

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the Senedd if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.
2. The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 are subject to the affirmative procedure and were laid in draft before the UK Parliament on 21 October 2020. An earlier draft of the SI, with the same title, was laid on 8 October, then withdrawn, amended (but not in devolved areas) and re-laid. A Statutory Instrument Consent Memorandum for the earlier version of the SI was laid on 14 October.
3. The Regulations can be found at:

<https://www.legislation.gov.uk/ukdsi/2020/9780348214055>

Summary of the Statutory Instrument and its objective

4. 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.
5. 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.
6. 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.
7. 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.

8. The provisions in the SI to which this Memorandum relates vary in territorial extent and application. The territorial extent and application of regulations 2, 3 and 4 which amend the Interpretation Act 1978, EUWA and the 2019 Regulations is the United Kingdom. Regulation 8 which amends the Legislation (Wales) Act 2019 extends and applies to Wales. Regulation 9 and the Schedule which repeals and revokes a number of provisions contained in primary legislation extends and applies to the United Kingdom.

Relevant Provision to be made by the SI

9. Regulations 2 and 8 make consequential amendments to the Interpretation Act 1978 (c. 30) and the Legislation (Wales) Act 2019 (anaw 4) to make interpretative provision for references in domestic legislation to EU instruments which form part of relevant separation agreement law following the end of the transition period.
10. It is the view of the Welsh Government that the provisions described in paragraph 8 above relate to subject matters that are within the legislative competence of the Senedd. The term “relevant separation agreement law” has a broad definition in section 7C of EUWA. This includes domestic legislation that may be made by a Minister of the Crown or the Welsh Ministers to implement separation issues in Part 3 of the Withdrawal Agreement, such as matters relating to state aid and procurement which fall within the Senedd’s legislative competence. It also captures domestic legislation that may be made to implement the Protocol on Ireland/Northern Ireland, which could include provisions relating to a number of matters that are within the Senedd’s legislative competence, such as fisheries and food.

Why it is appropriate for the SI to make this provision

11. There is no divergence between the Welsh Government and the UK Government (The Cabinet Office) on the amendments being made by the SI. It is to be made under section 23 of EUWA and section 41 of WAA which confer powers on a Minister of the Crown to make provision in consequence of both of those Acts. Equivalent powers to make consequential provision are not conferred on the Welsh Ministers and therefore the Welsh Ministers could not make a separate Welsh SI containing provision for the interpretation of legislation that is within the Senedd’s legislative competence.
12. The SI makes a number of technical amendments to the Interpretation Acts which are designed to ensure that the legislative framework for the Withdrawal Agreement and the Protocol on Ireland/Northern Ireland operate effectively following the end of the transition period.
13. It is our strong preference that laws made in Wales should, as part of the process of withdrawal from the EU, be amended in Wales. In the case of

the changes made by this SI, the Welsh Ministers do not have the powers. Consequently, given the requirement for the amendments to be made by the end of the transition period, the only alternative way to make the amendments in Wales would be to take primary legislation through the Senedd and for it to receive Royal Assent by the end of the year. This would not be a proportionate use of time and resources.

14. The amendments have been considered fully and there is no divergence on them. Given the technical nature of the amendments and the need for interpretative provisions to be in place by the end of the year, it is considered appropriate for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. Furthermore, making the necessary consequential amendments in one instrument helps to promote the accessibility of the law during this period of change.

Financial implications

15. There are no financial implications in consenting to the provisions in the SI.

Jeremy Miles MS

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