

National Assembly for Wales

Constitutional and Legislative Affairs Committee

June 2015

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Report on the Statutory Instrument Consent Memorandum for The Hazardous Waste (Miscellaneous Amendments) Regulations 2015

Background

1. On 11 June 2015, Carl Sargeant AM, the Minister for Natural Resources (“the Minister”), in accordance with Standing Order 30A.2, laid before the Assembly a Statutory Instrument Consent Memorandum for The Hazardous Waste (Miscellaneous Amendments) Regulations 2015.
2. Standing Order 30A states that that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Assembly if a UK Statutory Instrument makes provision in relation to Wales to amend primary legislation within the legislative competence of the Assembly.
3. On 10 June 2015, the Minister wrote to us stating that he did not intend to table a Statutory Instrument Consent Motion and explaining the reasons for his decision. A copy of the letter is attached as an annexe to this letter.

The Statutory Instrument Consent Memorandum

4. The 2015 Regulations relate to the transposition of new EU legislation (Commission Regulation 1357/2014 and Commission Decision 2014/955/EU) that updates the list of hazardous waste properties and the list of waste, to change the way hazardous waste is assessed and classified. The Regulations contain amendments to section 62A of the *Environmental*

Protection Act 1990 (“the 1990 Act”) for England and Wales, which are consequential on the updating of the list of hazardous waste properties and the list of waste.

3. The Memorandum states that:

“4. The Commission Regulation is binding and has direct effect in the UK. However, changes need to be made to UK legislation to give proper effect to the EU legislation, in part because domestic legislation is drafted in such a way that it will not be automatically updated as relevant EU legislation changes.”

4. The Memorandum also states that:

“9. The amendment is necessary as a result of the changes to EU legislation and is of a minor and technical nature ... The terms of the Commission Regulation or the amendment to the List of Wastes Decision do not afford any discretion in terms of policy or drafting as between Wales and England.

10. It is the view of the Welsh Government that it is appropriate to deal with the amendment of section 62A in these Regulations as it provides the most practical and expedient approach to making this technical amendment for both England and Wales.”

5. The Memorandum also notes that this is the first Statutory Instrument Consent Memorandum that relates to Regulations laid in the UK Parliament that are subject to the negative procedure. They will automatically become law on 1 July 2015 unless there is an objection from a member of either the House of Commons or House of Lords.

Consideration

6. We considered the Statutory Instrument Consent Memorandum at our meeting on 22 June 2015.

Conclusion

7. We note that the changes being made by this statutory instrument are technical in nature.

8. The statutory instrument is subject to the negative procedure in the UK Parliament. While we recognise that the procedure followed is determined by the 1990 Act, we nevertheless wish to express our reservations at the use of the negative procedure to amend primary legislation.

9. It remains our view that changes to primary legislation, however minor or technical in nature, should be made at the very least by statutory instruments subject to the affirmative procedure.

10. As the Consent Memorandum notes, this is the first Statutory Instrument Consent Memorandum to be considered that is subject to the negative procedure in the UK Parliament.

11. We note the reasons given by the Minister for not tabling a motion to this particular instrument.

12. This decision should not be regarded as setting a precedent for not holding debates on Statutory Instrument Consent Memoranda that are subject to the negative procedure in the UK Parliament. In our view, a motion should be tabled and debated on important matters contained in subordinate legislation that amends primary legislation.

13. We intend to monitor the future use of Statutory Instrument Consent Memoranda subject to the negative procedure in the UK Parliament, with a view to ensuring that the Assembly's procedures under Standing Order 30A remain fit for purpose.

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

David Melding AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff. CF99 1NA.

10th June 2015

Dear David

I am writing to inform you that I have laid a Statutory Instrument Consent Memorandum (Memorandum) in relation to The Hazardous Waste (Miscellaneous Amendments) Regulations 2015 (“the Regulations”) which were made by the Secretary of State for Environment, Food and Rural Affairs on 5 June. The regulations include amendments to the Environmental Protection Act 1990 which include provisions for Wales. I wish to make you aware that, while I have laid the Memorandum, I do not intend to table a Statutory Instrument Consent Motion.

The Regulations relate to the transposition of new EU legislation that updates the list of hazardous waste properties and the list of waste, to change the way hazardous waste is assessed and classified. The Regulations contain amendments to section 62A of the Environmental Protection Act (EPA) 1990 for England and Wales, which are consequential on the updating of the list of hazardous waste properties and the list of waste. The Memorandum (a copy of which is enclosed) explains in more detail the background to the amendments to the EPA which are technical in nature.

I have laid the Memorandum in accordance with the requirement under Standing Order (SO) 30A for “a member of the government ..[to].. lay a memorandum (“a statutory instrument consent memorandum”) in relation to any relevant statutory instrument laid before the UK Parliament by UK Ministers”. I consider the Regulations to be a relevant statutory instrument because they make provision in relation to Wales amending primary legislation within the legislative competence of the Assembly, and are not incidental or consequential provisions relating to matters that are not within the Assembly’s legislative competence.

The Regulations are subject to negative procedure in Parliament, and therefore they were made before they were laid, and provided no Member of Parliament prays against, they will come into force on 1 July. It is for you to decide whether you wish, as the responsible committee referred to under Standing Order 30A, to consider and report on the Memorandum.

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I have considered carefully whether I should proceed to table a Statutory Instrument Consent Motion under SO 30A.10, to be debated after the 35 days allowed for scrutiny by the responsible committee has elapsed. There is no requirement for the Welsh Government to do so, of course, but normally we would table a motion so that the Assembly can give its consent, or not, before the relevant statutory instrument is made.

In this case, as the Regulations have already been made, I have decided that I will not proceed to lay a motion, as that would result in the Assembly debating and deciding whether to give its consent after the relevant statutory instrument has been made. Each case would have to be considered on its merits, but in these Regulations the amendments in question are technical in nature and do not of themselves make substantive changes to policy. I do not think there is merit in holding an Assembly debate on whether consent should be given to provision in Regulations which have already been made, and where the provision in question is consequential in nature and not a substantive policy change. It is of course still open to any Assembly Member, if they feel strongly that the Memorandum should be debated, to lay a motion to debate this in Plenary.

The Committee will, of course, have the full opportunity to scrutinise the changes that we make to our legislation to implement the EU changes when we lay the Hazardous Waste (Miscellaneous Amendments) (Wales) Regulations 2015 around 20 June 2015.

I trust that the information will be helpful.

Yours sincerely

A handwritten signature in cursive script, reading 'Carl Sargeant'.

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources