

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018

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 National Assembly for Wales (“the Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 was laid before Parliament on 29 October and is now being laid before the Assembly. The order can be found at: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-inquiries-and-coroners-amendment-eu-exit-regulations-2018>

Summary of the Statutory Instrument and its objective

3. The objective of the SI is to correct deficiencies in legislation arising from the UK leaving the European Union relating to public inquiries and coroners inquests.
4. This SI makes technical corrections to the Inquiries Act 2005. These corrections are required to ensure that the statute book will continue to operate after exit.
5. This SI also makes technical corrections to the Coroners and Justice Act 2009 and the Coroners Act (Northern Ireland) 1959, but since these amendments could not be made by the Welsh Ministers (as they are outside devolved competence) they do not require approval.

Relevant provision to be made by the SI

6. The Inquiries and Coroners (Amendment) (EU Exit) Regulations 2018 amend sections 19, 22 and 25 of the Inquiries Act 2005 by replacing references to “EU obligations” and “an enforceable EU obligation” with references to “retained EU obligations” and “a retained enforceable EU obligation.”
 - Section 19 of the Inquiries Act 2005 sets out the powers of Ministers (including Welsh Ministers) and inquiry chairs to restrict public access to inquiries. Section 19(3)(a) limits these powers by stating that such restrictions must only relate to areas covered by “any statutory provision, enforceable EU obligation or rule of law”. The reference to “enforceable EU obligation” will be replaced by “retained enforceable EU obligation”.

- Section 22(1)(b) of the Inquiries Act 2005 provides that a person cannot be required to produce evidence to an inquiry, if such a requirement would be incompatible with an EU obligation. This provision is being amended by the regulations to ensure it will continue to apply to “retained EU obligations”.
 - Section 25 of the Inquiries Act 2005 enables persons to withhold elements of an inquiry report where required by an enforceable EU obligation. The regulations will ensure that such persons continue to be able to withhold information in pursuance of a retained enforceable EU obligation.
7. These amendments retain the status quo following the UK’s exit from the European Union.
 8. It is the view of the Welsh Government that the provisions described in paragraph 5 above fall within the legislative competence of the National Assembly for Wales in so far as they relate to public inquiries.

Why it is appropriate for the SI to make this provision

9. There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Carwyn Jones AM
First Minister of Wales
October 2018