

STATUTORY INSTRUMENT CONSENT MEMORANDUM

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

1. Standing Order (SO) 30A prescribes that a Statutory Instrument Consent Memorandum (SICM) must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“National Assembly”) if a UK Statutory Instrument (SI) makes provision (“relevant provision”) in relation to Wales amending primary legislation within the legislative competence of the National Assembly.
2. The Welsh Government laid a SICM in respect of The Marine Environment (Amendment) (EU Exit) Regulations 2018 (“2018 Regulations”) on 26 November 2018.¹
3. This SICM is laid in accordance with SO 30A.3.
4. The 2018 Regulations were laid before the Houses of Parliament for sifting 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>
5. At its meeting on 4 December 2018, the House of Commons European Statutory Instrument Committee considered the regulations and recommended that the negative procedure should apply.² The House of Lords Secondary Legislation Scrutiny Committee (Sub-Committee B) also reported that the negative procedure should apply.³

Summary of the Statutory Instrument and its objective

6. The objective of the SI is to address:

(a) failures of retained EU law to operate effectively; and

(b) other deficiencies;

arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018.

¹ Welsh Government, [Statutory Instrument Consent Memorandum, The Marine Environment \(Amendment\) \(EU Exit\) Regulations 2018](#), 26 November 2018

² House of Commons European Statutory Instruments Committee, [Tenth Report of Session 2017–19](#), 6 December 2018, HL 1794

³ House of Lords Secondary Legislation Scrutiny Committee (Sub-Committee B), [8th Report of Session 2017–19](#), 6 December 2018, HL Paper 244

7. In particular, the SI makes amendments to:
- (a) the Marine and Coastal Access Act 2009 (“2009 Act”) (Part 2 of the SI);
 - (b) the Marine Strategy Regulations 2010 (Part 3 of the SI);
 - (c) Commission Directive Decision (EU) 2017/48 (Part 4 of the SI).

Relevant provision to be made by the SI

8. 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 - to remove the definition of a ‘third country vessel’;
 - (e) section 244(1) - to provide that EU Member States vessels and vessels from Gibraltar will be treated as third country vessels.
9. The changes identified in paragraphs 8(c) to (e) relate to functions that are within the legislative competence of the National Assembly, which could be the subject of a National Assembly Bill. It is these provisions within the 2018 Regulations that are the subject of this SICM.

Why it is appropriate for the SI to make this provision

10. The changes made by the 2018 Regulations as they relate to the 2009 Act concern:
- (a) the replacement of references to “EU law” with references to “retained EU law” (in section 123(5)); and
 - (b) the definition of third country vessel (in sections 141 and 244(1)).

11. It is considered appropriate that the UK Government legislates on behalf of the Welsh Ministers in this instance.

How this SICM differs from the Welsh Government's SICM

12. This SICM re-iterates some of the content of the Welsh Government's SICM but focuses on the relevant provisions in the SI (namely in Part 2) that is to be the subject of a consent motion.

Reason for this additional SICM

13. On 26 November 2018, Lesley Griffiths AM, the Cabinet Secretary for Energy, Planning and Rural Affairs⁴ wrote to the Constitutional and Legislative Affairs Committee saying:

“Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI, and I would be happy to participate in a debate, should one be held.”

14. This SICM is therefore provided in accordance with Standing Order 30A.3 to enable a motion to be tabled so that the National Assembly's agreement can be sought on whether a relevant provision should be included in this statutory instrument.

Suzy Davies AM
31 December 2018

⁴ Following a Welsh Government Ministerial re-shuffle on 13 December 2018, Lesley Griffiths AM became the Minister for Environment, Energy and Rural Affairs.