

SL(5)385 – The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019

Background and Purpose

The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 (“these Regulations”) are made in exercise of the powers in paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 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.

Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 5(3)(a) of these Regulations amends regulation 11(2)(b) of the Nitrate Pollution Prevention (Wales) Regulations 2013 to remove a reference to EU legislation, and substitute references to domestic legislation. However, the amendment fails to take into account wording inserted into regulation 11(2)(b) of the 2013 Regulations by the Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018. As such, once these Regulations come into force, regulation 11(2)(b) of the 2013 Regulations would read “[...] *the provisions of the Private Water Supplies (Wales) Regulations 2017 and the Water Supply (Water Quality) Regulations 2018, as last amended by Commission Directive (EU) 2015/1787.*” This statement would be incorrect, and is therefore defective.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly



To the extent these Regulations make amendments to the Water Supply (Water Quality) Regulations 2018, these Regulations apply in relation to the supply of water by water undertakers operating wholly or mainly in Wales (and to supplies by water supply licensees using the supply systems of such an undertaker). As such, they apply in the parts of England to which those water undertakers and licensees operate. Therefore, although the Regulations are made solely by the Welsh Ministers, the application in part to England is reflected in the title of the instrument.

Implications arising from exiting the European Union

No further points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

We note the technical scrutiny point in relation to this SI. An amending instrument will be pursued.

Legal Advisers

Constitutional and Legislative Affairs Committee

14 March 2019

