



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019**

DATE **07 June 2019**

BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019

Policy Overview of the SI

The 2019 Regulations address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union.

European Directly Applicable Instruments amended by the 2019 Regulations

- Council Directive 2004/42/CE of the European Parliament and of the Council on the limitation of emissions of VOCs, which aims to reduce VOCs in certain paints and varnishes, and vehicle refinishing products, in order to prevent or reduce air pollution resulting from the contribution of VOCs to the formation of tropospheric ozone.
- Council Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe, which sets legally binding limits for concentrations in outdoor air of major air pollutants that impact public health, such as particulate matter (PM) and nitrogen dioxide (NO₂).
- Council Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control), which lays down rules on integrated prevention and control of pollution arising from certain industrial activities.
- Council Directive 2015/2193/EU of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants, which lays down rules to control emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x) and dust into the air from medium combustion plants, and rules to monitor emissions of carbon monoxide (CO).

- Council Directive 2016/2284/EU of the European Parliament and the Council on the reduction of national emissions of certain atmospheric pollutants, which establishes the emission reduction commitments for the Member States' anthropogenic atmospheric emissions of specified pollutants, requires that national air pollution control programmes be drawn up, adopted and implemented, and that emissions of specified pollutants, as well as their impacts, be monitored and reported.
- Council Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise, which defines a common approach intended to avoid, prevent or reduce on a prioritised basis the harmful effects, including annoyance, due to exposure to environmental noise.
- Council Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), which lays down general rules aimed at the establishment of INSPIRE, for the purposes of Community environmental policies and policies or activities which may have an impact on the environment.
- Council Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, which establishes a framework within which Member States are to take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest.
- Council Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, which aims to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater.
- Council Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration, which establishes specific measures to prevent and control groundwater pollution and depletion.
- Council Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, which lays down environmental quality standards ("EQS") for priority substances and certain other pollutants as provided for in the Water Framework Directive (the "EQS Directive"), with the aim of achieving good surface water chemical status.
- Council Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality, which aims to preserve, protect and improve the quality of bathing waters.

- Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, which aims to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean.
- Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, which concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors and aims to protect the environment from the adverse effects of such waste water discharges.
- Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, which has the objective of reducing water pollution caused or induced by nitrates from agricultural sources and preventing further such pollution.
- Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture.

Purpose of the amendments

This instrument transfers a series of legislative functions that are currently conferred by European Union (“EU”) Directives upon the European Commission (“the Commission”), to public authorities in the United Kingdom (“UK”), so that they can be exercised at national level after the UK leaves the EU.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://beta.parliament.uk/work-packages/01V7qIYC>

Any impact the SI may have on the legislative competence of the National Assembly for Wales and/or the Welsh Ministers’ executive competence

Marine

Welsh Ministers have some executive marine functions in the Welsh Zone, and as a result, their consent will be required where this executive competence is, or is likely to be affected by regulations made by the Secretary of State under Part 6 to the Marine Strategy Regulations 2010.

The National Assembly for Wales has some legislative competence within the marine area in relation to Wales, subject to reservations such as shipping, oil and gas. As a result, prior to making regulations under the new Part 6 of the Marine Strategy Regulations 2010, the Secretary of State must obtain the consent of the Welsh Ministers where regulations apply in relation to Wales (as defined in section 158(1) of the Government of Wales Act 2006 (GoWA 2006)). Functions transferred to the Secretary of State constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly

Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

Air Quality, Water and environmental noise

This SI contains provision which enables the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales. Functions transferred to the Secretary of State to be exercised concurrently with the consent of the Welsh Ministers constitute functions of a Minister of the Crown that relate to a qualified devolved function for the purposes Schedule 7B to the Government of Wales Act 2006. This therefore may be a relevant consideration in the context of the Assembly's competence to legislate in the future in these areas.

Functions transferred so that they are exercisable by the Secretary of State alone or to the Secretary of State but which are only exercisable with the consent of the Devolved Authorities in relation to devolved territories also constitute functions of a Minister of the Crown for the purposes of Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

Why consent was given

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. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.