

Explanatory Memorandum to The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister/Deputy Minister's Declaration

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

Hannah Blythyn

Deputy Minister for Housing and Local Government

5 February 2019

PART 1

1. Description

This instrument makes amendments using powers under the European Union (Withdrawal) Act 2018 (except part 2 – see below) to the following legislation:

- The Waste (Wales) Measure 2010
- The Landfill Allowance Scheme (Wales) Regulations 2004
- The Hazardous Waste (Wales) Regulations 2005
- The Recycling Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011

The amendments are to ensure that the statute book remains functional following the UK's exit from the EU and will address deficiencies in Welsh domestic legislation arising from EU Exit.

Part 2 of the Instrument is made under section 2(2) of the European Communities Act 1972 and corrects out of date references to European law and domestic legislation prior to, and in readiness for the UK's exit from the EU. This is required because out of date references to legislation are not necessarily interpreted as references to the correct (updated) legislation and there is therefore a risk that the statute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 effectively and inaccessible post-Brexit.

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

This instrument (with the exception of Part 2) is being made using the power conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (hereafter “the Withdrawal 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. Such instruments must first be laid for sifting by the Constitutional and Legislative Affairs Committee. The instrument makes minor and technical changes and as such should be subject to annulment.

3. Legislative background

This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 to the Withdrawal 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.

These Regulations are proposed to be made subject to annulment and laid for the purpose of being sifted by the Constitutional and Legislative Affairs Committee (proposed negative).

4. Purpose and intended effect of the legislation

What did any relevant retained EU law do before exit day?

The instrument amends four pieces of Welsh legislation relating to waste which implement various European Directives related to waste management to ensure that the waste regime can continue to operate effectively after the UK leaves the EU. No environmental standards are being removed or amended. Modifications are necessary to the text of the domestic legislation, removing or amending references to EU Directives and associated EU terms to ensure that waste legislation continues to operate as intended after EU exit.

EU law lays down rules and frameworks for the management of waste. These are implemented in Wales primarily via domestic legislation. The instrument amends that domestic legislation under powers in the Withdrawal Act (except Part 2 see section on 'out of date references below) to make the necessary technical changes to ensure that it will continue to operate effectively after the UK has left the EU, as set out below.

The Waste (Wales) Measure 2010 (“the 2010 Measure”)

The 2010 Measure makes provision, amongst other things:

- about targets to be met by local authorities in relation to waste;
- about prohibiting or otherwise regulating the deposit of waste in a landfill;
- to provide for site waste management plans for works involving construction or demolition.

The 2010 Measure borrows various definitions by reference to the Waste Framework Directive (Directive 2008/98/EC), the Industrial Emissions Directive (Directive 2010/75/EU) and the Landfill Directive (Directive 1999/31/EC). These references need to be modified to ensure the 2010 Measure remains operable post EU Exit.

The Landfill Allowances Scheme (Wales) Regulations 2004 (“the 2004 Regulations”)

The Waste and Emissions Trading Act 2003 aims to significantly reduce the quantity of biodegradable municipal waste sent to landfills, as required by Article 5 of the Landfill Directive. The Act sets the framework for the creation of a landfill allowance scheme and obliges the Assembly to allocate allowances to waste disposal authorities in Wales, not exceeding the maximum specified in relation to Wales.

The 2004 Regulations supplement the Waste and Emissions Trading Act 2003, by making detailed provision for the monitoring and enforcement of the land-fill allowances allocated to waste disposal authorities in Wales under the Act. The 2004 Regulations refer to various defined terms by reference to various waste related directives. Therefore these references need to be modified, similar to that in the 2010 Measure, to ensure the Regulations remain operable post EU Exit.

The Hazardous Waste (Wales) Regulations 2005 (“the 2005 Regulations”)

The 2005 Regulations set out the regime for the control and tracking of hazardous waste in Wales, identical regulations are in force in England. The 2005 Regulations introduced a process for registration of hazardous waste producers and a system for recording the movement of waste from the point of production to the final point of disposal or recovery. The 2005 Regulations likewise refer to, and borrow defined terms such as waste, hazardous waste properties, recovery and disposal of waste by reference to the Waste Framework Directive and the Landfill Directive. Therefore, the 2005 Regulations need to be amended to ensure they remain operable post EU exit.

The Recycling, Preparation for Reuse and Composting Targets (Monitoring and Penalties (Wales) Regulations 2011 (the “2011 Regulations”)

Section 3 of the 2010 Measure establishes statutory targets for the percentage of a local authority's municipal waste which must be recycled, prepared for re-use and composted and impose a financial liability on a local authority if it fails to meet a target. The 2011 Regulations supplement the 2010 Measure, by making detailed provision for the monitoring and enforcement of the targets. The 2011 Regulations refer to various provisions of the Waste Framework Directive which need to be amended to ensure they remain operable after EU exit.

Out of date references

In addition to the modifications described above, the 2019 Regulations correct out of date references to European Directives and Regulations in domestic legislation, using powers under section 2(2) of the European Communities Act 1972. The 2019 Regulations update references in the four pieces of domestic legislation set out above so that they refer to the correct version of the Waste related directives. This is consistent with other updates that have been made and to ensure the statute book works effectively post EU Exit.

Why is it being changed?

Directives are not being incorporated into domestic law under the Withdrawal Act and will not form part of retained EU law. Therefore, the 2019 Regulations make provision so that the domestic legislation that cross-refer to the various directives are amended (e.g. the directives are modified, where necessary, for the purpose of that legislation) to ensure that it continues to operate as intended after EU Exit. The minor and technical changes made by the instrument are necessary to ensure that the legislation it amends continues to operate effectively following the UK's withdrawal from the European Union.

What will it now do?

The instrument will ensure that the legislation being amended continues to operate effectively after the UK leaves the EU. There is no change in environmental standards.

5. Consultation

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 after 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 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 18(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 Deputy Minister for Housing and Local Government, Hannah Blythyn has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Waste (Wales) (Miscellaneous Amendments) (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 to waste law in Wales.”

2. Appropriateness statement

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

“In my view The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2019 does no more than is appropriate”. This is the case because the instrument makes technical amendments only which are designed to address failures of retained EU law to operate effectively after exit day.”

3. Good reasons

The Deputy Minister for Housing and Local Government, Hannah Blythyn 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 Welsh legislation being amended continue to be operable after the UK leaves the European Union.”

4. Equalities

4.1 The Deputy Minister for Housing and Local Government, Hannah Blythyn has made the following statement(s)

“The draft 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 Deputy Minister for Housing and Local Government, Hannah Blythyn has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Hannah Blythyn 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.”

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.