

**Explanatory Memorandum to The Flood and Water (Amendments)
(England and Wales) (EU Exit) Regulations 2019**

This Explanatory Memorandum is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Flood and Water (Amendments) (England and Wales) (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.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

6 March 2019

PART 1

1. Description

The Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 ensure floods and water legislation will continue to be operable in Wales after the UK leaves the EU. The instrument addresses failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the UK's withdrawal from the EU. The purpose of the instrument is to preserve and protect existing policy, it will not introduce any new policy.

This instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 defines as 29 March 2019 at 11.00pm.

The instrument makes amendments to the following enactments—

- the Contaminated Land (Wales) Regulations 2006;
- the Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010;
- the Incidental Flooding and Coastal Erosion (Wales) Order 2011;
- the Nitrate Pollution Prevention (Wales) Regulations 2013;
- the Private Water Supplies (Wales) Regulations 2017;
- the Water Supply (Water Quality) Regulations 2018.

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

This instrument is made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 ("the 2018 Act").

As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to the negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

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.

The Constitutional and Legislative Affairs Committee considered a draft of this instrument for sifting on 21 January 2018. The Committee agreed with the WG's recommendation that the instrument follows the negative resolution procedure. A link to the report is attached:

<http://www.assembly.wales/laid%20documents/cr-ld12060/cr-ld12060-e.pdf>

3. Legislative background

This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 to the 2018 Act 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?

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

The function of the EU law in this area is to protect and improve the water environment from various sources of pollution e.g. from agriculture and urban sources; it is also about protecting human health by preventing contamination of drinking water and bathing waters.

They amend the regulations implementing the Nitrates Directive in Wales (the Nitrate Pollution Prevention (Wales) Regulations 2013), which aims to prevent nitrates from agricultural sources polluting ground and surface waters and by promoting the use of good farming practices.

They also amend the regulations that implement Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies and Council Directive 2013/51/Euratom laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (the Private Water Supplies (Wales) Regulations 2017 and the Water Supply (Water Quality) Regulations 2018).

The Regulations make amendments to the Contaminated Land (Wales) Regulations 2006 and the Incidental Flooding and Coastal Erosion (Wales) Order 2011; both of which contain incidental references to EU Directives such as the Water Framework Directive, the Habitats Directive and the Wild Birds Directive. These Directives are either already fully transposed into domestic law or are to be appropriately amended by other statutory instruments made under the 2018 Act.

The Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010 contain a requirement for certain storage tanks to conform with relevant British Standards, or equivalent standards in other specified states in line with EU requirements.

Why is it being changed?

This instrument makes several minor and technical amendments to deficiencies in the existing legislation described above and some other pieces of domestic

legislation to ensure the legislation works effectively after exit. Some of the changes are described in the following paragraphs.

Where there was a reference in an EU Directive to a Member State reporting to the EU Commission this is being replaced by including a requirement in the domestic legislation that such an environmental report is to be made publicly available; for example the new regulations 23A and 39A in the Private Water Supplies (Wales) Regulations 2017 and the Water Supply (Water Quality) Regulations 2018 (respectively) replace reporting obligations currently found in Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies.

References to the Welsh Ministers acting in compliance with EU law by reference to an EU Directive, are amended so they can be read with appropriate modifications. Similarly, for cross-references in domestic legislation to UK obligations as a Member State in EU Directives, such obligations will fall away as we will no longer be a Member State and these are instead to be read as an obligation on the appropriate Minister or regulator responsible for complying with that obligation before exit day.

Cross-references in domestic legislation to provisions in EU Directives where the UK, as a Member State, engages in EU wide exercises and processes, including obligations to collaborate with other Member States have been removed. This change has been made as we will no longer be mandated by, or have a mechanism to take part in EU procedures and processes.

Amendments to remove cross-references to provisions in Directives requiring Member States to inform the EU Commission of certain actions, for instance informing the EU Commission under the Nitrates Directive where the UK grants a derogation under the Nitrate Pollution Prevention Regulations 2015. It would no longer be appropriate to inform the EU Commission as to the grant of that derogation after EU exit. Instead provision is inserted for the Welsh Ministers to review the overall position of those derogations as part of the four yearly review under those regulations.

The amendment to the Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010 will prevent the UK from being in potential breach of the Most Favoured Nation principle of the WTO Rules in a no-deal EU exit scenario.

What will it now do?

The instrument will ensure that the EU derived law in this area will operate effectively in Wales after we leave the EU. By making the proposed instrument, we will be maintaining the existing policy regime, thereby providing businesses, environmental NGOs and the public with maximum certainty as the UK leaves the EU.

5. Consultation

No public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain operable by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

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	A statement that the SI does no more than is appropriate.

		statement when exercising powers in Schedule 2	
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 committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
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	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

		committed to make the same statement when exercising powers in Schedule 2	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 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to	A statement to explain why it is appropriate to create such a sub-delegated power.

		create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
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 Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Flood and Water (Amendments) (England and Wales) (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 the changes being made are technical in nature and make no substantive changes.

1. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

2. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, 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”. This is because the provisions ensure that protections provided by the Flood and Water (Amendments) (England and Wales) (EU Exit) Regulations 2019 continue to be operable after the UK leaves the European Union.

3. Equalities

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

“The instrument does not 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.

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths, 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.”

Little or no impact on equalities is expected.

4. Explanations

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

5. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

Not applicable/required.