

Report on the Statutory Instrument Consent Memorandum for The Marine Environment (Amendment) (EU Exit) Regulations 2018 (No.2)

January 2019

1. This report relates to the Statutory Instrument Consent Memorandum (SICM) that has been laid in relation to the Marine Environment (Amendment) (EU Exit) Regulations 2018 (“proposed 2018 Regulations”). This is the first occasion that a Member, other than a member of the government, has laid a SICM and subsequently tabled the relevant statutory instrument consent motion.

01. Background

2. 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.

3. The Marine Environment (Amendment) (EU Exit) Regulations 2018 were laid before the Houses of Parliament for sifting on 20 November 2018. The Welsh Government laid a SICM in respect of those proposed 2018 Regulation on 26 November 2018.

4. At its meeting on 4 December 2018, the House of Commons European Statutory Instrument Committee considered the regulations and recommended that the negative procedure should apply. The House of Lords Secondary Legislation Scrutiny



Committee (Sub-Committee B) also reported that the negative procedure should apply.

5. Subsequently The Marine Environment (Amendment) (EU Exit) Regulations 2018 (2018 Regulations) were made on 18 December 2018. The Regulations can be found at:

<http://www.legislation.gov.uk/uksi/2018/1399/contents/made>

6. The Committee considered the Welsh Government's SICM at its meeting on 10 December 2018. The Committee also noted the letter from the then Cabinet Secretary for Energy, Planning and Rural Affairs accompanying the SICM which stated:

“Given the volume of legislation that the Assembly is considering, I do not believe that a debate on this SI would be a productive use of valuable Plenary time. However, SO30A provides that any member may table a motion for a debate on this SI, and I would be happy to participate in a debate, should one be held.”

7. In accordance with Standing Order 30A.3, ‘any member, other than a member of the government, who intends to table a statutory instrument consent motion in relation to a relevant statutory instrument must first lay a statutory instrument consent memorandum, but must not normally do so until after a member of the government has laid a statutory instrument consent memorandum in respect of that statutory instrument’.

8. On 31 December 2018, Suzy Davies AM, laid before the National Assembly a Statutory Instrument Consent Memorandum for The Marine Environment (Amendment) (EU Exit) Regulations 2018. Suzy Davies AM has subsequently tabled a Statutory Instrument Consent Motion on 07 January 2019, which has been scheduled for debate on 16 January 2019.

The Statutory Instrument Consent Memorandum

9. Although two SICMs have been laid in relation to the proposed 2018 regulations, the motion proposed by Suzy Davies refers specifically to the SICM laid by her on 31 December 2018, and it is on that basis that the Assembly is being asked to make its decision. This report therefore only includes the detail of the SICM tabled by Suzy Davies, as this will be the relevant SICM the Assembly will consider.

10. The Memorandum states that the objective of the SI is to address:

“(a) failures of retained EU law to operate effectively; and

(b) other deficiencies;

arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018”.

- 11.** It explains that in particular, the Regulations (SI) make amendments to:
- (a) the Marine and Coastal Access Act 2009 (“2009 Act”) (Part 2 of the SI);
 - (b) the Marine Strategy Regulations 2010 (Part 3 of the SI); and
 - (c) Commission Directive Decision (EU) 2017/48 (Part 4 of the SI).
- 12.** The SICM sets out how the 2018 Regulations amend the 2009 Act:
- (a) section 60(8) - to reflect amendments to Scottish devolution legislation under Part 3 of Schedule 3 to the European Union (Withdrawal) Act 2018;
 - (b) section 76(2) - to ensure operability of the provisions post exit from the European Union;
 - (c) section 123(5) - to ensure operability of the provisions post exit from the European Union;
 - (d) section 141 – to remove the definition of a ‘third country vessel’;
 - (e) section 244(1) – to provide that EU Member States vessels and vessels from Gibraltar will be treated as third country vessels.
- 13.** And states that:
- “The changes identified in paragraphs 8(c) to (e) relate to functions that are within the legislative competence of the National Assembly, which could be the subject of a National Assembly Bill. It is these provisions within the 2018 Regulations that are the subject of this SICM”.
- 14.** Paragraph 10 of the SICM sets out why the Member (Suzy Davies) considers that it is appropriate for the SI to make the relevant provisions. In its own SICM, the Welsh Government also considered it appropriate that the UK Government legislated in this instance.
- 15.** Paragraph 12 of the SICM explains the difference between this SICM and the Welsh Government SICM in that it focuses mainly on Part 2 of the 2018 Regulations as the subject of the consent motion.
- 16.** In explaining why the additional SICM is needed the SICM notes the letter of 26 November 2018 from the Cabinet Secretary for Energy, Panning and Rural Affairs

giving the reason for why the Cabinet Secretary was not minded to table a motion for debate as being due to the volume of legislation currently before the Assembly. However, it goes on to say that the additional SICM enables a motion to be tabled:

“so that the National Assembly’s agreement can be sought on whether a relevant provision should be included in this statutory instrument”.

02. Consideration

17. The Committee considered the Statutory Instrument Consent Memorandum laid by Suzy Davies AM at its meeting on 14 January 2019, and noted the reason that the Member considered it necessary to table a SICM.

03. Conclusion

18. The Committee is content with the Memorandum laid by Suzy Davies AM, and for this SICM to be considered by the Assembly in accordance with Standing Order 30A.3, and the motion tabled by the Member on 7 January 2019.