting are the only radioactive substances activity taking place in oil and gas production.
- The full government response to the consultation can be found at the gov.uk website.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been completed for these Regulations. The Regulations implement the Basic Safety Standards Directive (2013/59/Euratom) and failure to implement would risk infraction proceedings against the UK and the associated costs.

The Regulations are considered to be deregulatory, with the proposals around i) additional exemptions for ‘Naturally Occurring Radioactive Material’ (NORM) from certain regulatory requirements and ii) changes to the system for determining which sources are ‘High Activity Sealed Sources’ (HASS) both expected to generate cost-savings for private businesses and the regulators. The Regulations are expected to impose only small additional costs on private businesses operating in Wales, with those costs reflecting the time required for organisations to familiarise themselves with the new requirements.

[1] “As low as reasonably practicable” - this principle of radiation protection involves weighing a risk against the trouble, time and cost needed to control it.

SL(5)206 – The Environmental Permitting (England & Wales) (Amendment) (No. 2) Regulations 2018

Background and Purpose

These Regulations are part of a package of measures to transpose Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing Council Directive 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (the Basic Safety Standards Directive).

These Regulations transpose provisions of the Basic Safety Standards Directive relevant to the environmental permitting regime as it applies to radioactive substance activities, by amending the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154). These Regulations also make amendments to remove unnecessary regulatory burdens.

The Regulations also amend existing references to, and definitions from, directives repealed by the Basic Safety Standards Directive.

Procedure

Negative – composite.

Technical Scrutiny

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

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

Merits Scrutiny

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

Implications arising from exiting the European Union

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

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

April 2018



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

SeneddCLA@assembly.wales

25 April 2018

Dear Mick

I am writing in response to your letter of 17 April about the Welsh Government's response to your Committee's report on scrutiny of regulations made under the European Union (Withdrawal) Bill.

I am genuinely sorry if there has been any confusion about the Welsh Government's approach to the Committee's recommendations, particularly recommendation two, which was that the recommendation of the sifting committee should be binding, save where the Assembly resolves otherwise. To a large extent this is simply a result of the accelerated timescale with which your Committee's report was considered by the Assembly, for reasons I understand.

Your report was published on 16 February and the debate took place on 7 March (with the motion tabled on 28 February). At that point the Welsh Government had simply not had adequate time to fully consider the implications of all the recommendations, and normal practice in such circumstances is for the Assembly to be asked to take note of the Committee's report. During the debate the Leader of the House explained that the Welsh Government fully understood why the Committee had sought the endorsement of the Assembly before the Welsh Government had had the opportunity to respond formally, but she equally was very clear that as we had not had the chance to respond formally, our support for the motion was qualified insofar as we were reserving our position in respect of recommendation two, and that we wished to reflect further before we formally responded.

Having carefully considered our position, the Leader of the House responded formally to you on 27 March, confirming our position on the Committee's recommendations, and the reasons why we do not agree with recommendation two. I subsequently wrote to the Secretary of State for Wales on 29 March, copied to you, to the chair of EAAL Committee, and to the Llywydd.

Bae Caerdydd • Cardiff Bay
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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.

As we made clear in the debate, and in our formal response to your Committee, we believe that in the vast majority of cases we will accept the recommendation of the sifting committee, particularly bearing in mind the ability of any Member to table a motion of annulment under Standing Order 27.2 for any statutory instrument made subject to the negative resolution procedure. However, there may be situations where – for reasons of urgency – we will need to act more quickly than the affirmative procedure provides for, and it is essential the government retains the flexibility to do so.

I am copying this letter to the Llywydd and to the Leader of the House and Chief Whip.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Mick Antoniw AM

Chair, Constitutional and Legislative Affairs Committee

National Assembly for Wales

Cardiff Bay

CF99 1NA

25 April 2018

Dear Mick,

Scrutiny of regulations made under the European Union (Withdrawal) Bill

Thank you for your letter dated 17 April 2018 regarding scrutiny of regulations made under the European Union (Withdrawal) Bill. Also, for sharing with me your letter to the First Minister regarding the Assembly's decision on 7 March to endorse recommendations 1, 2, 4 and 7 in your Committee's recent report on the Scrutiny of regulations made under the European Union (Withdrawal) Bill.

You raise matters of importance and I share your concerns. I will give this further consideration following your Statement tomorrow to the Assembly on this matter and the receipt of the First Minister's response to your Committee.

Yours sincerely,

Elin Jones AM

Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

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Pack Page 31



David Rees AM
Chair
European Affairs and Additional Legislation Committee
National Assembly for Wales
SeneddEAL@assembly.wales

25 April 2018

Dear David

I am writing in response to your letter of 23 March about scrutiny arrangements for the delegated powers set out in the European Union (Withdrawal) Bill.

Your letter refers to the Secretary of State for Wales's letter to the Llywydd of 16 March and to the Constitutional and Legislative Affairs Committee's recent report about the scrutiny of regulations made under the Bill.

I enclose a copy of the Leader of the House and Chief Whip's letter to the chair of CLAC, dated 27 March, which explains the Welsh Government's position in relation to each of its recommendations.

You also ask about our position in respect of the enhanced explanatory information, which the Bill requires must accompany regulations laid before Parliament under the delegated powers contained in the Bill.

CLAC did not make recommendations in respect of this information so it is not covered in our response to its report. However, I can confirm the Welsh Government's position is that the information envisaged to be included in the statements is material we would expect to provide in any event and we therefore see no particular need to extend to Welsh Ministers the requirement to produce explanatory material in respect of regulations laid before the National Assembly.

I am copying this letter to the Llywydd and to the chair of CLAC.

Yours sincerely

CARWYN JONES

Bae Caerdydd • Cardiff Bay
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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.

Chloe Smith MP
Parliamentary Secretary (Minister for the Constitution)
Cabinet Office

26 April 2018

Dear Minister

Understanding of devolution

On 2 February 2018 we published our report [UK governance post-Brexit](#). A summary report of the evidence will be published shortly.

Our report made nine recommendations; the first four recommendations concern strengthening the existing Joint Ministerial Committee (JMC) followed by a more fundamental reform to create a decision-making UK Council with an independent dispute resolution, arbitration and adjudication mechanism.

Our report also considered the understanding of devolution by civil servants in Whitehall and indicated that we would write to the UK Government to seek clarification on how devolution is supported across Whitehall.

Many witnesses to our inquiry highlighted the poor knowledge and understanding of devolution that exists in parts of Whitehall, despite some laudable efforts to remedy the situation by successive administrations.

One of the drivers for our inquiry was our experience of, and a desire to learn lessons from, the UK Government's handling of the Wales Bill (our summary report will identify some of the evidence we heard on this issue). We had become concerned that Whitehall departments were able to exert too much influence over the architecture of devolution, despite partial and inconsistent understanding and knowledge. In our view this was the root cause of the problems that surrounded the draft Wales Bill and the Bill itself, which



meant that our extensive work on this legislation was largely focused on highlighting problems and identifying potential solutions, rather than contributing positively as part of a constructive constitutional dialogue.

We recognise that training is made available to civil servants on devolution. However it was surprising to hear in our evidence sessions that there is some way to go before there is a clear understanding within the civil service of the way in which powers are now held in the different nations of the UK. As if to emphasise this point, we were told that training on the new reserved powers model under the *Wales Act 2017* would be rolled out across the Civil Service prior to the Act's introduction. Given the central role of Whitehall departments in shaping the Act, these comments added to our sense that many Whitehall departments may have been making decisions on reserving powers without a clear understanding and knowledge of devolution, or the implications of the decisions that they were making.

Regrettably, the legislative outcome is that in our view the *Wales Act 2017* is an unnecessarily complex and restrictive settlement.

The lack of understanding about devolution was highlighted to us as recently as this week with the publication of a supplementary memorandum concerning the delegated powers in the European Union (Withdrawal) Bill relating to amendments tabled by the UK Government on 23 April. Paragraph 28 of the memorandum concerning the sifting of statutory instruments made under the Schedule 2 powers by the Welsh Ministers appears to confuse the roles of the National Assembly and Welsh Government as legislature and executive, stating:

“The UK Government has consulted the devolved administrations on where additional scrutiny requirements applied to UK ministers in the Bill should be extended to the corresponding powers for devolved authorities. The Welsh Government, having sought the views of the National Assembly for Wales, has requested the sifting committee procedure should apply where the Welsh Ministers lay negative instruments under their Schedule 2 powers.”

This text appeared despite the UK Government receiving notification of the National Assembly's formal position on these issues in a letter from the Llywydd on 22 March.



In light of our concerns, I would welcome clarification on the following points:

- The new devolution settlement came into force on 1 April. Are you satisfied that all civil service departments are fully conversant with the new reserved powers model in the *Wales Act 2017*?
- Recommendation 4 of our report included a call for Devolution Guidance Notes to be subject to a thorough overhaul and public consultation. In the meantime, it would be helpful to know the status of any revised Devolution Guidance Note that accompanies the new reserved powers model. The existing Devolution Guidance Note 9 was intended to help Whitehall departments have an understanding of the conferred powers model so that UK Government Bills were developed with devolution in mind. What guidance has been available to Whitehall departments over the last few months in respect of developing Bills on the basis that devolution in Wales would be moving to a reserved powers model?

Our observations not only influenced our recommendations advocating reform of the JMC, but also suggest that the civil service machinery that supports UK governance needs to adapt and change to the new UK constitutional position that will emerge as we leave the European Union.

In our report we said that the internal Civil Service apparatus supporting devolution as described to us appears complex and muddled. In order to help improve our understanding of how the civil service machinery works, it would be helpful to have your observations on the following:

- The staffing structure does not appear to mirror the political structure, with both Wales and Scotland having Secretaries of State but not Permanent Secretaries, while Northern Ireland has both. Why is this the case?
- What are your observations on our view that it is problematic for the most senior official in the Wales Office with the most direct contact with the Secretary of State for Wales and potentially knowledge and understanding of devolution, not to be involved in important discussions at Permanent Secretary level that may impact on Wales?
- Whether it is appropriate for the Head of UK Governance Group (with responsibilities for Wales and Scotland) and Permanent Secretary at the Department for Exiting the EU to be the person to whom the Head of the Wales Office is ultimately accountable? Is there a danger of blurring the lines of accountability and how are conflicts of interest resolved?



Another theme that emerged in our work and which is relevant to understanding of governance in the UK is that the Civil Service supports the UK Government in its role as the executive for the UK and, in devolved areas, England. We would welcome your observations on this anomaly and what plans the UK Government has to address it post-Brexit.

I am copying this letter to Rt Hon Alun Cairns MP, the Secretary of State for Wales and Philip Rycroft CB, Head of UK Governance Group and Permanent Secretary at the Department for Exiting the European Union.

I look forward to receiving your response.

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

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



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Agenda Item 9

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

Document is Restricted

Agenda Item 11

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

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Mark Drakeford AM/AC
Cabinet Secretary for Finance



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref

Rt Hon David Lidington CBE MP

24 April 2018

Dear David

European Union (Withdrawal) Bill: amendments and Intergovernmental Agreement

Further to the intensive trilateral discussions which have taken place between our two Governments and the Scottish Government, I am writing to tell you that the Welsh Government, on basis of the intergovernmental agreement, will support an LCM linked to the EU (Withdrawal) Bill. Although the position we have currently developed does not meet the whole of our aims I recognise that the trilateral discussion process represents very significant progress from where we started.

As you know, our position is that the best way forward within the framework of EU legislation is for the Governments of the UK to work together to create common approaches where we agree they are needed. We welcome the fact that this work is underway although I would have preferred such arrangements to have been developed without the need for legislative constraints, with respective Governments trusting each other's undertakings not to legislate in areas where we agree UK wide frameworks are needed until they have been agreed.

Nevertheless I recognise that the UK Government's latest amendments to Clause 11, together with the commitments and assurances set out in the Inter-Governmental Agreement, represent a significant step forward and a recognition that the default position is that responsibility for policy in areas devolved to Wales should continue to lie with the National Assembly.

Instead of the blanket restriction on the devolved legislatures amending retained EU law, with the possibility of specific areas being 'released' into devolved competence, the amendments recognise that only certain elements of EU law, specifically related to areas where it is agreed frameworks are needed, should be subject to a new, temporary, constraint. This is clearly much more compatible with the 'reserved powers' model of devolution.

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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 Agreement also effectively means that secondary regulation-making powers which will not normally be used to put in place these new temporary restrictions on competence without the consent of the National Assembly for Wales. You have agreed not normally to put such regulations to Parliament for approval unless the devolved legislatures and administrations have given their consent. Moreover, in the event of a legislature withholding consent, Parliament will be asked, on the basis of even-handed information, to decide if the regulations should be made. We accept that, within our current constitutional system, this responsibility rests with Parliament, though as you know, we have put forward constructive proposals as to how inter-governmental working could be fundamentally reformed to minimise the risk of deadlock between the Governments. We look forward to the UK Government engaging more substantially with these ideas.


The Agreement also contains explicit assurance of a 'level playing field' in terms of legislation, in that you have undertaken not to bring forward new legislation relating to England in areas where our legislative competence is constrained. In addition your previous assurances that the constraints envisaged would be temporary are now reflected in the proposed amendments. Finally, the Agreement removes any doubt that primary legislation brought forward to put in place new UK-wide frameworks – for example, on agricultural support - could be construed as being outside the Sewel convention.

More generally, I believe the collaborative process of working set out in the Agreement will form the basis of a more equitable approach to inter-governmental working than has been the case with the JMC to date and will strengthen inter-governmental relations. In this context, we must all step up engagement on the development of frameworks and the broader work of the JMC (EN). Alongside our support for an LCM on the basis of the amendments laid in Westminster, the Welsh Government is committed to continued dialogue to explore refinements to the inter-governmental agreement on which we have all been working.

In summary, the Agreement and the new UK Government amendments to the EU (Withdrawal) Bill represent a substantive change in approach that balances our concerns on the risks to our devolution settlement and your position to seek certainty in law as we leave the European Union. On the basis of this Agreement, the Welsh Government intends to recommend to the National Assembly for Wales that it gives legislative consent to the EU (Withdrawal) Bill, we will also take steps to repeal our Law Derived from the European Union (Wales) Bill, and the Attorney General will withdraw his reference of the Bill to the Supreme Court.

I am copying this letter to the Minister for Negotiations on Scotland's Place in Europe, the Secretary of State for Exiting the European Union and the First Minister of Wales.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

Mark Drakeford AM/AC
Cabinet Secretary for Finance



Cabinet Office

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Our Ref: CDL/1659

Mark Drakeford AM
Cabinet Secretary for Finance and Local Government
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

24 April 2018

Dear Mark

EU (WITHDRAWAL) BILL

Thank you for your letter of 24 April and for your telephone call earlier today. I am grateful for the work that you and your officials have put into our current proposals.

I am extremely pleased that we have been able to work together to develop a proposal on clause 11 that provides reassurance on the points you have raised, whilst also continuing to provide legal certainty across the UK. I am grateful to you for confirmation that you will put forward a recommendation of legislative consent for the EU (Withdrawal) Bill to the National Assembly for Wales.

I agree with you that our joint working over recent months has shown how successful our collaboration can be and the underlying strength of our intergovernmental relations. We are committed to continuing to work together on designing and implementing new frameworks that will replace the existing EU arrangements in place across the UK.

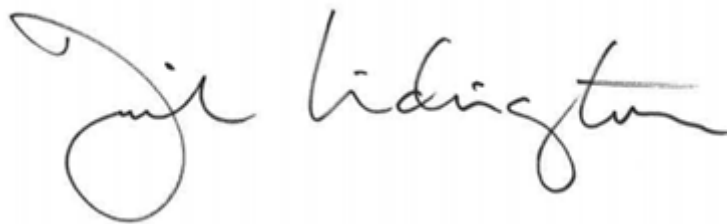
It is important that our governments have found a way forward that prioritises legal certainty for people and businesses across the UK. As was made clear in the Lords Committee debates on the EU (Withdrawal) Bill, we need to be able to protect the UK internal market as we leave the EU and give certainty that that will happen even where agreement between governments cannot be reached. That is why working with you we have developed a model which emphasises early, joint collaborative working and favours agreement with the devolved legislatures, while having a clear and transparent process when agreement cannot be reached. It is right that the UK Parliament provides that certainty.

We have come to an agreement which provides maximum reassurance and certainty and will be delivered through amendments to clause 11 and through the draft intergovernmental agreement that sits alongside the legislation. I hope that the Scottish Government will continue

to work with us so that we can maintain the prospects for its agreement both on the Bill and the inter-governmental agreement.

As part of our agreement, we have also agreed that steps will be initiated to secure the repeal of the Law Derived from the European Union (Wales) Bill before the EU (Withdrawal) Bill receives Royal Assent so that our statute book is clear. We have each also agreed to ask the Attorney General and the Counsel General to make or support applications to the Supreme Court to withdraw the Reference made in respect of that Bill.

I am copying this letter to the the First Minister of Wales, First Minister and Deputy First Minister of Scotland and Michael Russell MSP.

A handwritten signature in black ink, reading "David Lidington". The signature is written in a cursive style with a large, looping initial "D".

Rt Hon David Lidington CBE MP

**Intergovernmental Agreement on the European Union (Withdrawal)
Bill and the Establishment of Common Frameworks¹**

1. The UK Government and the Devolved Administrations ('the governments') will work together to ensure that the European Union (Withdrawal) Bill ('the Withdrawal Bill') and associated secondary legislation creates a fully functioning statute book across the UK on exit from the European Union. Building on the principles on the establishment of common frameworks ('the principles') agreed by the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) in October 2017, the governments will also continue to work together to create future common frameworks where they are necessary.
2. This agreement and attached supplementary 'Memorandum on the EU (Withdrawal) Bill and the Establishment of Common Frameworks' ('the Memorandum'), together with agreed proposed amendments to the Withdrawal Bill, form the basis of an agreed approach between the governments. If the UK Parliament makes the amendments, the Devolved Administrations will recommend that the Devolved Legislatures give legislative consent to the Withdrawal Bill.
3. This agreement is without prejudice to the UK's Withdrawal Agreement (including any Implementation Period) and future relationship with the EU. It is also without prejudice to the Devolved Administrations' policy positions in relation to the UK's withdrawal from the EU.
4. This agreement respects established constitutional conventions and practices. Consistent with those, the governments reaffirm their commitment to seek to proceed by agreement.
5. The governments agree that EU law should be temporarily preserved where it is envisaged that future common frameworks with a legislative underpinning may be necessary. The governments agree that this is likely, in whole or in part, in 24 areas. For the devolved institutions, temporary preservation will be given effect through regulations made under the provisions in clause 11 of and Schedule 3 to the Withdrawal Bill ('clause 11 regulations'). For England, temporary preservation will be given effect by the UK Government committing not to bring forward legislation that would alter areas of policy in so far as the devolved legislatures are prevented from doing so by virtue of clause 11 regulations, for as long as those regulations are in force. It is possible that some additional areas that the UK Government believes are reserved, but are subject to ongoing discussions between the governments, will also be subject to clause 11 regulations.
6. The implementation of this agreement will result in the UK Parliament not normally being asked to approve clause 11 regulations without the consent of the devolved legislatures. The UK Government commits to make regulations through a collaborative process and

¹ As of 24 April 2018, the UK Government and the Welsh Government have agreed to the terms of this IGA and Memorandum. The IGA and Memorandum remain open to the Scottish Government and a future Northern Ireland Executive.

in accordance with this agreement and the Devolved Administrations commit not to unreasonably withhold recommendations of consent. In the absence of the consent of the devolved legislatures, UK Ministers will be required to make an explanatory written statement to the UK Parliament if a decision is taken to proceed. This will be accompanied by any statement from the relevant devolved Ministers on why, in their view, the consent of their legislature has not been provided.

7. The power to make clause 11 regulations will expire 2 years after exit day (if not repealed earlier) in line with other powers in the Withdrawal Bill, while the temporary clause 11 regulations themselves will last for a maximum of five years after they come into force.
8. Under this agreement, the UK Government has committed to ensure that clause 11 regulations will not affect the operation of the Sewel convention and that related practices and conventions in relation to future primary legislation, including legislation giving effect to common frameworks, will continue to apply. Accordingly, those established practices and conventions will operate as if clause 11 regulations had not been made.
9. In the interests of transparency and accountability, the Withdrawal Bill will contain a duty on UK Ministers regularly to report to the UK Parliament on progress on implementing common frameworks and removing temporary clause 11 regulations and powers. UK Ministers will formally send any such report to the devolved administrations. Ministers in the devolved administrations will share this report with their own legislatures as part of the reporting arrangements agreed between them.
10. As part of the implementation of this agreement, the governments agree that steps will be initiated to secure the repeal of Bills passed by the devolved legislatures as possible alternatives to the Withdrawal Bill, before the Withdrawal Bill receives Royal Assent. The governments will also ask their principal legal officers to make or support applications to the Supreme Court by consent to withdraw the references made to that Court in respect of such Bills.

Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks

1. This memorandum between the governments provides further detail on how the Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks will be put into operation by the governments.

Common frameworks

2. At the meeting of the Joint Ministerial Committee (EU Negotiations) on 16 October 2017, the governments agreed a set of principles that would determine the creation of common frameworks. Using these principles, the governments have made a joint initial assessment of the 153 areas of EU law that intersect with devolved competence in one or more settlement, assessing the impact that future divergence would have on the following criteria:
 - a. the functioning of the UK internal market, while acknowledging policy divergence;
 - b. compliance with international obligations;
 - c. the UK's ability to negotiate, enter into and implement new trade agreements and international treaties;
 - d. management of common resources;
 - e. the administration of and provision of access to justice in cases with a cross-border element; and
 - f. the security of the UK.
3. The UK Government published its analysis of the 153 areas, based on joint work between the governments, on 9 March 2018. This includes 24 policy areas where frameworks may require to be underpinned through subsequent primary legislation in whole or in part; 82 areas where non-legislative frameworks are being explored; and 49 areas where no further action is thought to be necessary. Also included in the analysis are 12 areas that the UK Government believes are reserved, subject to ongoing discussions between the governments.
4. 'Deep Dive' sessions between the governments, held without prejudice to the views of Ministers in each administration, have been used to begin to test and refine the analysis. These sessions indicate that legislative frameworks may not be necessary in all of the 24 areas identified, and that only specific elements of some areas will require legislation, with the remainder of the framework being established in a memorandum of understanding or other non-legislative approach. Deep dive sessions have also begun to explore areas where non-legislative frameworks are envisaged and cross-cutting issues, and the DAs role in them, including the governance of frameworks, the functioning of the UK internal market, and trade agreements.
5. Further discussions between the governments are now required to define the precise scope and form of future common frameworks. Deep dives in May and June 2018 will refine policy thinking on legislative frameworks and cross-cutting issues in conjunction

with a broader review of intergovernmental relations. Discussions on non-legislative frameworks are underway, but will be the focus on deep dive discussions from June onwards. The Joint Ministerial Committee (EU Negotiations) will retain oversight of the frameworks programme and will review the outcome of deep dive discussions periodically.

6. As these discussions proceed, It is anticipated that regulations made under clause 11 and related provisions will be made for all or part of the 24 areas where legislation may be required, and in such other relevant areas as the governments seek to agree to be appropriate, as set out in **Annex A**.

Clause 11 Regulations

7. Clause 11 regulations will be made in accordance with the following process, underpinned by provisions in the Withdrawal Bill:
 - a. Building on the 'Deep Dive' process, which has been a collaborative effort between the governments, discussions will take place between the governments to seek to agree the scope and content of regulations. This process will continue to report into JMC(EN).
 - b. Following those discussions between the governments, a UK Minister will formally send draft clause 11 regulations to the relevant devolved administration(s), notifying the relevant Presiding Officer(s) of the relevant devolved legislature(s) that the regulations have been sent.
 - c. Where the draft regulations have been developed in line with this agreement, the relevant devolved administration(s) will lay them before their legislature(s) and will not unreasonably withhold an accompanying recommendation to their respective legislature(s) to provide consent.
 - d. If the consent of a devolved legislature is not provided within 40 days of the draft regulations being sent to the relevant devolved administration, the UK Minister may decide either not to proceed with the regulations or to ask the UK Parliament to approve the regulations. If a UK Minister decides to proceed with the regulations, the Minister must provide a written statement to the UK Parliament indicating the reasons why, in the Minister's view, the devolved legislature did not provide consent.
 - e. The relevant devolved administration(s) will also provide a written a statement to the UK Parliament setting out why, in their view, the consent of their legislature has not been provided.
 - f. In these circumstances, the UK Minister may make the regulations where they are approved by the UK Parliament.

Use of Concurrent Powers in the Withdrawal Bill

8. The UK Government will be able to use powers under clauses 7, 8 and 9 to amend domestic legislation in devolved areas but, as part of this agreement, reiterates the commitment it has previously given that it will not normally do so without the agreement

of the devolved administrations. In any event, the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency.

9. The UK Government will bring forward amendments to Schedule 2 to the Withdrawal Bill to enable the devolved administrations to amend retained directly applicable EU law which relates to areas that are otherwise devolved except where clause 11 regulations have been made. While the UK Government will also be able to use the powers in clause 7, 8 and 9 to amend this retained directly applicable EU law, as part of this agreement it commits it will not normally do so without the agreement of the devolved administrations. Where the UK Government is proposing to amend retained directly applicable EU law which relates to areas that are otherwise devolved, but which cannot be amended by the devolved administrations because clause 11 regulations have been made, the UK Government commits that it will first consult the relevant devolved administration(s).

Annex A: policy areas that are likely to be subject to clause 11 regulations

The governments are exploring the extent to which legislation could be required, in whole or in part, in 24 policy areas; these areas are likely to be subject, in whole or in part, to regulations made under the provisions in clause 11 of and Schedule 3 to the Withdrawal Bill ('clause 11 regulations') and are detailed below. It is possible that other areas that continue to be discussed by the governments will also be subject to clause 11 regulations - examples are provided below.

24 areas where legislation could be required, in whole or in part:

1. Agricultural support
2. Agriculture - fertiliser regulations
3. Agriculture - GMO marketing and cultivation
4. Agriculture - organic farming
5. Agriculture - zootech
6. Animal health and traceability
7. Animal welfare
8. Chemicals regulation (including pesticides)
9. Elements of reciprocal healthcare
10. Environmental quality - chemicals
11. Environmental quality - ozone depleting substances and F-gases
12. Environmental quality - pesticides
13. Environmental quality - waste packaging and product regulations
14. Fisheries management & support
15. Food and feed safety and hygiene law (food and feed safety and hygiene law, and the controls that verify compliance with food and feed law (official controls))
16. Food compositional standards
17. Food labelling
18. Hazardous substances planning
19. Implementation of EU Emissions Trading System
20. Mutual recognition of professional qualifications (MRPQ)
21. Nutrition health claims, composition and labelling
22. Plant health, seeds and propagating material
23. Public procurement
24. Services Directive

Other policy areas - which the UK Government believes are reserved (or excepted in the Northern Ireland Act 1998), but are subject to ongoing discussion with the devolved administrations - that could be subject to clause 11 regulations:

25. Food Geographical Indications (protected food names)
26. State aid

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.2)

EUROPEAN UNION (WITHDRAWAL) BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.

The European Union (Withdrawal) Bill (the “Bill”) was introduced in the House of Commons on 13 July 2017. . The most recent version of the Bill (HL Bill 79 as introduced in the House of Lords) was published on 18-01-2018 and can be found at [Bill documents — European Union \(Withdrawal\) Bill 2017-19 — UK Parliament](#)

Policy Objective(s)

2. The UK Government’s stated policy objective for the Bill is to ensure that the UK withdraws from the EU with maximum certainty, continuity and control. It aims to end the supremacy of European Union (“EU”) law in UK law and to convert EU law as it stands at the moment of exit into domestic law. The Bill also creates temporary powers for Ministers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has withdrawn, so that the domestic legal system continues to function correctly outside the EU. The Bill also enables domestic law to reflect the content of a withdrawal agreement under Article 50 of the Treaty on European Union once the UK leaves the EU.

Summary of the Bill

3. The Bill is sponsored by the Department for Exiting the European Union.
4. The Explanatory Notes set out the UK Government’s view that the Bill performs four main functions. It:
 - repeals the European Communities Act 1972
 - converts EU law as it stands at the moment of withdrawal into domestic law before the UK leaves the EU;
 - creates powers to make secondary legislation, including temporary powers to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU and to implement a withdrawal agreement; and
 - maintains the current scope of devolved decision making powers in areas currently governed by EU law.

Changes to the Bill since the publication of the first Legislative Consent Memorandum

5. The Welsh Government laid a Legislative Consent Memorandum in respect of the Bill (as introduced on 13 July 2017) on 12 September 2017, based on the version of the Bill as introduced to Parliament. The Memorandum confirmed that the Welsh Government would not be able to recommend to the Assembly that it gives consent to the Bill as drafted at that stage.
6. Since the publication of the first Memorandum, the Bill has been amended during scrutiny in the House of Commons and House of Lords. This Supplementary Memorandum sets out those changes to the Bill which require the consent of the Assembly. Annex 1 lists the clauses which were amended in the House of Commons. Annex 2 lists government amendments tabled at Report stage in the House of Lords and one non-government amendment that was agreed.
7. Consent is required for the provisions or amendments listed in both annexes either because they modify the Assembly's legislative competence or because they fall within the Assembly's legislative competence.
8. The Welsh Government's objections with the Bill as introduced and which subsequently led to proposed amendments jointly prepared with the Scottish Government being promoted in the House of Commons, related to four issues all of which have been substantially addressed in the amendments made or proposed to the Bill or the Inter-governmental Agreement related to it and published on 25 April:
 - The potential for Minister of the Crown powers to be used to make corrections to the Government of Wales Act: this power has been removed in respect of Clause 7 (and Clause 8 is being deleted in its entirety) and the necessary changes to the Government of Wales Act 2006, prepared in liaison with ourselves, included on the face of the Bill;
 - The fact that where Ministers of the Crown exercise concurrent powers to 'reach over' and make corrections to legislation within devolved competence, there was no requirement to gain the consent of the Welsh Ministers: while the Bill has not been amended, the Inter-governmental Agreement makes clear that UK Ministers will normally seek the consent of Welsh Ministers where UK Ministers legislate on matters the Welsh Ministers can legislate on, an undertaking equivalent to the Sewel Convention requirements;
 - The new constraints on executive and legislative competence proposed under Clause 11: this Clause is being substantially amended to make clear that only where regulations have been

made following an affirmative resolution of Parliament, and normally only with the consent of the National Assembly, will any new constraints on competence be introduced. These will be time-limited and specifically related to areas where it has been agreed that UK wide frameworks are needed and the Inter-governmental Agreement makes a clear and equivalent commitment that the UK Government will not bring forward legislation related to England in these areas for as long as any constraints on the devolved legislatures apply;

- The extent of restrictions placed on Welsh Ministers powers to make corrections to legislation within devolved competence, particularly in respect of retained direct EU law, compared to those of Ministers of the Crown: the blanket restriction on Welsh Ministers correcting direct EU law is being removed, and a restriction will only apply in areas where regulations have been made under Clause 11. The requirement for Welsh Ministers to seek the consent of Ministers of the Crown when making certain types of corrections within devolved competence has been replaced with a requirement to consult.

9. The Cabinet Secretary for Finance made an oral statement on 25 April updating the Assembly on developments in respect of the EU (Withdrawal) Bill [[Welsh Government | Oral Statement - The EU \(Withdrawal\) Bill](#)]. The statement outlined in further detail why the Welsh Government felt able to commend the Inter-governmental Agreement and the amendments related to it to Members.

Scrutiny of Welsh Ministers' subordinate legislation powers

10. Paragraphs 19-21 of the first Memorandum described the scrutiny arrangements which would apply to the subordinate legislation making powers provided to Welsh Ministers by clause 10 and Schedule 2. (<http://www.assembly.wales/laid%20documents/lcm-ld11177/lcm-ld11177-e.pdf>) These relevant provisions have been amended to reflect the removal of the power to establish a public authority and the removal of the power to make regulations to ensure continued compliance with international obligations.

11. In addition, Schedule 7 has been amended to provide for the establishment of a sifting committee of the National Assembly. The Welsh Ministers will be required to lay a draft of regulations that they consider should be subject to the negative resolution procedure. The sifting committee will then make a recommendation as to the appropriate procedure for the regulations in question.

12. The relevant amendments are further described in Annex 2.

Reasons for making these provisions for Wales in the European Union (Withdrawal) Bill

13. As set out in the first Memorandum, the Welsh Government agrees that legislation is necessary to provide clarity and certainty for citizens and businesses as we leave the EU. We accept in principle the need for provisions which convert EU law into domestic law, and provisions which create temporary powers to make secondary legislation to make corrections to laws that would otherwise no longer operate appropriately once the UK has left the EU. The Welsh Government also agrees that ideally such legislation should be made by Parliament, for the UK as a whole, as this would offer the greatest degree of consistency and certainty for citizens and businesses.

Welsh Government position on the Bill as amended

14. The Cabinet Secretary for Finance confirmed in his oral statement on 25 April that taken together, the amendments tabled by UK Government Ministers for Lords Report, and the associated Inter-Governmental Agreement [[Intergovernmental Agreement on the European Union \(Withdrawal\) Bill - GOV.UK](#)] which was published on 25 April, are sufficient to enable the Welsh Government to recommend that the National Assembly give its legislative consent to the Bill.

Conclusion

15. This supplementary memorandum describes the relevant changes requiring Assembly consent made to the EU (Withdrawal) Bill since introduction, and confirms the Welsh Government's position to now recommend that consent to the Assembly.

Rt Hon Carwyn Jones AM
First Minister of Wales
April 2018

ANNEX 1 – LEGISLATIVE CONSENT MEMORANDUM: EUROPEAN UNION (WITHDRAWAL) BILL – CLAUSES FOR WHICH CONSENT IS REQUIRED - AMENDMENTS MADE IN THE HOUSE OF COMMONS

Clause or Schedule amended	Effect
Clause 7(2) (Dealing with deficiencies arising from withdrawal).	Defines the scope of the Minister of the Crown’s powers to correct deficiencies in retained EU law with reference to an exhaustive list.
Clause 7(3) (Dealing with deficiencies arising from withdrawal).	Provides that there is a deficiency in retained EU law in circumstances where a Minister of the Crown considers it is of a similar category to any deficiency which falls within clause 7(2) or is of a kind described or provided for in regulations made by a Minister of the Crown.
Schedule 2, Part 1, paragraph 1(3) (Power to deal with deficiencies).	Confirms that the requirements in clauses 7(2) to (9) apply for the purposes of regulations made by a devolved authority under Part 1 of Schedule 2 with the exception of the reference to a Minister of the Crown in clause 7(3)(b).
Schedule 2, Part 1, paragraph 5 (Requirement for consultation in certain circumstances).	Removes the restriction which prevents a devolved authority from making regulations to correct deficiencies without the consent of a Minister of the Crown, by replacing it with a requirement to consult the Secretary of State instead.
Schedule 8, Part 4, Paragraph 27(5) and (6) (Retention of existing EU law).	Provides an exception from paragraph 3 of Schedule 1 which provides that there is no right of action in domestic law on or after exit day based on a failure to comply with any of the general principles of EU

	<p>law. Paragraph 27(5) permits certain legal challenges to the validity of retained EU law to be brought where these relate to anything which happened before exit day, and are made within three months of exit day.</p>
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ANNEX 2 – LEGISLATIVE CONSENT MEMORANDUM: EUROPEAN UNION (WITHDRAWAL) BILL – CLAUSES FOR WHICH CONSENT IS REQUIRED - AMENDMENTS TABLED FOR LORDS REPORT AND NON-GOVERNMENT AMENDMENTS AGREED AT LORDS REPORT

GOVERNMENT AMENDMENTS TABLED FOR LORDS REPORT

Clause/Schedule Number	Amendment(s) Number	Subject of Amendment
After Clause 6	26	A new clause which provides for the status of different categories of retained EU law and how those categories of law are to be amended. The provision draws a distinction between retained direct principal EU legislation (for example, an EU regulation which forms part of domestic law on and after exit day under clause 3) and retained direct minor EU legislation (anything other than retained direct principal EU legislation)
Clause 7	32A, 32B, 33A and 34A - 34D	The amendments restrict the deficiencies power in clause 7 from being exercised in certain ways. The power cannot be exercised to establish a public authority, impose or increase fees or amend the Government of Wales Act 2006. Those restrictions also apply to the Welsh Ministers equivalent regulation making power in Part 1 of Schedule 2 (paragraph 1).
Clause 11	89DA	The original clause placed a broad restriction on the Assembly's competence which would generally have prevented it from modifying retained EU law (subject to certain exceptions). Clause 11 has been

		<p>replaced with a new provision which only restricts the Assembly's competence (and that of the other devolved legislatures) in circumstances where a Minister of the Crown has made regulations specifying a description of retained EU law which cannot be modified by the Assembly.</p> <p>No regulations are to be made by a Minister of the Crown unless the Assembly has made a consent decision in relation to the laying of the draft, or a period of 40 days has expired without the Assembly having made such a decision.</p> <p>The Minister of the Crown's power to make regulations is limited to a period of two years beginning with exit day and any regulations made using the power will be revoked at the end of five years beginning with the time at which the regulations came into force.</p>
Schedule 2, Part 1, new paragraph 3A and 23A	89ZZD	Places restrictions on the Welsh Ministers competence to modify retained direct EU legislation when exercising the powers to correct deficiencies in retained EU law (3A) and to implement the withdrawal agreement (23A). This includes modifications that would breach section 109A of the Government of Wales Act 2006 if the provision were made in an Assembly Act.
Schedule 2, Part 3, paragraph 21(4)	89B	The amendment prevents the power to implement the withdrawal agreement from being exercised by a devolved authority to establish a public authority.
Schedule 2, Part 3, paragraph 28	89D	Amends the definition of devolved competence that is to apply to any regulations made by the Welsh Ministers to Implement the Withdrawal agreement under Part 3 of

		Schedule 2.
Schedule 3, Part 1, paragraph 2	92AB	Provision amended to reflect the amendments made to clause 11. This includes that the Welsh Ministers will not have the competence to make, confirm or approve any subordinate legislation in circumstances where the law being modified is of a description specified in regulations made by a Minister of the Crown.
Schedule 3, Part 2, new paragraph 36A	92DB	Amendment inserts a new provision in the Government of Wales Act 2006 (section 157ZA) which provides for explanatory statements to be provided in regulations made by a Minister of the Crown under section 80(8) or 109A of the Government of Wales Act 2006.
Schedule 3, Part 2, new paragraph 39A	92E	Amends the technical standards reservation in Part 2 of Schedule 7A to the Government of Wales Act 2006 (section C7, paragraph 77).
Schedule 7, Part 1, new paragraph 3A	70C	Paragraph 3A makes provision for a Committee of the Assembly to sift certain regulations involving Welsh Ministers which are subject to the negative procedure in circumstances where the regulations have been laid before the Assembly, along with a memorandum setting out the statement and the reasons for the Welsh Ministers opinion. The regulations cannot be made unless a Committee of the Assembly has either made a recommendation as to the appropriate procedure for the instrument or a period of 14 days has elapsed without a recommendation being made.
Schedule 7, Part 1, new paragraph 4B	72ZC	Paragraph 4B provides an exception from the sifting committee provisions in paragraph 3A in respect of certain regulations made by the Welsh

		Ministers in urgent cases.
Schedule 7, Part 2, new paragraph 13A	77E	Provides that paragraph 3A (Committee of the Assembly to sift regulations involving Welsh Ministers) applies to regulations made by the Welsh Ministers under Part 3 of Schedule 2.
Schedule 7, Part 3, new paragraph 18A	82	Inserts a new paragraph which provides for the anticipatory exercise of powers in relation to retained EU law. It provides that any power to make regulations under the Act which modifies retained EU law is capable of being exercised before exit day so that the regulations come into force on or after exit day.
Schedule 8, Part 1, new paragraphs 3A to 3F	111	Defines the circumstances where certain existing powers to make, confirm or approve subordinate legislation can be exercised to modify retained EU law. The amendments also provide for the parliamentary procedure which is to apply to the subordinate legislation in question, which depends on such factors as the category of retained law and the nature of the modification. For example, subordinate legislation which amends or revokes any retained direct principal EU legislation is to be subject to the same procedure that would apply before Parliament and the devolved legislatures as it would apply to that legislation if it were amending or repealing primary legislation.
Schedule 8, Part 1, new paragraphs 5A to 5C	112	Defines the circumstances where future powers to make, confirm or approve subordinate legislation can be exercised to modify retained EU law and provides for the

		parliamentary procedure which is to apply to the subordinate legislation in question.
Schedule 8, Part 1, new paragraph 5D	112A	Imposes a requirement on a relevant authority to provide an explanatory statement for instruments amending or revoking regulations made under section 2(2) of the European Communities Act 1972. This includes a requirement to make a statement as to why, in the opinion of the relevant authority, there are “good reasons” for the amendment or revocation.

NON-GOVERNMENT AMENDMENTS AGREED AT LORDS REPORT

Clause 5	15	Replaces clause 5(4) and (5). The provision provides that the Charter of Fundamental Rights is to form part of domestic law on or after exit day with the exception of the Preamble and Chapter V.
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By virtue of paragraph(s) vi of Standing Order 17.42

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