

SL(5)230 – The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018

Background and Purpose

These Regulations amend the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (“the 2006 Regulations”).

Part 2A of the Environmental Protection Act 1990 sets out a regime for the identification and remediation of contaminated land. The 2006 Regulations made provision for Part 2A to apply with modifications for the purpose of dealing with harm attributable to any radioactivity possessed by any substance.

These Regulations are part of a package of measures to transpose Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation (“the Directive”).

These Regulations transpose requirements in Article 73(1) of the Directive and make amendments to reflect new definitions in the Directive.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. 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 Assembly

The 21-day rule requires 21 calendar days to pass between: (a) the date a statutory instrument which is subject to the negative procedure is laid before the Assembly, and (b) the date the statutory instrument comes into force. These Regulations come into force 19 days after they were laid before the Assembly, therefore there is breach of the 21-day rule.

We note the breach and thank Julie James AM, Leader of the House, for the explanation set out in her [letter dated 18 June 2018](#). We agree that the breach will have limited impact in Wales, given that there is no radioactive contaminated land identified in Wales.

2. 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 Assembly

We note how clear, helpful and transparent the Explanatory Memorandum is, and how helpful that has been to the Committee in scrutinising these Regulations.



3. Standing Order 21.3(iv) - that it inappropriately implements European Union legislation

These Regulations implement the Directive (i.e. Council Directive 2013/95 Euratom). However, implementation should have been completed by 6 February 2018. We welcome the reference to the delay in the Explanatory Memorandum and the explanation as to how most of the public exposure requirements of the Directive have already been implemented in previous domestic legislation. We also note the limited impact the delay might have in Wales by virtue of there being no radioactive contaminated land identified in Wales.

Nevertheless, we note the deadline has been missed by 4 months and we ask the Welsh Government to confirm whether it has been in correspondence with the European Commission in respect of the delay and whether there has been any realistic prospect of infraction proceedings being brought against the United Kingdom as a result of this delay.

Implications arising from exiting the European Union

With regard to the status of Euratom in the UK, the Nuclear Safeguards Bill (currently awaiting Royal Assent) makes provision for nuclear safeguards after the UK leaves Euratom.

The Nuclear Safeguards Bill provides, among other things, that the UK Government must make a request to the European Council for relevant Euratom arrangements to continue to have effect in the UK after exit day if, by 1 March 2019, sufficient arrangements have not been made in respect of new agreements between the UK and other international parties relating to nuclear safeguards and atomic energy.

In those circumstances, the UK Government request would be for the Euratom arrangements to continue to have effect in the UK after exit day until sufficient arrangements have been made in respect of the new international agreements.

Government Response

Response to Merits Scrutiny Points

Point 3.

The Welsh Government has not had any discussions with the European Commission regarding delayed transposition of the parts of the Basic Safety Standards Directive (BSSD) relating to radioactive contaminated land. The UK Government has been in contact with the Commission with regards the transposition of BSSD more broadly and it is not considered that there is a reasonable likelihood of infraction proceedings being brought against the UK Member State at this time.

Legal Advisers

Constitutional and Legislative Affairs Committee

21 June 2018

