

2019 No. (W.)

**EXITING THE EUROPEAN
UNION, ENGLAND AND
WALES**

AGRICULTURE, WALES

COAST PROTECTION, WALES

**ENVIRONMENTAL
PROTECTION, WALES**

**FLOOD RISK MANAGEMENT,
WALES**

**WATER, ENGLAND AND
WALES**

The Flood and Water
(Amendments) (England and
Wales) (EU Exit) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in powers in paragraph 1(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 in retained EU law arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to secondary legislation in the field of environmental protection, water and flood.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result,

it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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The Flood and Water
(Amendments) (England and
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Sift requirements satisfied ***

Made ***

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers make these Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018(1).

(1) 2018 c. 16.

The requirements of paragraph 4(2) of Schedule 7 to that Act (relating to the appropriate National Assembly for Wales scrutiny procedure for these Regulations) have been satisfied.

Title, commencement and application

1.—(1) The title of these Regulations is the Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 and they come into force on exit day.

(2) An amendment made by these Regulations has the same extent and application as the provision amended.

Amendment of the Contaminated Land (Wales) Regulations 2006

2. In regulation 3 of the Contaminated Land (Wales) Regulations 2006(1)—

- (a) the existing paragraph is renumbered as paragraph (1) of that regulation;
- (b) in sub-paragraph (b)(ii) of paragraph (1) (as renumbered), for the words from “protected areas” to the end (but not the final “or”) substitute “shellfish water protected areas or bathing waters, those waters do not meet the environmental objectives that apply to them as set out in the relevant river basin management plan under Part 6 of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(2)”.
- (c) after paragraph (1) (as renumbered), insert—

“(2) In this regulation—

 - (a) “bathing water” has the same meaning as in the Bathing Water Regulations 2013(3);
 - (b) “shellfish water protected area” means a body of water designated under regulation 9 of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.”

Amendment of the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010

3. In regulation 2(3) of the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil)

(1) S.I. 2006/2989 (W. 278), amended by S.I. 2012/283 (W. 47). There are other amending instruments but none is relevant.

(2) S.I. 2017/407.

(3) S.I. 2013/1675, amended by S.I. 2018/575. There are other amending instruments but none is relevant.

(Wales) Regulations 2010(1), omit the words from “and is recognised” to the end.

The Incidental Flooding and Coastal Erosion (Wales) Order 2011

4. In article 3 of the Incidental Flooding and Coastal Erosion (Wales) Order 2011(2)—

(a) in paragraph (3), for “the United Kingdom to comply with its obligations under” substitute “compliance with the legislation(3) which implemented”;

(b) for paragraph (4)(a) substitute—

“(a) “*environmental objectives*” has the same meaning as in the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017;”.

Amendment of the Nitrate Pollution Prevention (Wales) Regulations 2013

5.—(1) The Nitrate Pollution Prevention (Wales) Regulations 2013(4) are amended as follows.

(2) In regulation 6—

(a) the existing paragraph is renumbered as paragraph (1) of that regulation;

(b) after paragraph (1) (as renumbered), insert—

“(2) In paragraph (1), in the definition of “derogation” (“*rhanddirymiad*”), the reference to paragraph 2(b) of Annex 3 to Council Directive 91/676/EEC(5) is to be read as if the third subparagraph were omitted.

(3) For the purposes of these Regulations, a reference to an EU Directive is to be read as if any reference in that Directive to a member State in a provision imposing an obligation on, or providing a discretion to, a member State were to the authority which, immediately before exit day, was responsible for compliance with that obligation, or exercise of that discretion, in Wales.

(1) S.I. 2010/1493 (W. 136), to which there are amendments not relevant to these Regulations.

(2) S.I. 2011/2829 (W. 302), relevant amending instruments are S.I. 2013/755 (W. 90), 2018/1216 (W. 249).

(3) The legislation which implemented the Habitats Directive includes S.I. 2017/1012. The legislation which implemented the Wild Birds Directive includes the Wildlife and Countryside Act 1981 (c. 69) and S.I. 2017/1012. The legislation which implemented the Water Framework Directive includes S.I. 2003/3245, 2004/99, 2017/407.

(4) S.I. 2013/2506 (W. 245), relevant amending instruments are S.I. 2015/2020 (W. 308) and 2018/1216 (W. 249).

(5) OJ No L 375, 31.12.1991, p 1, as last amended by Regulation (EC) No 1137/2008 (OJ No L 311, 21.11.2008, p 1).

(4) In paragraph (3), the “authority” means the Natural Resources Body for Wales or the Welsh Ministers.”

(3) In regulation 11—

(a) in paragraph (2)(b), for “Council Directive 98/83/EC on the quality of water intended for human consumption”, substitute “the Private Water Supply (Wales) Regulations 2017⁽¹⁾ and the Water Supply (Water Quality) Regulations 2018⁽²⁾”;

(b) after paragraph (3) insert—

“(4) In paragraph (3)(a), the reference to Annex I to Council Directive 91/676/EEC is to be read as if—

(a) each reference in it to Article 5 of that Directive were to regulations 12, 13 and 14 to 46 of these Regulations;

(b) in point A, paragraph 1, for the words from “more than” to “Directive 75/440/EEC” there were substituted “a concentration of nitrates greater than 50mg/l”.”

(4) In regulation 47, after paragraph (3) insert—

“(4) As part of the review conducted under this regulation, the Welsh Ministers must review the overall position of derogations granted under regulation 13A against—

(a) objective criteria, including—

(i) the existence, in designated nitrate vulnerable zones, of—

(aa) long growing seasons,

(bb) crops with high nitrogen uptake, and

(cc) soils with exceptionally high denitrification capacity, and

(ii) the net rainfall in designated nitrate vulnerable zones;

(b) the following objectives—

(i) reducing water pollution caused or induced by nitrates from agricultural sources, and

(ii) preventing further such pollution.”

(5) After regulation 48, insert—

(1) S.I. 2017/1041 (W. 270), amended by S.I. 2018/647 (W. 121).

(2) S.I. 2018/647 (W. 121).

“Implementation report

48A.—(1) The Welsh Ministers must prepare a report on the implementation of these Regulations for each relevant period.

(2) A report under paragraph (1) must contain—

- (a) details of any steps taken to promote good agricultural practice;
- (b) the map deposited under regulation 7(2), accompanied by a statement detailing the nature of, and reasons for, any revisions to the designated nitrate vulnerable zone since the end of the previous reporting period;
- (c) a summary of the monitoring results under regulation 11;
- (d) a summary of the most recent review conducted under regulation 47.

(3) A report under paragraph (1) must be published—

- (a) in such manner as the Welsh Ministers consider appropriate;
- (b) by the last day of the six month period beginning with the day on which the relevant period ends.

(4) In this regulation, “relevant period” means the period of four years beginning with 1st January 2016 and each successive period of four years.”

Amendment of the Private Water Supply (Wales) Regulations 2017

6.—(1) The Private Water Supply (Wales) Regulations 2017(1) are amended as follows.

(2) In regulation 2—

- (a) the existing paragraph is renumbered as paragraph (1) of that regulation;
- (b) after paragraph (1) (as renumbered), insert—

“(2) In these Regulations, a reference to an EU or Euratom Directive is to be read as if any reference in that Directive to a member State in a provision imposing an obligation on, or providing a discretion to, a member State were to either the Welsh Ministers or local authority depending on which, immediately before exit day, was responsible for compliance with that obligation, or exercise of that discretion, in respect of Wales.”

(1) S.I. 2017/1041 (W. 270), to which there are amendments not relevant to these Regulations.

(3) In regulation 6, after paragraph (5) insert—

“(6) For the purposes of paragraph (4)(c), a reference to Articles 7(1) and 8 of Directive 2000/60/EC⁽¹⁾ is to be read with the following modifications—

- (a) as if any reference to Annex 5 of that Directive were a reference to that Annex as modified by Part 1 of Schedule 5 to the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017⁽²⁾;
- (b) in Article 8, as if—
 - (i) in paragraph 1, the final indent were omitted;
 - (ii) in paragraph 2, the first sentence were omitted;
 - (iii) paragraph 3 were omitted.”

(4) For regulation 12(6), substitute—

“(6) The Welsh Ministers must publish, in such a manner as they consider appropriate, the grounds for a decision under paragraph (3) and the documentation provided under paragraph (5) supporting the decision.”

(5) After regulation 23, insert—

“Reporting

23A.—(1) The Welsh Ministers must prepare and publish a report on the quality of water intended for human consumption, with the objective of informing consumers.

(2) A report under paragraph (1) must—

- (a) be published in such manner as the Welsh Ministers consider appropriate;
- (b) include, as a minimum, information on all individual supplies of water that—
 - (i) exceed 1,000m³ a day as an average, or
 - (ii) serve more than 5,000 persons;
- (c) cover a period of three calendar years.

(3) The first report under this regulation must cover the years 2017, 2018 and 2019 and be published by 31st December 2021.

(4) Subsequent reports under this regulation must be published at intervals not exceeding three years.

(1) O.J. No L 327, 22.12.2000, p 1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p 32).

(2) S.I. 2017/407, amended by S.I. 2018/942.

(5) Any report published under paragraph (1) must also be made available on the Drinking Water Inspectorate’s website.”

Amendment of the Water Supply (Water Quality) Regulations 2018

7.—(1) The Water Supply (Water Quality) Regulations 2018(1) are amended as follows.

(2) In regulation 2, after paragraph (5) insert—

“(6) In these Regulations, a reference to an EU or Euratom Directive is to be read as if any reference in that Directive to a member State in a provision imposing an obligation on, or providing a discretion to, a member State were to either the Welsh Ministers or local authority depending on which, immediately before exit day, was responsible for compliance with that obligation, or exercise of that discretion, in respect of England or Wales.”.

(3) In regulation 6(15), for “communicate the grounds for the notification to the European Commission” substitute “publish, in such manner as the Welsh Ministers consider appropriate, the grounds for the notification”.

(4) In regulation 9, after paragraph (12) insert—

“(13) For the purposes of paragraph (11)(c), a reference to Articles 7(1) and 8 of Directive 2000/60/EC is to be read with the following modifications—

(a) as if any reference to Annex 5 of that Directive were a reference to that Annex as modified by Part 1 of Schedule 5 to the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(2);

(b) in Article 8, as if—

(i) in paragraph 1, the final indent were omitted;

(ii) in paragraph 2, the first sentence were omitted;

(iii) paragraph 3 were omitted.”

(5) In regulation 23—

(a) in paragraph (7) for “further departure” substitute “further two departures”;

(b) omit paragraphs (9) and (10).

(6) In regulation 31—

(a) omit paragraph (2)(a);

(1) S.I. 2018/647 (W. 121).

(2) S.I. 2017/407, amended by S.I. 2018/942.

- (b) in paragraph (2)(b), omit “of an EEA state or Turkey”;
- (c) omit paragraph (3)(b);
- (d) omit paragraph (15).
- (7) In regulation 39(1)(h), omit “and (9) respectively”.
- (8) After regulation 39 insert—

“Reporting

39A.—(1) The Welsh Ministers must publish a report on the quality of water intended for human consumption, with the objective of informing consumers.

(2) A report under paragraph (1) must—

- (a) be published in such manner as the Welsh Ministers consider appropriate;
- (b) include, as a minimum, information on all individual supplies of water that—
 - (i) exceed 1,000m³ a day as an average, or
 - (ii) serve more than 5,000 persons;
- (c) cover a period of three calendar years.

(4) The first report under this regulation must cover the years 2017, 2018 and 2019 and be published by 31st December 2021.

(5) Subsequent reports under this regulation must be published at intervals not exceeding three years.

(6) Any report published under paragraph (1) must also be made available on the Drinking Water Inspectorate’s website.”

Name

Minister for Environment, Energy and Rural Affairs,
One of the Welsh Ministers

Date