

# Report on the Statutory Instrument Consent Memorandum for the Pesticides (Amendment) Regulations 2019

October 2019

## 1. Background

1. The Pesticides (Amendment) Regulations 2019 were made by the UK Government on 26 September 2019, and laid before the UK Parliament on 1 October 2019. The Regulations will come into force on 31 October 2019.
2. On 4 October 2019, Lesley Griffiths AM, the Minister for Environment, Energy and Rural Affairs (the Minister), in accordance with Standing Order 30A, laid before the National Assembly a Statutory Instrument Consent Memorandum (the Memorandum) for The Pesticides (Amendment) Regulations 2019.
3. Standing Order 30A states that a member of the government must lay a Statutory Instrument Consent Memorandum in relation to any relevant statutory instrument laid before the UK Parliament by UK Ministers, if a UK statutory instrument makes provision in relation to Wales to amend primary legislation within the legislative competence of the National Assembly.

## 2. The Statutory Instrument Consent Memorandum

4. The Memorandum states that:

"The primary objective of the Regulations is to correct out-of-date references to Regulation (EC) No 1107/2009 on the placing of plant protection products on the market, following amendment of that



Regulation by Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products."<sup>1</sup>

**5.** The Memorandum explains that the amendments cover legislation in the fields of pesticides, water and the environment.

**6.** The Memorandum also states that:

"The amendments will ensure the accuracy of the statute book ahead of the UK's exit from the European Union. This is because out-of date references to legislation are not necessarily interpreted as references to the correct (updated) legislation; and there is therefore a risk that the statute book would not work as intended as a result.

The Regulations to which this Statutory Instrument Consent Memorandum relates have been laid in the UK Parliament under the negative procedure and will automatically become law unless there is an objection from a member of either House of Parliament. If there is no such objection, the provision that amends the primary legislation referenced below in this Memorandum will come into force on 31 October 2019."<sup>2</sup>

**7.** Regulation 2 of the Regulations amends section 43(3)d of the *Natural Environment and Rural Communities Act 2006*, which is primary legislation within the legislative competence of the National Assembly.

**8.** The Memorandum states that:

"It is the view of the Welsh Government that it is appropriate and proportionate that the amendments in these Regulations are made and are made by statutory instrument, due to the technicality of their nature and the extent and application of the enactments being amended. Making these amendments separately could result in the law not operating as intended, being uncertain and inaccessible."<sup>3</sup>

**9.** On 18 October 2019, the Minister wrote to us stating that she had intended to table a statutory instrument consent motion for debate on 22 October, but an

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<sup>1</sup> [Welsh Government: Statutory Instrument Consent Memorandum for The Pesticides \(Amendment\) Regulations 2019](#), paragraph 3

<sup>2</sup> Statutory Instrument Consent Memorandum, paragraphs 6-7

<sup>3</sup> Statutory Instrument Consent Memorandum, paragraph 11

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administrative error meant that had not happened.<sup>4</sup> The correspondence stated in particular:

"The Regulations are subject to the negative procedure in Parliament and, provided no Member of Parliament prays against them, will come into force on 31 October 2019.

I had intended a statutory instrument consent motion to be tabled for debate on 22 October but unfortunately due to an administrative error this has not happened. As a result there is no time for the Assembly to debate the Regulations before they come into force. I have asked officials to ensure that this error is not repeated in future."

### 3. Consideration

10. We considered the Memorandum at our meeting on 21 October 2019.<sup>5</sup>

### 4. Conclusion

11. We are content with the Memorandum.

12. We note the Minister's comments in her letter to us of 18 October 2019.

13. We do however note that the regulations are subject to the negative procedure and therefore subject to annulment by either House of the UK Parliament. The date by which an objection must be raised is 14 November 2019.

14. The key dates in respect of these regulations are therefore the 31 October 2019 (coming into force date) and 14 November 2019 (the date for an objection to be raised in the UK Parliament).

15. This being the case, a motion tabled on 22 October 2019 could have been debated in the National Assembly on 5 November 2019. The outcome of such a debate could have informed a decision by any member of either House of the UK Parliament to determine whether or not to table a motion to annul.

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<sup>4</sup> [Letter from the Minister for Environment, Energy and Rural Affairs to the Chair of the Constitutional and Legislative Affairs Committee, 18 October 2019](#)

<sup>5</sup> [Constitutional and Legislative Affairs Committee, 21 October 2019](#)

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**16.** We therefore believe that a motion should have been tabled by the Welsh Government on the Memorandum for debate on 5 November 2019.