

Explanatory Memorandum to The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020.

This Explanatory Memorandum has been prepared by Resource Efficiency and Circular Economy Division within the Economy, Skills and Natural Resources Department and is laid before the Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs
25 November 2020

PART 1

1. Description

These Regulations are made under powers of the Welsh Ministers in paragraph 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 (c. 16), in order to address failures of retained EU law to operate effectively, and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

In particular, these regulations make modifications to the Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/414 (W. 96)) (“the 2019 Regulations”).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”).

The Legislation, Justice and Constitution Committee (LJCC) considered a draft of these regulations on 16 November 2020, and agreed that the negative procedure is appropriate for these regulations. A copy of the published LJCC’s report can be accessed via the following link:

<https://senedd.wales/laid%20documents/cr-ld13815/cr-ld13815-e.pdf>

3. Legislative background

- a) This instrument is being made using the power in Part 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

The SI Instrument amends The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019. EU law lays down rules and frameworks for the management of waste. These rules are implemented in Wales primarily via domestic legislation. The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 (the “2019 Regulations”) amend that existing domestic legislation under powers in the Withdrawal Act (except Part 2 see para 5.10 below) to make the necessary technical changes to ensure that it will continue

to operate effectively after the UK has left the EU, as set out below. These come into force on IP completion day and make modifications to the Waste (Wales) Measure 2010 (nawm 8), the Landfill Allowances Scheme (Wales) Regulations 2004 (S.I. 2004/1490 (W. 155)), the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W. 138)) and the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011 (S.I. 2011/1014 (W. 154)).

Why is it being changed?

As a result of implementation of EU legislation since the 2019 Regulations were made, including amendments to various EU Directives made under the EU Circular Economy Package, 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 continues to operate effectively.

What will it now do?

Directives are not being incorporated into domestic law under the Withdrawal Act and will not form part of Retained EU Law. Therefore, the 2019 Regulations made provision so that the domestic legislation that cross-refer to the various directives are amended (e.g. the directives are modified, where necessary, for the purpose of that legislation) to ensure that it continues to operate as intended after EU Exit. The minor and technical changes made by this instrument are necessary to ensure that the legislation it amends continues to operate effectively following the UK's withdrawal from the European Union.

Regulation 2 of these Regulations, which has effect immediately before IP completion day, makes amendments to the 2019 Regulations, in order to ensure that when they come into force, the instruments they amend, will function effectively on IP completion day.

Regulation 3 revokes certain minor provisions in the Hazardous Waste (Wales) Regulations 2005 which will cease to function effectively after IP completion day.

There is no change in policy and no change in environmental standards.

5. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

The Secretary of State has been consulted on the Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 fulfilling the requirement in paragraph 4, Schedule 2 of the EU (Withdrawal Act) 2018. The SoS replied on 17 November, has noted the provisions being brought forward and has confirmed that they have no concerns over the approach to this amendment.

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

Annex 2

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Waste (Wales)(Miscellaneous Amendments)(EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of Senedd Cymru (i.e. the negative procedure). This is the case because the changes being made are technical in nature and make no substantive changes to waste law in Wales”.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Waste (Wales)(Miscellaneous Amendments)(EU Exit) Regulations 2020 does no more than is appropriate”. This is the case because the instrument makes technical amendments only which are designed to address failures of retained EU law to operate effectively after exit day”.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. This is because the provisions ensure that protections provided by the Welsh legislation being amended continue to be operable after the UK leaves the European Union.

4. Equalities

- 4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS, has made the following statement(s) “The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 4.3 “In relation to the instrument, I, Lesley Griffiths MS have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”].

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.