



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019**

DATE **24 January 2019**

BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019 (“the 2019 Regulations”)

The law which is being amended

European Directly Applicable Instruments

- Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH);
- Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures;
- Commission Regulation (EU) No 544/2011 of 10 June 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the data requirements for active substances;
- Commission Regulation (EU) No 545/2011 of 10 June 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the data requirements for plant protection products;
- Commission Regulation (EU) No 547/2011 of 8 June 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards labelling requirements for plant protection products;
- Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products;
- Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals;
- Commission Regulation (EU) No 283/2013 of 1 March 2013 setting out the data requirements for active substances, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market;

- Commission Regulation (EU) No 284/2013 of 1 March 2013 setting out the data requirements for plant protection products, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market;
- Commission Implementing Regulation (EU) No 354/2013 of 18 April 2013 on changes of biocidal products authorised in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council;
- Commission Implementing Regulation (EU) No 414/2013 of 6 May 2013 specifying a procedure for the authorisation of same biocidal products in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council;
- Commission Implementing Regulation (EU) No 88/2014 of 31 January 2014 specifying a procedure for the amendment of Annex I to Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products;
- Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council.

Other non-domestic legislation

- Part 2 of Annex II to the EEA agreement.

Secondary legislation to be corrected

- the Health and Safety (Enforcing Authority) Regulations 1998;
- the Control of Substances Hazardous to Health Regulations 2002;
- the Dangerous Substances and Explosive Atmospheres Regulations 2002;
- the Plant Protection Products (Fees and Charges) Regulations 2011;
- the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013;
- the Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2013;
- the Genetically Modified Organisms (Contained Use) Regulations 2014;
- the Control of Major Accident Hazards Regulations 2015;
- the Explosives (Appointment of Authorities and Enforcement) Regulations (Northern Ireland) 2015;
- the Biocidal Products (Fees and Charges) Regulations (Northern Ireland) 2015;
- the Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2015;
- the Health and Safety and Nuclear (Fees) Regulations 2016.

The following retained direct EU law is repealed—

Commission Regulation (EU) No 440/2010 of 21 May 2010 on the fees payable to the European Chemicals Agency pursuant to Regulation (EC) No 1272/2008 of the European

Parliament and of the Council on classification, labelling and packaging of substances and mixtures.

Any impact the SI may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence

The UK Chemicals regime covers both devolved and reserved matters, as it has been designed to protect the health and safety of workers (a reserved matter in Wales and Scotland) as well as public health and the environment (which are devolved). Import and export controls are also reserved for chemicals other than fertilisers and pesticides, as is animal testing for scientific purposes.

This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales. Functions transferred to the Secretary of State to be exercised concurrently with the consent of the Welsh Ministers constitute functions of a Minister of the Crown that relate to a qualified devolved function for the purposes Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

Functions transferred so that they are exercisable by the Secretary of State alone or to the Secretary of State but which are only exercisable with the consent of the Devolved Authorities in relation to devolved territories constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

Functions transferred to the Health and Safety Executive alone constitutes functions of a public authority other than a devolved Welsh Authority for the purposes Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

The purpose of the amendments

The 2019 Regulations make the modifications necessary to continue to apply the current rules set out in law post-EU Exit. They are particularly important to facilitating the operation of chemical supply chains, which are critical to manufacturing and other chemical-using industries, because they set out the conditions that must be met before importing chemical substances and mixtures into the UK, manufacturing them or placing them on the market.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://beta.parliament.uk/work-packages/XnzRsY2j>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.