



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc) (EU Exit) Regulations 2020**

DATE **15 October 2020**

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

SO30C – SI laid in Parliament, which amends secondary legislation in a devolved area

The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020

The 2020 Regulations contain provisions which fall within devolved competence. They amends the following legislation:-

Domestic Legislation

- The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019 (2019 Regulations), and
- The Fluorinated Greenhouse Gases Regulations 2015

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

The 2019 Regulations transferred functions falling within devolved competence to the Welsh Ministers and Natural Resources Wales.

The 2019 Regulations also provided the Welsh Ministers with a power to consent to the SoS exercising those Welsh Ministerial functions, in relation to Wales.

The 2020 Regulations contain one new function for the Secretary of State without encumbrance. This represents a practical decision taken to comply with the Montreal and NIP Protocols, and also reflects that the resources and expertise in this area sit with HMRC

and Border Force. Should the NIP come to an end this function will cease to exist.

The introduction of provisions to control imports and exports at the GB boundary rather than at the UK border, is critical to ensure that the integrity of the GB and EU F gas and ODS quota and licensing systems are maintained. It acknowledges the movement of F gases and ODS as an exception to the principle of unfettered market access for trade from NI to GB, to ensure that the UK continues to comply with its international obligations under the Montreal Protocol.

Existing enforcement functions within the UK are devolved in all but two areas (which relate to disposal and the power of customs to seize and detain goods). These existing devolved enforcement functions will remain, and the new SoS enforcement function will be added in over and above these existing devolved enforcement functions. The new enforcement function for the SoS is specific to imports/exports over the NI/GB border which for the purposes of compliance with the protocol is to be treated as an international border rather than an internal one. In practice it has been agreed that checks undertaken by Border Force on F-Gas and ODS at the NI/GB border will be documentary, rather than physical, and local enforcement agencies, such as Natural Resources Wales, Local Authorities and Port Health Authorities in Wales will still retain their enforcement role. While exact data is not available it is thought that the volume of goods which this will impact will be minimal.

Welsh Ministers still have the power to establish and operate our own systems if they choose to. In practice, however, the Welsh Government, UK, and Scottish Government intend to operate GB-wide F gas and ODS systems, which from the end of the Implementation Period will be administered by the Environment Agency. The detailed arrangements for long term cooperation between the UK Government and Devolved Administrations will be agreed through a Common Framework.

The purpose of the amendments

The 2020 Regulations are made in exercise of the exercise of the powers conferred by sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 and section 41(1) of the European Union (Withdrawal) Act 2020.

The 2020 Regulations corrects operability deficiencies necessary for the implementation of the Protocol. In particular it reduces the extent of the 2019 Regulations from the UK to GB, as NI will remain subject to the EU F gas and ODS Regulations under the Protocol. The 2019 Regulations, as amended by the 2020 Regulations will transfer powers previously held previously held by the EU Commission to England, Scotland and Wales.

The 2020 Regulations introduces provisions to control the movement of F gases and ODS between GB and NI. These provisions define that this movement will be deemed as imports/exports for the purposes of F gas and ODS trade. Controlling F gas and ODS trade between GB and NI is vital to maintain the integrity of the GB (and EU) F gas and ODS systems, and to implement the Protocol. It therefore supports our ability to meet the UK's obligations under the Montreal Protocol and, as such, is acknowledged as an exception to the principle of unfettered market access for trade from NI to GB.

The SIs and accompanying Explanatory Memorandums, setting out the effect of each amendment is available here:

<https://statutoryinstruments.parliament.uk/timeline/dXJbyQy9/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, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.