



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **SI laid in Parliament, which amends secondary legislation in a devolved area The Waste and Agriculture (Legislative Functions) Regulations 2021 (“the 2021 Regulations”)**

DATE **17 January 2022**

BY **Julie James MS, Minister for Climate Change and Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd.**

1. The 2021 Regulations provide for legislative functions of the European Commission under various Waste Directives to be exercisable instead by a public authority in the United Kingdom.
2. The 2021 Regulations will transfer functions concerning devolved policy matters to Welsh Ministers, the Secretary of State (SoS) in relation to England, Scottish Ministers in relation to Scotland and DAERA in Northern Ireland (so long as the relevant Directive is not listed in Annex 2 of the NI Protocol).
3. Any functions concerning reserved areas will be transferred to the SoS in relation to the UK unless the relevant Directive is in Annex 2 of the Northern Ireland Protocol, in which case it will be transferred in relation to Great Britain only.
4. The functions being transferred are primarily tertiary legislation making powers contained within the EU Waste Directives which allow for making of delegated legislation by the Commission in accordance with powers set out in EU Directives. The tertiary legislation generally amends or supplements non-essential parts of the Directive. The transferred powers in the 2021 regulations will be exercised by statutory instrument in the form of regulations. The legislative procedure for these SIs will be the negative procedure.

5. The Regulations also correct an error in existing provision for legislative functions relating to agriculture. The 2021 Regulations insert an omitted definition of “appropriate authority” in to REUL Regulation 1306/2013 on the financing, management and monitoring of the common agricultural policy. The definition provides that the Welsh Ministers are the “appropriate authority” in relation to REUL Regulation 1306/2013 with the Secretary of State being able to act in limited, specified circumstances with the Welsh Ministers’ consent.

Any impact the SI may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence

6. The 2021 Regulations will increase the Welsh Ministers Executive Competence by way of the various enabling powers being transferred to Welsh Ministers. The Regulations do not impact on the Senedd’s legislative competence.

The purpose of the amendments

7. In relation to devolved functions, the powers transferring to Welsh Ministers are:
 - i. Landfill Directive – transfers a power to develop a standard for sampling waste.
 - ii. Mining Waste Directive – transfers powers to amend secondary legislation and EU retained legislation on a range of technical functions including; sampling methods for waste, classifications of waste facilities, defining inert waste and technical guidelines for financial guarantees.
 - iii. Waste Framework Directive – transfers powers to set criteria for when specific substances or objects are by-products rather than waste, to set mandatory end of waste criteria for specific materials and to amend the application of the R1 energy recovery formula for incineration facilities.
 - iv. End of Life Vehicles Directive(ELV Directive) – transfers a power to be able to set minimum depollution requirements for facilities that treat end of life vehicles.
 - v. Batteries Directive – transfers a power to be able to set detailed rules supplementing the rules for export and recycling. Batteries can be recycled outside the EU and can count towards the UK requirement to recycle batteries if the recycling operation takes place under Directive equivalent conditions in another country.
 - vi. Waste Electronic and Electrical Equipment Directive (WEEE Directive) – transfers a power to be able to specify technologies in relation to treatment of substances that must be removed when treating WEEE and transfer the power to modify relevant subordinate legislation in light of scientific progress.

8. The reserved functions which will be transferred only to the SoS are;-
- i. ELV Directive – transfers a power to set a list of heavy metal restrictions in the manufacture of vehicles, and to set a list of exemptions from the bans on materials and components that contain heavy metals (lead, mercury, cadmium and chromium).
 - ii. ELV Directive – transfer of a power to set out the minimum requirements for the certificate of destruction. In the UK the DVLA is responsible for deregistering vehicles and applying certificates of destruction to the national vehicle register.
 - iii. ELV Directive – transfer a power to establish standards to support the obligation on vehicle manufactures to ensure component parts are marked (product labelling) to aid their reuse and recycling.
 - iv. Batteries Directive – transfer of a power to grant exemptions from the battery labelling requirements.
 - v. WEEE Directive – transfer of a power to modify the symbol for marking electrical and electronic equipment
9. For each of the powers being transferred there is no equivalent domestic power. It is important that we transfer these functions within two years of IP completion day to ensure we have a means to amend the relevant matters in the future.
10. The returning functions provided by the 2021 Regulations will not need to be exercised immediately, they will become part of EU retained law, current controls will continue to apply until such time as they need to change.
11. The 2021 Regulations correct an error in REUL Regulation 1306/2013 to insert the definition of “appropriate authority” which was erroneously omitted.
12. Regulation 10(2)(a) and (b) of the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020 (S.I. 2020/1445) amended regulation 3 of the Agriculture (Legislative Functions) (EU Exit) Regulations 2019 (S.I. 2019/748), and inserted a definition of “appropriate authority” into REUL Regulation 1306/2013. This definition provided that the Welsh Ministers were the appropriate authority subject to point (ii) of the definition which provided that the Secretary of State would act with the Welsh Ministers’ consent in limited, specified circumstances.
13. Regulation 3 of the Agriculture (Legislative Functions) (EU Exit) Regulations 2019 was subsequently repealed in error immediately before IP completion day by regulation 65

of the Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/831). This has meant that there is currently no definition of “appropriate authority” in REUL Regulation 1306/2013.

14. The 2021 Regulations re-insert the definition of “appropriate authority” into REUL Regulation 1306/2013.

Why consent was given

15. Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. There is no divergence in policy after full and careful consideration of the proposed amendments, assessment of the policy instructions and legal analysis of the drafting. These amendments are to ensure that the statute book remains functional following EU Exit.