

# SL(5)677 – The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020

## Background and Purpose

These Regulations make modifications to the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (“the 2019 Regulations”).

EU law lays down rules and frameworks for the management of waste. These rules are implemented in Wales primarily via domestic legislation. The 2019 Regulations amend that existing domestic legislation to make the necessary technical changes to ensure that it will continue to operate effectively after the UK has left the EU.

As a result of implementation of EU legislation since the 2019 Regulations were made, the correcting provisions made by the 2019 Regulations no-longer fully address the deficiencies in the operation of retained EU law which will arise as a consequence of leaving the European Union, and which they were intended to correct.

The minor and technical changes made by the instrument are necessary to ensure that retained EU legislation and the domestic EU legislation enforcing it continue to operate effectively.

## Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

## Technical Scrutiny

The following 2 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

These Regulations modify Article 6 of Directive 2008/98/EC to be read as if after paragraph 1, the following text was inserted:

*“1A. Any decision as to whether a substance or object has ceased to be waste must be made—*



*(a) in accordance with any regulations or retained direct EU legislation (within the meaning given to that expression in the European Union (Withdrawal) Act 2018) setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and*

*(b) having regard to any guidance published by the Welsh Ministers or the Natural Resources Body for Wales for the purposes of this Article."*

Further, Article 6 of Directive 2008/98/EC is modified to read as if "Those detailed criteria" is substituted with "Any detailed criteria set out in guidance as referred to in paragraph 1A".

The Directive is modified by regulations 2(2)(c), 2(3)(c), 2(4)(a) and 2(5)(b) of these Regulations.

Further explanation is sought as to whether, given the express reference to detailed criteria in (a) but not (b), the substituted wording "Any detailed criteria set out in guidance" should be to "Any detailed criteria set out in regulations or retained direct EU legislation".

## **2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 2(3)(a) omits "*(as substituted by regulation 4(2))*" from the definition of "waste facility" contained in regulation 2(1) of the Landfill Allowances Scheme (Wales) Regulations 2004. Regulation 2(3)(a) substitutes the amendment contained in regulation 7(2) of the 2019 Regulations. Although the omitted wording is contained in regulation 7(2) of the 2019 Regulations, it is not contained in the Landfill Allowances Scheme (Wales) Regulations 2004.

## **Merits Scrutiny**

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

A draft of these Regulations was laid before the Senedd for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

### **4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

We note that the subject heading of these Regulations is "Environmental Protection, Wales". The 2019 Regulations, which are amended by these Regulations, additionally include "Exiting the European Union, Wales" and "Waste, Wales" as subject headings. As subject headings help the reader to quickly identify the area effected by the instrument, it would have been helpful if the Regulations had included "Exiting the European Union, Wales" and "Waste, Wales".



**5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

In the second paragraph of Part 5 of the Explanatory Memorandum, there is a reference to the “Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020”. This reference also appears in the Welsh language version of the Explanatory Memorandum. It is assumed that this reference should be to these Regulations.

## **Implications arising from exiting the European Union**

Save for those set out above, no other implications are identified for reporting under Standing Order 21.3 in respect of these Regulations.

## **Welsh Government response**

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**9 November 2020**

