

Explanatory Memorandum to the Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Environment and Communities Division of the Welsh Government and is laid before the 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 Environment (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.

Lesley Griffiths AS
Minister for Environment, Energy and Rural Affairs
6 November 2020

PART 1

1. Description

This instrument makes amendment to regulation 2(5)(a) of The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019, specifically by replacing reference to Directive 2008/1/EC with reference to Directive 2010/75/EU.

The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 made amendments to The Air Quality Standards (Wales) Regulations 2010 in order to address failures of retained EU law to operate effectively following the withdrawal of the UK from the EU.

The instrument also amends articles 11 and 11A of the Natural Resources Body for Wales (Establishment) Order 2012 in light of the withdrawal of the United Kingdom from the European Union.

Regulation 3 of these Regulations comes into force immediately before IP completion day. This is to allow the amendment to the Air Quality (Wales) (Amendment) (EU Exit) Regulations 2019 to take effect, and for the amendments within that SI to operate immediately on IP completion day.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) (the “2018 Act”) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed this instrument is subject to the negative resolution procedure. The instrument makes a minor amendment and should therefore be subject to annulment.

In order for this provision to take effect on IP completion day (and immediately before IP completion day in relation to regulation 3) these Regulations will need to come into force sooner than 21 days after their laying before the Senedd.

Regulation 3 of the 2020 regulations comes into force immediately before Implementation Period completion day. This triggers the consultation requirement set out in paragraph 4 of Schedule 2 to the European Union Withdrawal Act 2018 for the Welsh Ministers to consult with the Secretary of State before the regulations are made.

The Legislation, Justice and Constitution Committee (LJCC) considered a draft of these regulations on 2 November 2020, and agreed that the negative procedure is appropriate for these regulations. A copy of the published LJCC's report can be accessed via the following link:

<https://senedd.wales/laid%20documents/cr-ld13657/cr-ld13657-e.pdf>

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK's exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before exit day into domestic law and preserves laws made in the UK which implement EU obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK's exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

In accordance with the requirements of the Withdrawal Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

The purpose of the instrument is to ensure retained EU law operates effectively once the UK leaves the EU. This means maintaining the substantive elements of the EU legislative regime in the fields of fisheries and marine management (following the work of addressing identified deficiencies).

The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 made amendments to The Air Quality Standards (Wales) Regulations 2010 (SI 2010/1433) which transposed the requirements of Directives 2008/50/EC and 2004/107/EC on ambient air quality in Europe.

Regulation 2(5)(a) of The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 makes reference to Directive 2008/1/EC concerning integrated pollution prevention and control. This Directive is no longer in force.

Regulation 3 of The Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 amends The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 by substituting reference to Directive 2008/1/EC with reference to Directive 2010/75/EU concerning industrial emissions (integrated pollution prevention and control).

The instrument also amends articles 11 and 11A of the Natural Resources Body for Wales (Establishment) Order 2012 in light of the withdrawal of the United Kingdom from the European Union.

5. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of this instrument is solely to enable the current domestic legislative and policy framework to remain unchanged by the withdrawal of the UK from the EU.

6. Regulatory Impact Assessment (RIA)

No impact assessment has been produced in relation to these Regulations as no impact is foreseen on the private, voluntary or public sectors.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which 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 Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)	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)
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. Welsh Ministers have committed to make the same statement	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		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 which 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 Authority. Welsh Ministers have	A statement to explain why it is appropriate to create such a sub-delegated power.

		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	
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

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Environment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of the Senedd Cymru (i.e. the negative procedure). This is the case because the changes made are minor and technical in nature.”

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Environment (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 Environment, Energy and Rural Affairs 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. There are benefits to the continuation of operable air quality standards legislation following EU exit.”

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs has made the following statement:

“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 Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose and 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.