

Explanatory Memorandum to: The Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Department of Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

Ken Skates

Minister for Economy and Transport

29 January 2019

1. Description

This instrument makes amendments to primary legislation, the Learner Travel (Wales) Measure 2008. The instrument ensures that the relevant legislation continues to be operable after the United Kingdom leaves the European Union.

The instrument comes into force on “exit day”, which is defined within section 20(1) of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) as 29 March 2019 at 11.00 pm.

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

The instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 to the 2018 Act. As set out in the Ministerial statement in Part 2 of the Annex to Explanatory Memorandum, it is proposed that the instrument be subject to negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

3. Legislative background

This instrument is being made using the power in Part 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

The Learner Travel (Wales) Measure 2008 requires seatbelts to be fitted on buses used for learner transport. The Measure contains reference to European Union law in a provision stating that the requirement to fit seatbelts does not affect any technical standard which would otherwise apply by virtue of certain enactments

Why is it being changed?

The instrument amends a reference to European Union law which will not be applicable when the United Kingdom leaves the European Union. Therefore this instrument is required to ensure that the Learner Travel (Wales) Measure continues to operate effectively.

What will it now do?

The instrument will substitute the reference in section 14A(5) of the Learner Travel (Wales) Measure 2008 to a “directly applicable requirement of European

Union law” with a reference to a “requirement of retained direct EU legislation”. This will ensure that the Measure does not contain a deficient reference when the United Kingdom leaves the European Union.

5. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

An RIA has not been prepared for this instrument because there are no significant impacts on businesses

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p>	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Economy and Transport, Ken Skates AM has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because this instrument addresses only technical deficiencies in the law that will arise from withdrawal.”

2. Appropriateness statement

The Minister for Economy and Transport, Ken Skates AM has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Learner Travel (Wales) (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”. This is the case because the instrument makes only minor and technical amendments to domestic legislation to ensure that it remains operative following the withdrawal of the United Kingdom from the European Union.”

3. Good reasons

The Minister for Economy and Transport, Ken Skates AM has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are set out in section 4 of this Explanatory Memorandum “

4. Equalities

4.1 The Minister for Economy and Transport, Ken Skates AM has made the following statement:

“The instrument does amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Minister for Economy and Transport, Ken Skates AM has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable

7. Legislative sub-delegation

Not applicable

8. Urgency

Not applicable