

STATUTORY INSTRUMENT CONSENT MEMORANDUM

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

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Senedd if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 were laid before Parliament on 14 October 2020. The Regulations can be found at:

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

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018. It also corrects out-of-date references to EU legislation.
4. The SI makes amendments to:
 - The Environmental Protection Act 1990.

Relevant provision to be made by the SI

5. The changes made by these Regulations were required as the relevant EU legislation had been changed and new EU legislation had been adopted since the existing EU Exit SIs were made. Powers need to be repatriated to the UK, and some amendments were necessary as a consequence of the Northern Ireland Protocol.
6. The Regulations ensured that existing domestic and retained EU legislation will still be fit for purpose. For example, it updated references in domestic EU Exit legislation so that they referred to waste and resources Directives and Regulations as amended by the EU Circular Economy Package. It also made EU Exit related amendments to, or revoked, 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.

7. Part 3 of the Regulations amended primary legislation relating to the Environmental Protection Act 1990; omitting section 62A. As a consequential amendment to transferring the Article 7(1) power in relation to the List of Waste, the power in Section 62A of the Environmental Protection Act 1990 is being revoked.
8. This power allows the SoS in England, or Welsh Ministers in Wales, to list a waste as hazardous in the List of Waste established by Commission Decision 2000/532/EC. Once the Article 7(1) power has been transferred we don't consider there will be a need for the s.62A power. The rationale is that in circumstances where a certain waste is not listed as hazardous but displays Annex 3 properties, the obvious thing is for an amendment to be made to Decision 2000/532 to reflect that rather than exercise the s.62A power.

Why it is appropriate for the SI to make this provision

9. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

October 2020