



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020**

**DATE**            **22 October 2020**

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

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

**The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020**

The 2020 Regulations amend a number of existing EU Exit instruments to ensure that they are still fit for purpose at the end of the Transition Period and makes EU Exit related amendments to, or revokes, a small amount of recent EU legislation which will become retained direct EU law It also includes some technical amendments to EU Exit instruments that are needed in consequence of the NI Protocol.

### European Directly Applicable Instruments amended by the 2020 Regulations

- Commission Decision 2000/532/EC replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste, and
- Commission Implementing Decision (EU) 2020/248 laying down technical guidelines for inspections in accordance with Article 17 of Directive 2006/21/EC of the European Parliament and of the Council.

### Subordinate legislation

- The Hazardous Waste (England and Wales) Regulations 2005
- The Marine Licensing (Exempted Activities) Order 2011
- The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 201

- The Environment (Amendment etc.) (EU Exit) Regulations 2019
- The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019
- The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019

#### Primary legislation amended

- The Environmental Protection Act 1990.

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

There is no impact on the Assembly’s legislative competence. The 2020 Regulations provide for these functions to be exercised by the Secretary of State in relation to Wales, but only with the consent of the Welsh Ministers.

The effect of the concurrent functions contained in this SI have potential to engage the consent requirements in Schedule 7B to GoWA and as such represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the OSSfW in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

### **The purpose of the amendments**

The 2020 Regulations will ensure that existing domestic and retained EU legislation will still be fit for purpose. For example, it updates references in domestic EU Exit legislation so that they refer to waste and resources Directives and Regulations as amended by the EU Circular Economy Package. It also makes EU Exit related amendments to, or revokes, recent EU legislation which will become retained direct EU law. The European Commission’s powers related to the Waste Framework Directive Article 7(1) will now be exercised by the Secretary of State and devolved administrations as appropriate.

The 2020 Regulations makes technical amendments, which can be grouped as follows:

- a. Transferring some of the European Commission’s functions in relation to article 7(1) in the Waste Framework Directive, which allows the European Commission to establish and review, in accordance with Article 7(2) and (3) of that Directive, a list of waste. This power has been exercised by the Commission to make Decision 2000/532, which sets out the list of waste types and their codes (EU waste codes). This power is being transferred to the Secretary of State and the DAs. The 2020 Regulations will allow the Secretary of State and the devolved administrations to establish a list of waste or amend the existing list of waste

(Decision 2000/532) as it becomes part of UK law (retained EU law) on EU exit, in line with the provisions in Article 7. Any amendments to the list of waste would be subject to public consultation. The use of this power would also be subject to consultation with relevant trade associations and waste producers.

- b. Inserting provisions into legislation for EU Directives to be read with modifications, where the modifications no longer work because the Directives have been amended. Omitting or simplifying modifications to Directives that are made by existing EU exit SIs, because on review they appeared unnecessary or unnecessarily complicated.
- c. Amending cross-references which existing EU Exit SIs insert into legislation, where the cross-references have become out of date due to recent legislative changes – in most cases, the instrument is updating existing EU Exit SIs so that they refer to the latest version of the EU waste and resources Regulations and Directives as amended by the EU Circular Economy Package.
- d. Making EU exit related amendments to, or revoking, recent EU legislation which will become retained direct EU law. This relates to EU legislation which has been adopted by the EU since the existing EU Exit SIs were made.
- e. Amending references to ‘exit day’ in existing EU Exit SIs. Commencement provisions in EU Exit SIs do not need amending, because the Withdrawal Agreement Act contains a general provision that SIs which were to come into force on exit day instead come into force on Implementation Period completion day. However, the general provision does not apply to other references to exit day which EU Exit SIs have inserted into legislation, and those references need amending individually to refer instead to IP completion day.
- f. Making some technical amendments to EU Exit SIs that are needed in consequence of the NI Protocol, where they are technical and can be made under s.8(1) of the European Union (Withdrawal) Act 2018 (some amendments will be able to be made under 8C. For example: EU Exit SIs have inserted definitions of terms such as “appropriate authority” into UK-wide legislation, which include a NI authority. For NIP Annex legislation, the amendments made by EU exit SIs will no longer apply to Northern Ireland, so the NI-specific references need to be removed. EU Exit SIs have amended general references to “EU legislation” to refer instead to “retained EU law”. In some cases, those references need further amending to include reference to NIP Annex legislation because, in relation to Northern Ireland, NIP Annex legislation will apply directly by virtue of the Withdrawal Agreement and s.7A EU(W)A, and will not be within the definition of retained EU law.
- g. References to Waste Framework Directive articles 5 and 6 were inserted by earlier EU Exit SIs (i.e. the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 (for primary legislation and EU Regulations and Decisions) and the Waste (Miscellaneous Amendments) (EU Exit) (No 2) Regulations 2019 (for domestic SIs / regulations)), which say that the Waste Framework Directive is to apply with modifications. The 2020 Regulations insert amended modifications to Articles 5 and 6 to reflect the latest wording in the Waste Framework Directive

2008 (Directive2008/98(EC)), which was last amended by Directive (EU) 2018/851.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://statutoryinstruments.parliament.uk/timeline/pBNWzAvN/SI-2020/>

### **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU. A Statutory Instrument Consent Memorandum is being laid in compliance with Standing Order 30.A.