

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Our ref: MA-CG-3212-20

Mick Antoniw MS
Chair
Legislation, Justice and Constitution Committee
SeneddLJC@senedd.wales

02 November 2020

Dear Mick,

I am writing to notify you that the UK Government has laid The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020. The regulations are subject to the affirmative procedure and were laid in draft before the UK Parliament on 8 October.

The objective of the statutory instrument is to ensure that the UK statute book works coherently and effectively following the end of the transition period. It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation after the end of the transition period.

The SI amends the Interpretation Act 1978 and the equivalent Interpretation Acts passed by the devolved legislatures (including the Legislation (Wales) Act 2019) in relation to the interpretation of references to "relevant separation agreement law". The SI also amends the European Union (Withdrawal) Act 2018 (EUWA) to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read following the end of the transition period.

The SI makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies and provides a general gloss to ensure that the correct interpretation of the EU instrument applies.

The SI also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 and technical repeals to redundant provisions within primary legislation arising from EUWA.

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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.

Regulations 2 and 8 of the SI make consequential amendments to the Interpretation Act 1978 (c. 30) and the Legislation (Wales) Act 2019 (anaw 4) to make interpretative provision for references in domestic legislation to EU instruments which form part of relevant separation agreement law following the end of the transition period.

It is the view of the Welsh Government that the provisions described above relate to subject matters that are within the legislative competence of the Senedd. The term “relevant separation agreement law” has a broad definition in section 7C of EUWA. This includes domestic legislation that may be made by a Minister of the Crown or the Welsh Ministers to implement separation issues in Part 3 of the Withdrawal Agreement, such as matters relating to State aid and procurement which fall within the Senedd’s legislative competence. It also captures domestic legislation that may be made to implement the Protocol on Ireland/Northern Ireland, which could include provisions relating to a number of matters that are within the Senedd’s legislative competence, such as fisheries and food.

The SI and accompanying Explanatory Memorandum are available here:
<https://www.legislation.gov.uk/ukdsi/2020/9780348214055>

An earlier draft of the SI, with the same title, was laid on 8 October, then withdrawn, amended (but not in devolved areas) and re-laid. A Written Statement and Statutory Instrument Consent Memorandum for the earlier version of the SI were laid on 14 October.

I can confirm that the SI has no impact on the legislative competence of the Senedd or the executive competence of the Welsh Ministers.

There is no divergence between the Welsh Government and the UK Government on the amendments being made by the SI. It is to be made under section 23 of EUWA and section 41 of WAA which confer powers on a Minister of the Crown to make provision in consequence of both of those Acts. Equivalent powers to make consequential provision are not conferred on the Welsh Ministers and therefore the Welsh Ministers could not make a separate Welsh SI containing provision for the interpretation of legislation that is within the Senedd’s legislative competence.

As such, the SI does not initiate a formal consent process with Ministers of the Devolved Governments. Nevertheless, officials of the Welsh Government contributed to the drafting of the SI and the Counsel General and Minister for European Transition has written to the Chancellor of the Duchy of Lancaster to say that formal consent should have been sought.

However, a Statutory Instrument Consent Motion is being tabled and the Senedd will have the opportunity to consider and consent to the technical changes to the Legislation (Wales) Act 2019. The debate is scheduled for 17 November to be ahead of the consideration in the UK Parliament.

It is our strong preference that laws made in Wales should, as part of the process of withdrawal from the EU, be amended in Wales. In the case of the changes made by this SI, the Welsh Ministers do not have the powers. Consequently, given the requirement for the amendments to be made by the end of the transition period, the only alternative way to make the amendments in Wales would be to take primary legislation through the Senedd and for it to receive Royal Assent by the end of the year. This would not be a proportionate use of time and resources.

The amendments have been considered fully and there is no divergence on them. Given the technical nature of the amendments and the need for interpretative provisions to be in place by the end of the year, it is considered appropriate for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. Furthermore, making the necessary consequential amendments in one instrument helps to promote the accessibility of the law during this period of change.

I am copying this letter to the Counsel General and Minister for European Transition.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive, flowing style.

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Minister for Finance and Trefnydd