

Explanatory Memorandum to The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018

Lesley Griffiths, Cabinet Secretary for Energy, Planning and Rural Affairs

23 November 2018

PART 1

1. Description

These Regulations introduce miscellaneous amendments to a number of statutory instruments relating to planning, agriculture, animal health, fisheries and the environment. The majority of the changes amend out of date references to European and domestic legislation.

Additional amendments cover the following:

- Correction of a drafting error in relation to the Water Abstraction (Transitional Provisions) Regulations 2017.
- Amendment to the Environmental Information Regulations 2004 to reflect a Supreme Court decision to end the application of the Freedom of Information Act 2000 in regards to specific aspects of the 2004 Regulations.
- Changes to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 to ensure the correct and full transposition of Directive 2004/35/EC.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations do not amend primary legislation. The amendments in these Regulations are technical in nature and do not introduce policy changes.

To ensure the accuracy of the statute book ahead of the UK's exit from the EU, the Regulations correct out of date references to European and domestic legislation as well as making other minor amendments to domestic legislation. The corrections address instances where European Directives and Regulations have been amended or replaced but the updated references have not been carried through into domestic law.

The Regulations also introduce minor technical changes, specifically to regulation 18(6) of the Environmental Information Regulations 2004 to end the application of Section 53 of the Freedom of Information Act 2000 in respect of the 2004 Regulations. This reflects case law development and a Supreme Court judgment in *R (on the application of Evans) and another v Attorney General 2015*.

The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 is amended to ensure the correct and full transposition of EU law and provides a cross reference to the term 'European Site' in accordance with the Conservation of Habitats and Species Regulations 2017.

The amendment to the Water Abstraction (Transitional Provisions) Regulations 2017 corrects a drafting error in the description of what circumstances apply for granting a more limited abstraction licence than the one applied for.

3. Legislative background

These Regulations are not made under the European Union (Withdrawal) Act 2018 but relate to the withdrawal of the United Kingdom from the EU because they correct out of date references to European and domestic legislation prior to the UK's exit from the EU. This is required because out of date references to legislation are not necessarily interpreted as references to the correct (updated) legislation and there is therefore a risk that the statute book would not work effectively post-Brexit.

These Regulations are made under the negative resolution procedure. They are made in exercise of several enabling powers though the majority of its provisions are made in exercise of powers conferred by section 2(2) of the European Communities Act 1972. The powers conferred by section 2(2) will be repealed by the European Union (Withdrawal) Act 2018 on exit day.

4. Purpose and intended effect of the legislation

The technical changes made by these Regulations are necessary to ensure the effective and correct functioning of the statute book following the UK's exit from the EU. The amendments include updating references to European and domestic legislation, minor drafting corrections and the revocation of legislation which is no longer applicable.

5. Consultation

As there is no policy change, no public consultation was undertaken.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment because the Regulations only introduce minor technical corrections.