

SL(5)328 – The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (the 'European Communities Act') and by the powers conferred by paragraph 1(1) of Schedule 2, and paragraph 21 of Schedule 7 to, the European (Withdrawal) Act 2018 (the 'Withdrawal Act').

These Regulations amend 5 other instruments as follows:

- The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (S.I. 2004/1656);
- The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009 (S.I. 2009/3342);
- The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016 (S.I. 2016/58);
- Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 (S.I. 2017/565); and
- The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (S.I. 2017/567).

The provisions made under section 2(2) of the European Communities Act make minor amendments or are to update out-of-date references.

The provisions made under the powers in the Withdrawal Act are intended 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.

Procedure

Negative.

Technical Scrutiny

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation

There are a number of instances of the ambiguous use of the word 'national' (in the English text) and 'cenedlaethol' (in the Welsh text). It is unclear whether 'national'/'cenedlaethol' is a reference to Wales, or to the UK. These occur in regulation 2(8)(b), 5(9)(b)(6A)(b), 5(11)(a)(ii) and 6(16)(a).

The Explanatory Memorandum ('EM') to the Regulations does not clarify the meaning of 'national'/'cenedlaethol' for the reader. The EM states as follows at paragraph 4.7:



4.7 The amendments made under the European Union Withdrawal Act 2018 can be broadly categorised as: ...

- Changing references to “Member States” to national, particularly in the context of the law at ‘Member State level’ to ‘any law of any part of the UK...

2. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The English text of regulation 5(11)(b)(ii) inserts “any other” after “pursuant to” ‘in the second place **with** [sic] it appears’. The Welsh text refers to “yn unol â deddfwriaeth genedlaethol” (pursuant to national legislation) but goes on to say “yn yr ail le y mae’n digwydd” (in the second place in which it appears), which is incorrect as the longer expression appears only once in the Welsh text of the principal Regulations although ‘pursuant’ does appear twice in the English text.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

Implications arising from exiting the European Union

These Regulations are made in exercise of powers in both the European Communities Act and the Withdrawal Act. The instruments amended by these Regulations will become part of retained EU law on exit day.

Government Response

The Committee has raised two reporting points under Standing Order 21.2(v).

(1) Reference to the term “national”

The first requires further clarification on whether the term ‘national’ in the amending regulations refers to Wales or the UK.

The Welsh Government acknowledges this point in relation to regulation 2(8)(b), 5(11)(a)(ii) and 6(16)(a) and an amendment will be made at the next available opportunity.

In relation to regulation 5(9)(b) Welsh Government considers the provision to enable the Welsh Ministers to have regard to a range of factors whether they are in the Welsh or UK national interest, or both. However, the Welsh Government acknowledges this point, too, and an amendment will be made at the next available opportunity.

The CLAC report refers to regulation (6A)(b) amongst the regulations which amend provision in the Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the 2019 Regulations”) by including the term “national”. To clarify, we note that regulation (6A) (b) is the provision inserted in the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 by regulation 5(9)(b) of the 2019 Regulations.



(2) Incorrect inclusion in Welsh text

The second relates to the incorrect inclusion of “yn yr ail le y mae’n digwydd” in regulation 5(11)(b)(ii).

The English text of regulation 5(11)(b)(ii) inserts “any other” after “pursuant to” ‘in the second place **with** [sic] it appears’. The Welsh text refers to “yn unol â deddfwriaeth genedlaethol” (pursuant to national legislation) but goes on to say “yn yr ail le y mae’n digwydd” (in the second place in which it appears), which is incorrect as the longer expression appears only once in the Welsh text of the principal Regulations although ‘pursuant’ does appear twice in the English text.”

The Welsh Government acknowledges this point and an amendment will be made at the next available opportunity.

Committee Consideration

The Committee considered the instrument, along with the Government response at its meeting on 4 March 2019 and reports to the Assembly in line with the reporting points above.

