

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Marine Environment (Amendment) (EU Exit) Regulations 2018

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Marine Environment (Amendment) (EU Exit) Regulations 2018 (“2018 Regulations”) were laid before the sifting committees in the Houses of Parliament on 20 November 2018. The Regulations can be found at:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-marine-environment-amendment-eu-exit-regulations-2018>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to address failures of retained EU law to operate effectively and other deficiencies arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018. It also covers operability amendments.
4. In addition, the SI makes amendments to:
 - The Marine and Coastal Access Act 2009 (“2009 Act”)

Relevant provision to be made by the SI

5. The amendments made to the 2009 Act by the 2018 Regulations, are to the following provisions:
 - a) Section 60(8) to reflect amendments to Scottish devolution legislation under Part 3 of Schedule 3 to the European Union (Withdrawal) Act 2018.
 - b) Section 76(2) to ensure operability of the provisions post exit from the European Union.
 - c) Section 123(5) to ensure operability of the provisions post exit from the European Union.
 - d) Section 141 removing the definition of a ‘third country vessel.’
 - e) Section 244 providing that EU Member States vessels and vessels from Gibraltar will be treated as ‘third country vessels.’
6. The changes identified in paragraph 4.3 (c) to (e) relate to functions that are within the legislative competence of the National Assembly for Wales, which could be the subject of a National Assembly Bill.

7. The National Assembly for Wales possess some legislative competence within the marine environment in relation to Wales, subject to reservations such as shipping, oil and gas. Further, the Welsh Ministers possess executive functions in relation to Wales in accordance with section 58B of the Government of Wales Act 2006 (designation for the purposes of s.2(2) European Communities Act 1972 in those areas where the National Assembly for Wales has legislative competence within the marine environment). The Welsh Ministers further possess various executive functions under a number of enactments in relation to Wales and the Welsh Zone.

Why it is appropriate for the SI to make this provision

8. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

26 November 2018