

## **STATUTORY INSTRUMENT CONSENT MEMORANDUM**

### **Environment (Amendment etc) (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 Environment (Amendment etc) (EU Exit) Regulations 2018 (“2018 Regulations”) were laid before the sifting committees in the Houses of Parliament on 4 December 2018. The Regulations can be found at:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

### **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:
  - Environmental Protection Act 1990;
  - Environment Act 1995; and
  - Pollution Prevention and Control Act 1999

### **Relevant provision to be made by the SI**

5. The amendments made by the 2018 Regulations to the following provisions are as follows:
  - Environmental Protection Act 1990: sections 7, 19(3), 113(5), 116(2), 140(4)(a), 142(2)(a), and 156 – the amendments make technical changes such as including retained EU law or retained EU obligation or United Kingdom and omit references to EU Treaties.
  - Environment Act 1995: sections 40(d), 41(a), 41A(b), 56(1)(b), 80(2)(a), 85(5)(a), 86(8)(a), 87(1)(b)(i), 93(3)(a), 94(2)(a)(i), 108(15)(c), 111(5)(e), and 122 – the amendments insert references to domestic legislation such as the Hazardous Waste (Wales) Regulations, amend references to now read as to retained EU obligations, changing the definition of environmental licence to refer to domestic legislations such as Greenhouse Gas Emissions Trading Scheme Regulations 2012.

- Pollution Prevention and Control Act 1999: Schedule 1, paragraphs 3(b), 20(1)(b) and 20(1)(c) - the amendments preserve the scope of the subordinate legislation making power of section 2 PPCA 1999. The reference in paragraph 3 to obligations under the EU treaties is replaced with a reference to retained EU obligations. The wording of paragraph 20 is amended so that it no longer operates by reference to section 2 of the European Communities Act 1972.
6. The changes identified in paragraphs 5 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. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to the environment.

#### **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**

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