

Report on the Statutory Instrument Consent Memorandum for The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

November 2020

Background

1. Standing Order 30A states that a member of the government must lay a Statutory Instrument Consent Memorandum in relation to any relevant statutory instrument (e.g. regulations) 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 Senedd.
2. The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020¹ (the Regulations) were laid before the UK Parliament on 21 October 2020.²

¹ [The European Union Withdrawal \(Consequential Modifications\) \(EU Exit\) Regulations 2020](#).

² An [earlier draft of the Regulations](#), with the same title, were laid before the UK Parliament on 8 October 2020 and withdrawn on 20 October. A [Written Statement for the earlier version of the Regulations](#) was laid before the Senedd on 14 October 2020.



3. On 2 November 2020, Jeremy Miles MS, the Counsel General, laid before the Senedd a Statutory Instrument Consent Memorandum³ (the Memorandum) for the Regulations, in accordance with Standing Order 30A. Also on 2 November, the Minister for Finance and Trefnydd wrote to notify us of the Memorandum.⁴

Committee consideration

4. We considered the Memorandum at our meeting on 9 November 2020.⁵

5. The Annex provides a commentary of our analysis of the Memorandum.

6. We note that a motion to debate the Memorandum is scheduled for debate in Plenary on 17 November 2020.

³ [Statutory Instrument Consent Memorandum – The European Union Withdrawal \(Consequential Modifications\) \(EU Exit\) Regulations 2020, November 2020](#)

⁴ [Letter from the Minister for Finance and Trefnydd, 2 November 2020](#)

⁵ [Legislation, Justice and Constitution Committee, 9 November 2020](#)

Annex

UK MINISTERS ACTING IN DEVOLVED AREAS	
200 - The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020	
<i>Laid in the UK Parliament: 21 October 2020</i>	
Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Draft affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	NA
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	NA
Date sifting period ends in UK Parliament	NA
Written statement under SO 30C:	Paper 20
SICM under SO 30A (because amends primary legislation)	SICM(5)38
Scrutiny procedure	
Outcome of sifting	NA
Procedure	Draft affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	27/10/20

Background

These Regulations are proposed to be made by the UK Government under section 23 of the European Union (Withdrawal) Act 2018 and section 41 of the European Union (Withdrawal Agreement) Act 2020.

Summary

The objective of the SI is to ensure that the UK statute book works coherently and effectively following the end of the transition period. It clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation after the end of the transition period.

The SI amends the Interpretation Act 1978 and the equivalent Interpretation Acts passed by the devolved legislatures (including the Legislation (Wales) Act 2019) in relation to the interpretation of references to “relevant separation agreement law”. The SI also amends the European Union (Withdrawal) Act 2018 (EUWA) to provide for how existing references to EU instruments that form part of relevant separation agreement law and how existing non-ambulatory references to direct EU legislation should be read following the end of the transition period.

The SI makes new interpretation provisions in light of the European Union (Withdrawal Agreement) Act 2020 (WAA), to remove uncertainty about which version of an EU instrument applies and provides a general gloss to ensure that the correct interpretation of the EU instrument applies.

The SI also makes consequential amendments to the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 (the 2019 Regulations) and technical repeals to redundant provisions within primary legislation arising from EUWA.

Statement by Welsh Government

Legal Advisers agree with the statement laid by the Welsh Government dated 2 November 2020 regarding the effect of these Regulations.

Intergovernmental Agreement on the European Union (Withdrawal) Bill

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Consent motion under Standing Order 30A.10

The Welsh Government laid a Statutory Instrument Consent Memorandum (SICM) in respect of these Regulations on 2 November 2020.

A motion to debate the SICM is scheduled for debate in Plenary on Tuesday 17 November 2020.