

Explanatory Memorandum to the Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2018

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales 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 Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2018.

LESLEY GRIFFITHS AM
CABINET SECRETARY FOR ENERGY, PLANNING AND RURAL AFFAIRS
14 JUNE 2018

1. Description

The Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2018 implements Council Regulation (EU) 2017/997 of 8 June 2017 amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 'Ecotoxic'. These changes take effect from 5 July 2018.

This technical amendment sets out how to classify waste as hazardous due to its ecotoxicity.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This statutory instrument follows the negative procedure and is subject to annulment by the National Assembly for Wales. The Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2018 is made under the European Communities Act 1972 (ECA) section 2(2) enabling power. There is a choice of procedure in relation to instruments made under section 2(2) of the ECA. The Welsh Ministers consider that it is appropriate to follow the negative Assembly procedure when using the ECA power because the purpose of this instrument is to implement European Union (EU) obligations which are mandatory and technical in nature by the transposition deadline of 5 July 2018.

3. Legislative background

The Order amends the Marine Licensing (Exempted Activities) (Wales) Order 2011 and revokes the Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2016. Both of these Orders refer to the Waste Framework Directive. The amendments are technical in nature and involve mandatory implementation of EU obligations.

The Welsh Ministers are obliged by section 80 GOWA 2006, to implement EU obligations so far as they are able, in relation to Wales. The Welsh Ministers are currently designated for the purposes of exercising functions under the ECA in relation to the prevention, reduction and management of waste (S.I. 2010/1552). After 1 April, with the commencement of the new section 58B GOWA 2006, Welsh Ministers will continue to be able to exercise section 2(2) ECA 1972 functions, under the reserved powers model of the Wales Act 2017.

The amendment of references to the Waste Framework Directive is necessary because Council Regulation (EU) 2017/99 which is binding in its entirety and is directly applicable in the UK amends Annex III of the Waste Framework Directive to update the method for classifying waste as ecotoxic. Because this Annex and the Waste Framework Directive are referred to in the Marine Licensing (Exempted Activities) (Wales) Order 2011, those references must be updated to include the amendment.

Restating the references to the Waste Framework Directive will ensure references to Annex III are up to date and refer to the latest methodology for assessing HP 14. Article 2 of the Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2018 amends the definition of the Waste Framework Directive in the Marine Licensing (Exempted Activities) (Wales) Order 2011 and article 3 revokes the Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2016 as this Order is now redundant due to the amendment in The Marine Licensing (Exempted Activities) (Wales) (Amendment) Order 2018.

4. Purpose & intended effect of the legislation

The Waste Framework Directive provides the legislative framework for the collection, transport, recovery and disposal of both hazardous and non-hazardous waste. Hazardous waste is waste which contains hazardous properties harmful to human health or the environment, strict controls on its management and eventual disposal are in place which allows this type of waste to be tracked from cradle to grave.

Waste is classified as either hazardous or non-hazardous depending on the type and concentration of the substances it contains, these are categorised in Annex III to the Waste Framework Directive. Annex III provides a list of 15 hazardous properties (HP) which render a waste hazardous (HP1 – HP15) and include for example properties such as flammable (HP1), irritant (HP4), toxic, carcinogenic, infectious etc. If these properties are displayed by a waste it is treated as hazardous. HP14 refers to 'Ecotoxic' and describes the ecotoxicological potential of waste by indicating whether the waste presents immediate or delayed hazard for one or more sectors of the environment such as the aquatic environment.

The hazardous waste properties are based on the definitions for hazardous substances in EC Regulation No. 1272/2008 on the Classification, Labelling and Packaging of Substances and Mixtures Regulation (the "CLP"). The CLP was amended in 2015 updating the hazardous properties, however, the definition of HP14 'Ecotoxic' was not amended at the time because an additional study was needed to develop a suitable methodology for the assessment of ecotoxicity of chemicals. The study has now been completed and Council Regulation EU 2017/997 sets out the assessment criteria for HP14 and amends Annex III of the Waste Directive. Member States are required to amend their legislation to give effect to HP14 changes before Council Regulation EU 2017/997 comes into force on 5 July 2018.

The changes to the assessment method of HP14 are not expected to have any significant impact on the classification of waste in the UK as either hazardous or non-hazardous. The Regulation sets out a method of assessment that is almost identical to that already used by the UK for determining a waste's ecotoxicity. Therefore, the change will have little impact on the classification of waste as hazardous in the UK. There are no impacts on permitting arrangements as the changes to the definitions in the List of Waste made in

2015 have been incorporated into all permits issued since that change and where required older permits are being varied to the revised definitions. Prior to 5 July 2018 member states have been using a variety of methods to assess HP 14 which makes it difficult to assess the impact on the classification of waste which may be moved from Europe to the UK. The Council Regulation introduces a unified assessment of HP 14 across the EU, this should simplify procedures regarding cross border movements of waste.

5. Consultation

During the development of the changes to the ecotoxic assessment method consultants for the European Commission set up a working group to look at the various options for a new definition. The consultants collected information from stakeholders across the EU. The Department for Environment, Food and Rural Affairs (Defra) coordinated formal responses from the UK which included UK industry, via the hazardous waste stakeholder forum. A stakeholder consultation was held in Brussels by the European Commission prior to the report at which industry in the UK were invited to participate. The report of this study was published at the beginning of 2016. A workshop was held in February 2016 between industry, the regulators and the UK and Welsh Governments to agree a common position on the report in order to respond to the European Commission on the methodologies proposed. UK industry views were compiled and fed into the European Commission.

The Regulation sets out a method of assessment that is almost identical to that already used by the UK for determining a waste's ecotoxicity. Therefore there will be little or no policy impact of this change on the classification of waste in the UK.

The Council Regulation requires mandatory implementation of EU obligations. There is no scope to have a different definition of ecotoxicity for Wales. An information note explaining the proposal to update legislation was sent to key Welsh stakeholders and published on the Welsh Government website. Given the proposals were consulted on at the time they were developed by the European Commission and there being no scope to introduce a different definition no further comments have been sought.

6. Regulatory Impact Assessment (RIA)

These are technical amendments to legislation that will have little change to the way hazardous waste is assessed and classified in Wales. As these are routine technical amendments which are necessary to update regulations and have no major policy impact, no formal detailed RIA is required beyond the statement above. Additionally, the instruments have no impact on statutory duties (sections 77 -79 GOWA 06) or statutory partners (sections 72-75 GOWA 06).