

Explanatory Memorandum to the Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before Senedd Cymru 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 Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

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.

Julie James MS
Minister for Housing and Local Government
23 November 2020

PART 1

1 Description

- 1.1 This instrument makes amendments to two statutory instruments:
- The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the first Brexit SI”).
 - The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the second Brexit SI”).
- 1.2 The first Brexit SI and the second Brexit SI made various amendments to legislation dealing with environmental impact assessment and town and country planning to ensure that the statute book remains operable following the UK’s exit from the EU and addressed deficiencies in domestic legislation arising from EU Exit. The first Brexit SI also made minor amendments to existing legislation deriving from EU requirements.
- 1.3 The amendments made by this instrument reflect the transition period in Article 127 of the Withdrawal Agreement. References to 31 January 2020 which currently read “exit day” will be changed to “IP Completion Day” referring to 11pm on 31 December 2020.

2 Matters of special interest to the Legislation, Justice and

Constitution Committee This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”), and was therefore required to be laid for sifting by the Legislation, Justice and Constitution Committee.

- 2.2 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it was proposed that the instrument be subject to the negative procedure. The proposed negative instrument was laid for sifting on 3 November and the Committee agreed that the appropriate procedure for these Regulations is the negative resolution procedure. The Committee’s report can be found on the Senedd Cymru website at: <https://senedd.wales/laid%20documents/cr-ld13815/cr-ld13815-e.pdf>

3 Legislative background

- 3.1 This instrument is being made using the power conferred on a devolved authority 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 arising from the withdrawal of the United Kingdom from the European Union. The Welsh Ministers are a devolved authority for these purposes (see section 20(1) of that Act). 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.

- 3.2 These Regulations are being made under the negative resolution procedure.

4 Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

- 4.1 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the "EIA Directive"), as amended by Directive 2014/52/EU, applies to a wide range of public and private projects, which are listed in Annexes I and II of the Directive. The EIA Directive sets out a formal process intended to ensure decisions on large, complex projects are taken with the full knowledge of their possible environmental effects. Those projects which fall within a project category in Annex 1 to the EIA Directive automatically require Environmental Impact Assessment (EIA). Whether projects listed in Annex 2 require EIA is dealt with on a case by case basis. This screening process considers whether the project is likely to have significant effects on the environment and if so, it must be subject to EIA. The EIA Directive is transposed by separate regulations for each sector.
- 4.2 Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC seeks to prevent major accidents involving chemical storage and to limit their consequences for human health and the environment. The Directive, commonly known as the Seveso Directive has three strands, the first of which is to ensure on site safety controls are in place to prevent major accidents occurring. The second aspect of the Directive is to ensure emergency plans are prepared to respond to accidents if they happen. Thirdly, the Directive requires member states to use its land use planning policies and controls to keep development sufficiently away from establishments, so if an accident were to occur, the deaths, injuries, damage to buildings and to the environment are minimised. This third strand is a devolved matter which is transposed by a number of town and country planning statutory instruments.
- 4.3 Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area (recast) was transposed by the Railway (Licensing of Railway Undertakings) Regulations 2005 ("the 2005 Regulations"). The main effect of the 2005 Regulations was to create the "European licence". Any operator established in Great Britain could be granted a European licence, subject to the Office of Railway Regulation being satisfied that the applicant met certain conditions regarding their professional competence, financial fitness and insurance cover. Once granted, the licence was valid for the holder to provide train services in any EEA Member State. This was within the context of a long term European programme to establish a "single European Railway Area"

within which train operators would have equal access to infrastructure and competition, and be subject to common safety and operating rules.

Why is it being changed?

- 4.4 This instrument uses powers conferred by the 2018 Act to update the first and second Brexit SIs to ensure they reflect Article 127 of the Withdrawal Agreement. As the statutory instruments were made to facilitate EU exit prior to the Withdrawal Agreement, they need minor technical corrections to ensure that references which are intended to refer to the last moment on which the UK is required to comply with EU law are changed to reflect the transition period. This will ensure the following Welsh legislation relating to environmental impact assessment and town and country planning will continue to operate effectively after the UK has left the EU.

The first Brexit SI

- 4.5 The first Brexit SI amends Welsh legislation in respect of environmental assessment. This instrument updates the first Brexit SI by amending references that currently read to “exit day” (31 January 2020) which will be changed to “IP Completion Day” (11pm on 31 December 2020). The domestic legislation affected by this amendment to the first Brexit SI is:
- The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017
 - The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

The second Brexit SI

- 4.6 The second Brexit SI amends Welsh legislation in respect of town and country planning. This instrument updates the second Brexit SI by again amending references from “exit day” to “IP Completion Day”. The domestic legislation affected by this amendment to the second Brexit SI is:
- The Town and Country Planning (Control of Advertisements) Regulations 1992 (which contain references to a railway undertaking licence)
 - The Planning (Hazardous Substances) (Wales) Regulations 2015

What will it now do?

- 4.8 The instrument will address deficiencies in domestic legislation arising from the withdrawal of the UK from the EU, and ensures that environmental impact assessment, advertisement consent and land use planning for hazardous substances continue to operate effectively on EU exit to protect public health and the environment.

5 Consultation

- 5.1 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 operable by the withdrawal of the United Kingdom from the European Union.

6 Regulatory Impact Assessment (RIA)

- 6.1 A Regulatory Impact Assessment 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 LJC Committee (as sifting committee)
Appropriate-Ness	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.	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		Welsh Ministers have 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 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	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 Housing and Local Government, Julie James MS has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of Senedd Cymru (i.e. the negative procedure). This is the case because the changes being made are technical in nature to reflect the fact that although the UK left the EU on 31 January 2020, it continued to abide by relevant EU law during the implementation period until 11pm on 31 December 2020.”

2. Appropriateness statement

The Minister for Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Environmental Assessments and Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 do 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.”

3. Good reasons

The Minister for Housing and Local Government, Julie James, 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 Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017, the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, the Town and Country Planning (Control of Advertisements) Regulations 1992 and the Planning (Hazardous Substances) (Wales) Regulations 2015 continue to be operate effectively after the UK leaves the European Union.”

4. Equalities

- 4.1 The Minister for Housing and Local Government, Julie James, 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.”

- 4.2 The Minister for Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Julie James, 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.”

- 4.3 Little or no impact on equalities is expected.

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/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.