

Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad: I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 1 – Y Senedd Gareth Williams
Dyddiad: Dydd Llun, 30 Ebrill 2018 Clerc y Pwyllgor
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- 1 **Cyflwyniad, ymddiheuriadau, dirprwyon a datganiadau o fuddiant**
14.45
- 2 **Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3**
14.45 (Tudalen 1)
CLA(5)–13–18 – Papur 1 – Offerynnau statudol sydd ag adroddiadau clir
Offerynnau'r Penderfyniad Negyddol
 - 2.1 SL(5)209 – Rheoliadau'r Byrddau Diogelu (Cyffredinol) (Cymru) (Diwygio)
2018
- 3 **Offerynnau sy'n cynnwys materion i gyflwyno adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3**
14.45
Offerynnau Cyfansawdd y Weithdrefn Penderfyniad Negyddol
 - 3.1 SL(5)206 – Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) (Diwygio) (Rhif 2) 2018
(Tudalennau 2 – 28)
CLA(5)–13–18 – Papur 2 – Rheoliadau
CLA(5)–13–18 – Papur 3 – Nodyn Trosi
CLA(5)–13–18 – Papur 4 – Memorandwm Esboniadol
CLA(5)–13–18 – Papur 5 – Adroddiad



4 Papurau i'w nodi

14.50

4.1 Craffu ar reoliadau a wnaed o dan Fil yr Undeb Ewropeaidd (Ymadael)

(Tudalennau 29 – 32)

CLA(5)–13–18 – Papur 6 – Llythyr gan y Prif Weinidog, 25 Ebrill 2018

CLA(5)–13–18 – Papur 7 – Llythyr gan y Llywydd, 25 Ebrill 2018

CLA(5)–13–18 – Papur 8 – Llythyr gan y Prif Weinidog at y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol, 25 Ebrill 2018

4.2 Llythyr at Lywodraeth y DU – Dealltwriaeth o ddatganoli

(Tudalennau 33 – 36)

CLA(5)13–18 – Papur 9 – Llythyr olaf

5 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y busnes a ganlyn:

14.55

6 Y Comisiwn ar Gyfiawnder yng Nghymru

(Tudalennau 37 – 42)

CLA(5)–13–18 – Papur 10 – Llythyr gan y Cadeirydd

CLA(5)–13–18 – Papur 11 – Datganiad Llywodraeth Cymru: Y Comisiwn ar Gyfiawnder yng Nghymru

7 Trafod Is-ddeddfwriaeth ac eithrio Offerynnau Statudol

(Tudalennau 43 – 44)

CLA(5)–13–18 – Paper 12 – Llythyr drafft at Lywodraeth Cymru

8 Adnoddau ar gyfer craffu ar Brexit

(Tudalennau 45 – 49)

CLA(5)–13–18 – Papur 13 – Ymateb drafft diwygiedig

9 Llythyr gan y Pwyllgor Busnes: Gorchmynion yn y Cyfrin Gyngor o dan Adran 116C

(Tudalennau 50 – 51)

CLA(5)-13-18 – Papur 14 – Llythyr gan y Llywydd, fel Cadeirydd y Pwyllgor Busnes

10 Blaenraglen Waith

Dim papur

Sesiwn gyhoeddus 15.30

11 Bil yr UE (Ymadael): Sesiwn dystiolaeth 2 – Ysgrifennydd y Cabinet dros Gyllid

15.30

(Tudalennau 52 – 61)

CLA(5)-13-18 – Papur 15 – Llythyr gan Mark Drakeford at Ganghellor

Dugiaeth Caerhirfryn

CLA(5)-13-18 – Papur 16 – Llythyr gan Ganghellor Dugiaeth Caerhirfryn at Mark Drakeford

CLA(5)-13-18 – Papur 17 – Cytundeb Rhynglywodraethol ar Fil yr Undeb Ewropeaidd (Ymadael) a Sefydlu Fframweithiau Cyffredin

Tŷ'r Arglwyddi, Trydedd Restr o Welliannau wedi'u Didol i'w cynnig yn ystod y Cyfnod Adroddiad, 23 Ebrill 2018

<https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-R-III.pdf>

Bil yr Undeb Ewropeaidd (Ymadael): Memorandwm Pwerau Dirprwyedig Atodol (3), 23 Ebrill 2018

<https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-supplementaryDPM3.pdf>

Tŷ'r Arglwyddi, Gwelliannau i'w cynnig yn ystod y Cyfnod Adroddiad [Atodol i'r Drydedd Restr o Welliannau wedi'u Didoli], 25 Ebrill 2018

[https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-R-III\(a\).pdf](https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-R-III(a).pdf)

Bil yr Undeb Ewropeaidd (Ymadael): Memorandwm Pwerau Dirprwyedig Atodol (4), 25 Ebrill 2018

<https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079-supplementaryDPM4.pdf>

12 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y busnes a ganlyn:

16.30

13 Trafod y dystiolaeth: Bil yr Undeb Ewropeaidd (Ymadael)

16.30

Dyddiad y cyfarfod nesaf

14 Mai 2018

Offerynnau Statudol sydd ag Adroddiadau Clir 30 Ebrill 2018

SL(5)209 – Rheoliadau Byrddau Diogelu (Cyffredinol) (Cymru) (Diwygio) 2018

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn ymwneud â Byrddau Diogelu Plant a sefydlir o dan adran 134(4) o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 a Byrddau Diogelu Oedolion a sefydlir o dan adran 134(5) o'r Ddeddf honno.

Mae rheoliad 2 yn newid y partner arweiniol ar gyfer Ardal Bwrdd Diogelu Gogledd Cymru, gan newid y partner arweiniol o Gyngor Bwrdeistref Sirol Conwy i Gyngor Sir Ddinbych.

Rhiant–Ddeddf: Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014

Fe'u gwnaed ar: 17 Ebrill 2018

Fe'u gosodwyd ar: 20 Ebrill 2018

Yn dod i rym ar: 25 Mai 2018



Eitem 3.1

STATUTORY INSTRUMENTS

2018 No. 428

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

**The Environmental Permitting (England and Wales)
(Amendment) (No. 2) Regulations 2018**

Made - - - - *21st March 2018*
Laid before Parliament *28th March 2018*
Laid before the National Assembly for Wales *28th March 2018*
Coming into force - - *2nd May 2018*

The Secretary of State and the Welsh Ministers make these Regulations in exercise of the powers conferred by sections 2 and 7(9) of and Schedule 1 to the Pollution Prevention and Control Act 1999(a) (“the 1999 Act”).

In accordance with section 2(4) of the 1999 Act, the Secretary of State and the Welsh Ministers have consulted—

- (a) the Environment Agency;
- (b) the Natural Resources Body for Wales;
- (c) such bodies and persons as appear to them to be representative of the interests of local government, industry, agriculture and small business as they considered appropriate; and
- (d) such other bodies or persons as they considered appropriate.

Citation and commencement

1. These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018 and come into force on 2nd May 2018.

Amendment of the Environmental Permitting (England and Wales) Regulations 2016

2. The Environmental Permitting (England and Wales) Regulations 2016(b) are amended as set out in regulations 3 to 7.

(a) 1999 c. 24. Amendments to section 2 were made by S.I. 2013/755. The functions of the Secretary of State under or in relation to section 2, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales (except in relation to offshore oil and gas exploration and exploitation) by article 3 of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). A further amendment was made to section 2 which is not relevant to this instrument. Schedule 1 was amended by S.I. 2011/1043. See also S.I. 2017/1248 designating Council Directive 2013/59/Euratom for the purposes of paragraph 20(1)(b) of Schedule 1. Further amendments to Schedule 1 were made which are not relevant to this instrument.

(b) S.I. 2016/1154. Amendments have been made to these Regulations which are not relevant to this instrument.

Amendment of regulation 3 (interpretation: Directives)

3. In regulation 3—

- (a) for the definition of the Basic Safety Standards Directive substitute—
“the Basic Safety Standards Directive” means Council Directive 2013/59/Euratom laying down basic safety standards for the protection against the dangers arising from exposure to ionising radiation^(a)”; and
- (b) omit the definition of the HASS Directive.

Amendment of regulation 14 (content and form of an environmental permit)

4. In regulation 14(6), after sub-paragraph (a), insert—

- “(aa) the keeping of radioactive material or the accumulation or removal of radioactive waste under paragraph 11(2) of Part 2 of Schedule 23, where—
 - (i) the activity is described in standard rules published under regulation 26(5); and
 - (ii) the permit authorises the carrying on of that activity at more than one site; or”.

Amendment of regulation 80 (review: England)

5. In regulation 80(2), omit sub-paragraph (g).

Amendment of Schedule 8 (Part B mobile installations and Part B mobile plant etc.)

6. In Schedule 8, in paragraph 5(3)(a), for “Article 1” substitute “Article 4”.

Amendment of Schedule 23 (radioactive substances activities)

7. Schedule 23 is amended as set out in the Schedule to these Regulations.

21st March 2018

Richard Harrington
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

21st March 2018

Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs,
one of the Welsh Ministers

SCHEDULE

Regulation 7

Amendment of Schedule 23

Amendment of Part 2 (interpretation)

1. Part 2 is amended as follows.
2. In paragraph 1(2), for “or either of Tables 5 and 7” substitute “or any of Tables 4A, 5 or 7”.

(a) OJ No L 13, 17.01.2014, p. 1.

3. In paragraph 2(1), in the definition of “type 2 NORM industrial activity”, after paragraph (k) omit “or” and insert—

“(ka) geothermal energy production, or”.

4. In paragraph 3(1), after “9” insert “, 9A”.

5. After paragraph 6 insert—

“Dilution to reduce concentration of radioactivity

6A. For the purposes of paragraphs 4, 5 and 6, a substance or article is to be treated as having a concentration of radioactivity which exceeds the value referred to in paragraph 4(2), 5(c)(i) or 6(a), if a person has diluted the substance or article with the intention of ensuring that its concentration of radioactivity does not exceed that value.”.

6. After paragraph 9 insert—

“Historic radium contamination

9A. A substance or article is not radioactive material or radioactive waste where the substance or article arises from the remediation of land contaminated by radium and—

- (a) the substance or article contains Ra-226 or its progeny;
- (b) in the absence of Ra-226 or its progeny, the substance or article would not otherwise be radioactive material or radioactive waste under this Schedule;
- (c) the contamination occurred prior to 13th May 2000; and
- (d) the concentration of Ra-226 or any of its progeny does not exceed the following values—
 - (i) for a substance or article which is a solid or a substance which is a relevant liquid, 1 Bq/g;
 - (ii) for a substance which is any other liquid, 1 Bq/l; or
 - (iii) for a substance which is a gas, 0.01 Bq/m³.”.

Amendment of Part 3 (tables of radionuclides and summation rules)

7. Part 3 is amended as follows.

8. In paragraph 1(1), in Table 1, in the entries for U-238sec, Ra-226+, Th-232sec and Th-228+, in the second column of each entry for “0.5” substitute “1”.

9. In paragraph 2(1), for Table 2 substitute—

<i>“Radionuclide</i>	<i>Concentration in becquerels per gram (Bq/g)</i>
H-3	10 ²
Be-7	10
C-14	10
F-18	10
Na-22	0.1
Na-24	1
Si-31	10 ³
P-32	10 ³
P-33	10 ³
S-35	10 ²
Cl-36	1
Cl-38	10
K-42	10 ²

K-43	10
Ca-45	10 ²
Ca-47	10
Sc-46	0.1
Sc-47	10 ²
Sc-48	1
V-48	1
Cr-51	10 ²
Mn-51	10
Mn-52	1
Mn-52m	10
Mn-53	10 ²
Mn-54	0.1
Mn-56	10
Fe-52+	10
Fe-55	10 ³
Fe-59	1
Co-55	10
Co-56	0.1
Co-57	1
Co-58	1
Co-58m	10 ⁴
Co-60	0.1
Co-60m	10 ³
Co-61	10 ²
Co-62m	10
Ni-59	10 ²
Ni-63	10 ²
Ni-65	10
Cu-64	10 ²
Zn-65	0.1
Zn-69	10 ³
Zn-69m+	10
Ga-72	10
Ge-71	10 ⁴
As-73	10 ³
As-74	10
As-76	10
As-77	10 ³
Se-75	1
Br-82	1
Rb-86	10 ²
Sr-85	1
Sr-85m	10 ²
Sr-87m	10 ²
Sr-89	10 ³
Sr-90+	1
Sr-91+	10
Sr-92	10
Y-90	10 ³
Y-91	10 ²

Y-91m	10 ²
Y-92	10 ²
Y-93	10 ²
Zr-93	10
Zr-95+	1
Zr-97+	10
Nb-93m	10
Nb-94	0.1
Nb-95	1
Nb-97+	10
Nb-98	10
Mo-90	10
Mo-93	10
Mo-99+	10
Mo-101+	10
Tc-96	1
Tc-96m	10 ³
Tc-97	10
Tc-97m	10 ²
Tc-99	1
Tc-99m	10 ²
Ru-97	10
Ru-103+	1
Ru-105+	10
Ru-106+	0.1
Rh-103m	10 ⁴
Rh-105	10 ²
Pd-103+	10 ³
Pd-109+	10 ²
Ag-105	1
Ag-108m+	0.1
Ag-110m+	0.1
Ag-111	10 ²
Cd-109+	1
Cd-115+	10
Cd-115m+	10 ²
In-111	10
In-113m	10 ²
In-114m+	10
In-115m	10 ²
Sn-113+	1
Sn-125	10
Sb-122	10
Sb-124	1
Sb-125+	0.1
Te-123m	1
Te-125m	10 ³
Te-127	10 ³
Te-127m+	10
Te-129	10 ²
Te-129m+	10

Te-131	10 ²
Te-131m+	10
Te-132+	1
Te-133+	1
Te-133m+	1
Te-134	10
I-123	10 ²
I-125	10 ²
I-126	10
I-129	0.01
I-130	10
I-131+	1
I-132	10
I-133	10
I-134	10
I-135	10
Cs-129	10
Cs-131	10 ³
Cs-132	10
Cs-134	0.1
Cs-134m	10 ³
Cs-135	10 ²
Cs-136	1
Cs-137+	1
Cs-138	10
Ba-131	10
Ba-140	1
La-140	1
Ce-139	1
Ce-141	10 ²
Ce-143	10
Ce-144+	10
Pr-142	10 ²
Pr-143	10 ³
Nd-147	10 ²
Nd-149	10 ²
Pm-147	10 ³
Pm-149	10 ³
Sm-151	10 ³
Sm-153	10 ²
Eu-152	0.1
Eu-152m	10 ²
Eu-154	0.1
Eu-155	1
Gd-153	10
Gd-159	10 ²
Tb-160	1
Dy-165	10 ³
Dy-166	10 ²
Ho-166	10 ²
Er-169	10 ³

Er-171	10 ²
Tm-170	10 ²
Tm-171	10 ³
Yb-175	10 ²
Lu-177	10 ²
Hf-181	1
Ta-182	0.1
W-181	10
W-185	10 ³
W-187	10
Re-186	10 ³
Re-188	10 ²
Os-185	1
Os-191	10 ²
Os-191m	10 ³
Os-193	10 ²
Ir-190	1
Ir-192	1
Ir-194	10 ²
Pt-191	10
Pt-193m	10 ³
Pt-197	10 ³
Pt-197m	10 ²
Au-198	10
Au-199	10 ²
Hg-197	10 ²
Hg-197m	10 ²
Hg-203	10
Tl-200	10
Tl-201	10 ²
Tl-202	10
Tl-204	1
Pb-203	10
Pb-210+	0.01
Pb-212+	1
Bi-206	1
Bi-207	0.1
Bi-210	10
Bi-212+	1
Po-203	10
Po-205	10
Po-207	10
Po-210	0.01
At-211	10 ³
Ra-223+	1
Ra-224+	1
Ra-225	10
Ra-226+	0.01
Ra-227	10 ²
Ra-228+	0.01
Ac-227+	0.01

Ac-228	1
Th-226+	10 ²
Th-227	1
Th-228+	0.1
Th-229+	0.1
Th-230	0.1
Th-231	10 ²
Th-232	0.01
Th-232+	0.01
Th-232sec	0.01
Th-234+	10
Pa-230	10
Pa-231	0.01
Pa-233	10
U-230+	1
U-231	10 ²
U-232+	0.1
U-233	1
U-234	1
U-235+	1
U-235sec	0.01
U-236	10
U-237	10 ²
U-238+	1
U-238sec	0.01
U-239	10 ²
U-240+	10 ²
Np-237+	1
Np-239	10 ²
Np-240	10
Pu-234	10 ²
Pu-235	10 ²
Pu-236	1
Pu-237	10 ²
Pu-238	0.1
Pu-239	0.1
Pu-240	0.1
Pu-241	10
Pu-242	0.1
Pu-243	10 ³
Pu-244+	0.1
Am-241	0.1
Am-242	10 ³
Am-242m+	0.1
Am-243+	0.1
Cm-242	10
Cm-243	1
Cm-244	1
Cm-245	0.1
Cm-246	0.1
Cm-247+	0.1

Cm-248	0.1
Bk-249	10 ²
Cf-246	10 ³
Cf-248	1
Cf-249	0.1
Cf-250	1
Cf-251	0.1
Cf-252	1
Cf-253	10 ²
Cf-253+	1
Cf-254	1
Es-253	10 ²
Es-254+	0.1
Es-254m+	10
Fm-254	10 ⁴
Fm-255	10 ²
Any other solid or relevant liquid radionuclide that is not of natural terrestrial or cosmic origin	0.01 or that concentration which gives rise to a dose to a member of the public of 10 microsieverts per year calculated by reference to the International Atomic Energy Agency publication “Application of the Concepts of Exclusion, Exemption and Clearance”, IAEA Safety Standards Series No. RS-G-1.7(a).”

Amendment of Part 4 (the Basic Safety Standards Directive)

10. Part 4 is amended as follows.

11. In paragraph 1(b)—

- (a) for “Article 13” substitute “Article 12”; and
- (b) for “Article 6(4) substitute “Article 5(c)”.

12. In paragraph 2—

- (a) in sub-paragraph (1)(a) omit “from which radioactive discharges are first made on or after 13th May 2000”; and
- (b) for sub-paragraph (2) substitute—

“(2) In exercising those relevant functions, the regulator must observe the requirements of the following provisions—

- (a) when estimating effective dose and equivalent dose—
 - (i) from external exposure, chapters 4 and 5 of International Commission on Radiological Protection Publication 116(b); and
 - (ii) from internal exposure, chapter 1 of International Commission on Radiological Protection Publication 119(c); and

(a) Available from www-pub.iaea.org. A hard copy of this publication can be obtained by writing to: Nuclear Decommissioning and Radioactive Waste Policy Team, Department for Business, Energy & Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

(b) Available from www.icpr.org. A hard copy of this publication can be obtained by writing to: SAGE Publications Ltd, 1 Oliver’s Yard, 55 City Road, London, EC1Y 1SP.

(c) Available from www.icpr.org. A hard copy of this publication can be obtained by writing to: Nuclear Decommissioning and Radioactive Waste Policy Team, Department for Business, Energy & Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

- (b) in estimating population doses, Article 66 of the Basic Safety Standards Directive.

13. After Section 2 insert—

“SECTION 3

Miscellaneous duties of the regulator

Inspection programmes

5. When establishing an inspection programme for the purposes of regulation 34(2) (periodic inspections of regulated facilities) in relation to radioactive substance activities, the regulator must take into account the potential magnitude and nature of the hazard associated with such activities, a general assessment of radiation protection issues in the activities, and the state of compliance with the requirements of these Regulations.

Inspection findings

6. Where a regulator makes an inspection of a regulated facility that is a radioactive substances activity, the regulator must—

- (a) record the findings of that inspection; and
- (b) communicate those findings to the operator of the regulated facility.

Radioactive waste: requirements to be imposed on permit holders

7.—(1) The regulator must require a person who holds an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(b) (disposing of waste) or (c) (accumulating waste) of Part 2 of this Schedule to—

- (a) achieve and maintain an optimal level of protection of members of the public;
- (b) accept into service adequate equipment and procedures for measuring and assessing exposure of members of the public and radioactive contamination of the environment;
- (c) check the effectiveness and maintenance of equipment as referred to in paragraph (b) and ensure the regular calibration of measuring instruments; and
- (d) seek advice from a radioactive waste adviser in the performance of the tasks referred to in paragraphs (a), (b) and (c).

(2) In this paragraph “radioactive waste adviser” means an individual, or group of individuals, with the knowledge, training and experience needed to give radioactive waste management and environmental radiation protection advice in relation to radioactive waste in order to ensure the effective protection of members of the public, and whose competence in that respect is recognised by the regulator.

Dilution of radioactive material and radioactive waste

8. In exercising its relevant functions in relation to a radioactive substances activity, the regulator must observe the requirements of Article 30(4) of the Basic Safety Standards Directive.

Monitoring of discharges

9.—(1) This paragraph applies where the regulator is exercising relevant functions in relation to a radioactive substances activity where there are radioactive discharges authorised by an environmental permit.

- (2) The regulator must impose appropriate environmental permit conditions concerning—

- (a) the monitoring, or the evaluation, of radioactive airborne or aqueous discharges into the environment; and
- (b) the reporting to the regulator of the results of such monitoring or evaluation.

(3) For the purposes of sub-paragraph (2), where the regulator is exercising relevant functions in relation to a nuclear power station or nuclear reprocessing plant, the environmental permit conditions imposed must require the monitoring of radioactive discharges and reporting to the regulator of such information on radioactive discharges as the appropriate authority directs.”.

Amendment of Part 5 (the HASS Directive)

14. Part 5 is amended as follows.

15. For the heading to Part 5 substitute “The control of high-activity and other sources”.

16. In paragraph 1—

- (a) for the definition of “high-activity source” substitute—
 - ““high-activity source” means a sealed source for which the activity of the contained radionuclide is equal to or exceeds the relevant activity value laid down in Annex III of the Basic Safety Standards Directive;”;
- (b) in the definitions of “orphan source” and “sealed source”, for “HASS Directive” substitute “Basic Safety Standards Directive”.

17. In the heading to section 3, omit “orphan”.

18. For paragraph 5 substitute—

“5. In exercising relevant functions in relation to a radioactive substances activity, the regulator must comply with Articles 85 to 89 and 91 of the Basic Safety Standards Directive.”.

19. For paragraph 6 substitute—

- “6. In relation to a high-activity source, the regulator must keep records of those matters—
- (a) required by Article 90 of the Basic Safety Standards Directive, and
 - (b) notified to it under Article 91(1) of that Directive.”.

20. In paragraph 8, in sub-paragraph (1)(a), before “recover”, insert “control and”.

Amendment of Part 6 (radioactive substances activity exemptions)

21. Part 6 is amended as follows.

22. In paragraph 1—

- (a) after the definition of “gaseous tritium light device”, insert—
 - ““high-activity or similar source” means—
 - (a) a high-activity source, or
 - (b) such other sealed source which, in the opinion of the regulator, is of a similar level of potential hazard to a high-activity source;
- “high-activity source” means a sealed source for which the activity of the contained radionuclide is equal to or exceeds the relevant activity value laid down in Annex III of the Basic Safety Standards Directive;”;
- (b) for the definition of “sealed source”, substitute—

““sealed source” has the same meaning as in the Basic Safety Standards Directive, excluding such a source where it is an electrodeposited source or a tritium foil source;” and

(c) in the definition commencing ““Table 4””, after ““Table 4””, insert ““Table 4A””,.

23. For paragraph 2 substitute—

“2.—(1) In this Part “NORM waste” means a substance or article which—

- (a) is solid radioactive waste under—
 - (i) paragraph 4 of Part 2 of this Schedule (NORM industrial activities); or
 - (ii) paragraph 5 of that Part (processed radionuclides of natural terrestrial or cosmic origin) where the waste arises from the remediation of land contaminated by radium and the contamination occurred prior to 13 May 2000;
- (b) contains one or more of the radionuclides which are listed in column 1 of Table 4A;
- (c) has a concentration of radioactivity that does not exceed the value specified in column 5 of Table 4A in respect of that radionuclide; and
- (d) is not waste to which sub-paragraph (3) applies.

(2) In this Part—

“type 1 NORM waste” means NORM waste which—

- (a) has a concentration of radioactivity that does not exceed the value specified in column 2 of Table 4A; and
- (b) is not waste to which sub-paragraph (4) applies;

“type 2 NORM waste” means NORM waste which has a concentration of radioactivity that exceeds the value specified in column 2 of Table 4A.

(3) This sub-paragraph applies to waste where, prior to the disposal of that waste, a person has diluted it with the intention of ensuring that the concentration of radioactivity does not exceed the value specified in column 5 of Table 4A.

(4) This sub-paragraph applies to waste where, prior to the disposal of that waste, a person has diluted it with the intention of ensuring that the concentration of radioactivity does not exceed the value specified in column 2 of Table 4A.”.

24. In paragraph 4, at the end insert—

“(8) D is not exempt under sub-paragraph (7) from the requirement for an environmental permit where the waste accumulated is or contains a high-activity or similar source.”.

25. In paragraph 5(2) omit “with a NORM waste concentration which is less than or equal to 10 Bq/g”.

26. In paragraph 7—

(a) for sub-paragraph (1) substitute—

“(1) This paragraph applies to the following radioactive substances activities—

- (a) the activity described in paragraph 11(2)(c) of Part 2 of this Schedule (“Activity A”);
 - (b) the activity described in paragraph 11(4) of Part 2 of this Schedule (“Activity B”);
- (b) in sub-paragraphs (2) and (3)—
- (i) omit “Subject to sub-paragraph (5) where it applies,” in both places it appears;
 - (ii) for “Qualifying NORM Waste” substitute “NORM waste” in both places it appears; and

(c) omit sub-paragraphs (4) and (5).

27. In paragraph 16—

- (a) for sub-paragraph (1)(a) substitute—
 - “(a) subject to sub-paragraph (2)—
 - (i) solid radioactive waste described in an entry in column 1 of Table 6 which does not contain a concentration of radionuclides that exceeds the value specified in column 2 of that table in respect of that kind of waste, or
 - (ii) a broken or damaged individual sealed source of the type described in the fourth entry in Table 6 (individual sealed sources which are solely radioactive waste because they contain tritium), which would not have exceeded the value specified in column 2 when the source was intact, or”.
- (b) in sub-paragraph (2)(b) omit “with a NORM waste concentration which is less than or equal to 10 Bq/g”.

28. For paragraph 17(2)(d) substitute—

“(d) where the waste is a high-activity or similar source, notify the details of the disposal to the regulator within 14 days of the disposal (including, for a high-activity source, the information required by Annex XIV of the Basic Safety Standards Directive), in such form as may be required by the regulator, and”.

29. In paragraph 18—

- (a) for sub-paragraph (1) substitute—
 - “(1) This paragraph applies to the following radioactive substances activities carried on in respect of NORM waste—
 - (a) the activity described in paragraph 11(2)(b) of Part 2 of this Schedule (“Activity A”); and
 - (b) the activity described in paragraph 11(4) of Part 2 of this Schedule (“Activity B”).”
- (b) in sub-paragraph (2)—
 - (i) at the beginning omit “Subject to sub-paragraph (6),”; and
 - (ii) omit “type 1 NORM waste or type 2”;
- (c) in sub-paragraph (4)—
 - (i) in both places it appears, for “5 x 10¹⁰ Bq” substitute “the value specified in column 3 of Table 4A”; and
 - (ii) at the beginning of paragraph (b) omit “subject to sub-paragraph (6),”;
- (d) at the beginning of sub-paragraph (5) omit “Subject to sub-paragraph (6),”; and
- (e) omit sub-paragraphs (6) and (7).

30. After paragraph 18 insert—

“Exemption for disposing of gaseous NORM waste from oil and gas production

18A. A person is exempt from the requirement for an environmental permit to carry on the radioactive substances activity described in paragraph 11(2)(b) (disposing of waste) of Part 2 of this Schedule where the only radioactive waste disposed of is gaseous NORM waste released in the production of oil and gas.”.

31. In paragraph 19(2)(b)(i) for “1 x 10⁸ Bq” substitute “the value in column 4 of Table 4A”.

32. In paragraph 25, in Table 4, in the final row, in the second column for the words from “in respect” to the end, substitute “2 x 10⁸ Bq of all other radionuclides, (no more than 1 x 10⁸ Bq of which is contained in radioactive material)”.

33. After paragraph 25 insert—

“Table 4A

25A.—(1) The Table 4A referred to in Sections 2, 5 and 6 of this Part is—

Table 4A

NORM waste concentrations and maximum disposal quantities

<i>Radionuclide</i>	<i>Type 1 NORM concentration (Bq/g)</i>	<i>Type 1 NORM total activity for landfill (GBq/year)</i>	<i>Type 1 NORM total activity for incineration (MBq/year)</i>	<i>Type 2 NORM concentration (Bq/g)</i>
U-238sec	5	50	100	10
U238+	5	50	100	10
U-234	5	50	100	10
Th-230	5	50	100	10
Ra-226+	5	50	100	10
Pb-210+	100	1000	100	200
Po-210	100	1000	100	200
U-235sec	5	50	100	10
U-235+	5	50	100	10
Pa-231	5	50	100	10
Ac-227+	5	50	100	10
Th-232sec	5	50	100	10
Th-232	5	50	100	10
Ra-228+	5	50	100	10
Th-228+	5	50	100	10

(2) The summation rule in respect of columns 2 and 5 of Table 4A is the sum of the quotients A/B where—

- (a) “A” means the concentration of each radionuclide listed in column 1 of Table 4A that is present in the substance or article; and
- (b) “B” means the concentration of that radionuclide specified in column 2 or 5 (as appropriate) of Table 4A.

(3) The summation rule in respect of columns 3 and 4 of Table 4A is the sum of the quotients C/D where—

- (a) “C” means the quantity of each radionuclide listed in column 1 of Table 4A that is present in the substance or article; and
- (b) “D” means the quantity of that radionuclide specified in column 3 or 4 (as appropriate) of Table 4A.”.

34. In paragraph 26—

- (a) in sub-paragraph (1), in Table 5, in the final row of column 2 for “Health Protection Agency’s” substitute “Public Health England”;
- (b) in sub-paragraph (3), for “column 2” substitute “column 3”.

35. In paragraph 30, in Table 8—

- (a) in the entry for Ra-226+—
 - (i) before “Table 5” insert “Table 4A and”; and
 - (ii) for “Pb-210, Bi-210, Po-210, Po-214” substitute “Po-214, Pb-210, Bi-210, Po-210”;
- (b) in the entry for U-238 sec for “Pb-210, Bi-210, Po-210, Po-214” substitute “, Po-214, Pb-210, Bi-210, Po-210”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are part of a package of measures to transpose Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing Council Directive 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (the Basic Safety Standards Directive). Most of the transposition measures are being dealt with by amending or replacing existing statutory instruments. These Regulations transpose provisions of the Basic Safety Standards Directive relevant to the environmental permitting regime as it applies to radioactive substances activities, by amending the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154) (the 2016 Regulations). These Regulations also make amendments not required for transposition but which removes unnecessary regulatory burdens.

Schedule 23 to the 2016 Regulations concerns radioactive substances activities. Where a radioactive substances activity is in scope (Part 2 of Schedule 23) of the environmental permitting regime a permit is required, unless an exemption (Part 6 of Schedule 23) applies. Amendments to Schedule 23 are set out in the Schedule to these Regulations.

These Regulations also amend existing references to and definitions from directives repealed by the Basic Safety Standards Directive.

Regulation 4 amends regulation 14 of the 2016 Regulations, to except certain radioactive substances activities from the requirement that a permit includes a site map or plan. The exception only applies to standard rules permits covering multiple sites.

Paragraph 3 of the Schedule adds geothermal energy production to the list of NORM industrial activities (that is, industrial activities involving naturally occurring radioactive material where the radioactivity is incidental to the activity), bringing such activity within scope of the environmental permitting regime.

Paragraph 5 adds a new provision disallowing dilution: where the concentration of radioactivity in a substance or article is reduced by diluting it to make it out of scope, it will remain in scope.

Paragraph 6 adds a new out of scope provision for historic radium contamination. Radioactive material or waste generated when contaminated land is remediated will be out of scope if the radium concentration is below the specified limit and the contamination occurred before 13 May 2000.

Paragraph 8 substitutes new out of scope concentration values for some radionuclides arising from NORM industrial activities (column 2 of Table 1 in Part 3), and paragraph 9 replaces the table of out of scope concentration values, inserting new values for some radionuclides for the purposes of the definitions of radioactive material and waste (Table 2 in Part 3).

Paragraph 13 inserts new Section 3 in Part 4, imposing miscellaneous duties on the regulator (the Environment Agency, for England, and the Natural Resources Body for Wales). Requirements are imposed in relation to the inspection programme the regulator establishes, and the regulator must record and communicate inspection findings. The regulator must require permit holders to undertake certain tasks, and to seek advice on those tasks from a radioactive waste adviser. The regulator must not allow the dilution of radioactive material for the purpose of it being released from regulatory control. The regulator must require permit holders to monitor and report on authorised radioactive discharges. Where the monitoring relates to a nuclear power station or nuclear reprocessing plant, the regulator must require monitoring in accordance with a direction issued by the appropriate authority (the Secretary of State, in relation to England, or the Welsh Ministers).

Paragraph 16 substitutes a new definition of high-activity sealed source, by reference to Annex III of the Basic Safety Standards Directive which sets out new radioactivity values for radionuclides contained in a sealed source.

Paragraph 20 inserts a new requirement on the regulator to be prepared or have made provision for the control of any orphan source (that is, a radiation source which should be but is not under regulatory control because, for example, it has been lost or stolen).

Paragraphs 23, 25, 26, 27(b), 29 and 31 to 33 make a series of amendments to the definitions of Type 1 and Type 2 NORM waste for the purposes of exemptions for accumulating radioactive waste, disposing of solid radioactive waste and disposing of NORM waste. New radioactivity concentration limits are imposed (new Table 4A). Specific provision is made disallowing dilution for the purposes of reducing the concentration of radioactivity in waste to bring it within the NORM waste exemption.

Paragraph 24 inserts a new provision disallowing the exemption for accumulating waste where the waste is or contains a high-activity sealed source.

Paragraph 27 inserts a new provision allowing the solid radioactive waste exemption to be claimed for broken sealed sources containing tritium (known as gaseous tritium light devices).

Paragraph 30 inserts a new provision to create an exemption for the disposal of gaseous NORM waste released in oil and gas production (known as venting or flaring).

An updated transposition note is submitted with the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

TRANSPOSITION NOTE

IMPLEMENTATION OF THE JUSTIFICATION OF PRACTICES AND PUBLIC EXPOSURES ASPECTS OF THE BASIC SAFETY STANDARDS DIRECTIVE 2013/59/EURATOM (BSSD)

Environmental Permitting (England and Wales) Regulations 2016

The Department for Business, Energy and Industrial Strategy (BEIS) has overall responsibility for coordinating UK transposition of the BSSD. A number of government departments, and the devolved administrations, are making regulations to transpose various aspects of the BSSD and each will complete a Transposition Note relating to the regulations they are making.

BEIS is implementing the **justification of practices** and **public exposures** aspects of the BSSD through four sets of regulations:

- the Justification of Practices Involving Ionising Radiation (Amendment) Regulations 2018, which amend the Justification of Practices Involving Ionising Radiation Regulations 2004 (S.I. 2004/1769) which set out a UK-wide framework for the making of justification decisions;
- the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018, which amend the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154) which set out the environmental permitting regime for radioactive substances activities;
- the Radioactive Contaminated Land (Enabling Powers and Modification of Enactments) (Amendment) (England) Regulations 2018, which amend the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 (S.I. 2005/3467) and the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (S.I. 2006/1379); and
- the Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018¹, which makes UK-wide provision for matters not covered by existing statutory regimes.

The table below sets out how articles in the BSSD are transposed by the **Environmental Permitting (England and Wales) Regulations 2016 as amended by the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018**. Unless otherwise stated, the references in the table refer to the 2016 Regulations.

Article	Objective	Implementation
2.1	Scope Directive applies to planned and existing exposure situations involving members of the public,	EPR 2016
2.2 (a), (c)		Regulation 8, 12, 35 and Schedule 23 Part 2, Part 6

¹ This instrument will be made on a separate date.

and (c)(ii)	including in particular transport, storage, use, and disposal of radioactive material; processing of materials with naturally occurring radionuclides.	
4	Definitions Sets out relevant definitions.	Regulation 8, 12, 35 and Schedule 23 Part 2, Part 6
5 (b)	General principles of radiation protection	Schedule 23 Part 4, paragraph 1
5 (c)	Protection to be optimised when members of the public are exposed to ionising radiation (public exposures). Dose limits to apply.	Schedule 23 Part 4, paragraph 1 & 2
6.1 (b)	Dose constraints for occupational, public and medical exposure	Schedule 23 Part 4, paragraph 2
6.2	Dose constraints to be established to optimise protection in public exposure situations.	Schedule 23 Part 4, paragraph 2
12	Dose limits for public exposure Effective dose and equivalent dose limits to apply for public exposures from authorised practices.	Schedule 23 Part 4, paragraph 1
13	Estimation of the effective and equivalent dose Standard values and relationships to be used to estimate effective and equivalent doses.	Schedule 23 Part 4, paragraph 2(2)
14.2	Requirements for radiation protection education, training and information Arrangements to be made for education, training and re-training to allow for recognition of radiation protection experts.	Radioactive waste advisers: Schedule 23 Part 4, paragraph 7 <u>statement on radioactive waste advisers</u>
23	Identification of practices involving naturally-occurring radioactive material Identification of classes or types of practice involving naturally-occurring radioactive materials leading to exposure.	Schedule 23, Part 2, paragraphs 2 & 4
24.1	Graded approach to regulatory control	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6

	Practices to be subject to regulatory control for the purposes of radiation protection, by way of notification, authorisation and inspection.	
25.1 and 25.2	Notification Practices to be notified, including existing exposure situations managed as planned exposure situations.	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
26.1 (a) – (c)	Exemption from notification Practices which may be exempted from being notified. Exemption limits expressed as quantities or activity concentrations. General exemption criteria to be followed.	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
26.2		Regulation 8, 12 and 35 and Schedule 23 Part 6
27.1 (a)	Registration or licensing Practices requiring registration or licensing.	Regulated as a “use” of radioactive substances: Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
28 (b)- (f)	Licensing Practices requiring licensing.	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
29.1 and 29.2	Authorisation procedures Information to be provided on the nature of the practice and the radiological risk involved. Conditions to be included in a licence, including on radioactive discharges.	Schedule 5 paragraphs 2 & 4: <u>application forms</u> and Schedule 23 Part 4, Section 1
29.3		Schedule 5 paragraph 12 and Schedule 23 Part 4, Section 1
29.4		Schedule 5 paragraph 12 and <u>Statutory Guidance re discharges</u>
30.1	Release from regulatory control The disposal, recycling or reuse of radioactive materials to be authorised or otherwise meet the specified criteria for release from regulatory control. Clearance levels expressed as activity concentrations. Dilution not to be allowed.	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
30.2 (a)		Schedule 23 Part 2, paragraphs 5 & 6
30.2 (b)		Schedule 23 Part 2, Part 6
30.3		Schedule 23 Part 2, paragraphs 5 & 6
30.4		Schedule 23 Part 2 paragraph 6A, Part 4 paragraph 8, Part 6 paragraphs 2, 6 & 21
65.1	Operational protection of members of the public Criteria for operational protection of members of public in normal circumstances for practices subject to licensing, including criteria for discharges.	Regulation 8, 12 and 35
65.2		Schedule 23 Part 4, Section 1, <u>Statutory Guidance re discharges</u> and <u>public dose assessment principles</u>
65.3		Regulation 8, 12 and 35 and Schedule 23 Part 4, Section 1

66	Estimation of doses to the members of the public Arrangements to be made for estimating doses to members of the public from authorised practices.	Schedule 23 Part 4, paragraph 2(2)
67	Monitoring of radioactive discharges Where an undertaking is authorised to make radioactive airborne or liquid discharges, it must monitor, evaluate and report.	Schedule 23 Part 4, paragraph 9
68	Tasks for the undertaking Undertakings are to optimise protection to members of public and the environment, to check equipment and to take expert advice.	Schedule 23 Part 4, paragraph 7
76.1	Competent authority Independent competent authority to be designated to carry out tasks of Directive.	EPR16
77	Transparency Information on practices and regulation of radiation sources and radiation protection to be made available to members of the public.	Regulation 46 and Schedule 27
79	Recognition of services and experts Recognition of radiation protection experts (79.1(c)).	Radioactive waste advisers: Schedule 23 Part 4, paragraph 7 and <u>statement on radioactive waste advisers</u>
82.1	Radiation protection expert Radiation protection experts to give competent advice to operators, and criteria the advice should cover.	Schedule 23 Part 4, paragraph 7
82.2 (f)		Schedule 23 Part 4, paragraph 7
82.2 (h)		Schedule 23 Part 4, paragraph 9
82.2 (i)		Schedule 23 Part 4, paragraph 7
85	General requirements for unsealed sources Arrangements for managing, transferring, recycling and disposing of unsealed sources, including notification of loss.	Schedule 23 Part 5, paragraph 5

86	<p>General requirements for sealed sources Arrangements for managing, transferring, recycling and disposing of sealed sources, including notification of loss.</p>	Schedule 23 Part 5, paragraph 5
87	<p>Requirements for control of high-activity sealed sources Arrangements for the safe management and disposal of high-activity sealed sources, including financial security.</p>	Schedule 23 Part 5, paragraph 5
88	<p>Specific requirements for licensing of high-activity sealed sources Criteria for licensing of high-activity sealed sources.</p>	Schedule 23 Part 5, paragraph 5
89	<p>Record keeping by the undertaking Record keeping requirements for operators for high-activity sealed sources.</p>	Schedule 23 Part 5, paragraph 5
90	<p>Record keeping by the competent authority Record keeping requirements of the competent authority for high-activity sealed sources.</p>	Schedule 23 Part 5, paragraph 6
91	<p>Control of high-activity sealed sources Criteria that activities involving high-activity sealed sources are to comply with.</p>	Schedule 23 Part 5, paragraph 5
92.3	<p>Detection of orphan sources Advice and assistance to be made available to persons who suspect the presence of an orphan source.</p>	Schedule 23 Part 5, paragraph 4
93.2	<p>Metal contamination Management of metal scrap installation to inform competent authority if orphan source is processed.</p>	Regulation 8, 12 and 35 and permit conditions
94.1	<p>Recovery, management, control and disposal of orphan sources Competent authority to make provision to control and recover orphan sources.</p>	Schedule 23 Part 5, paragraph 8

95	Financial security for orphan sources Financial means to be in place to cover intervention costs relating to recovery of orphan sources.	Schedule 23 Part 5, paragraph 8
96	Notification and recording of significant events Arrangements for recording, reporting and investigating significant exposure events.	Schedule 23 Part 5, Part 1, paragraph 20
100.3	Programmes on existing exposure situations Existing exposures where legal responsibility can be assigned to be dealt with as planned exposures.	Regulation 8, 12 and 35 and Schedule 23 Part 2, Part 6
104.1	Inspections Systems of inspection to be established to enforce provisions of the Directive and to take corrective action where necessary. Requirements for inspection programmes and findings from inspections.	Regulation 34(2) and Schedule 23 Part 5, paragraph 2 & 6
104.2		Schedule 23 Part 4, paragraph 5
104.3		Schedule 23 Part 4, paragraph 6
104.4		Regulation 46 and Schedule 27, paragraph 1
105	Enforcement Competent authority to have power to require individual or legal person to take action to remedy deficiencies where exposure situation is not compliant with provisions of Directive.	Regulations 36 to 44

Explanatory Memorandum to the Environmental Permitting (England & Wales) (Amendment) (No. 2) Regulations 2018

This Explanatory Memorandum has been prepared by Department for 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 Environmental Permitting (England & Wales) (Amendment) (No. 2) Regulations 2018.

Lesley Griffiths
Cabinet Secretary for Environment, Planning & Rural Affairs

28 March 2018

1. Description

The primary purpose of the instrument is to amend the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154, “the 2016 Regulations”), so as to transpose parts of Council Directive 2013/59/EURATOM of 5 December 2013 (BSSD) on laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation.

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

With regards radioactivity, it is highly desirable, where possible, to ensure similar provision across the four UK administrations as this makes the regulatory landscape simpler and more transparent which is of benefit to regulators, Industry, Government and the public and avoids potential cross border issues within the UK.

Many of the changes required to transpose BSSD will be made by amending Schedule 23 of the 2016 Regulations. The 2016 regulations are on an England and Wales basis and it is therefore appropriate to transpose the necessary changes arising from BSSD on the same basis. Similar changes will be made to the equivalent legislation affecting Scotland and Northern Ireland.

Late transposition of an EU obligation

Article 106 of BSSD requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 February 2018. Delays to finalising these composite regulations following consultation have meant this deadline will not be met.

3. Legislative background

Powers

The power to make these regulations is section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 (“the 1999 Act”). Section 1 of that Act states that section 2 may be used to make provision for or in connection with regulating activities that are capable of causing any environmental pollution (this includes radioactive substances activities), or for otherwise preventing or controlling emissions capable of causing any such pollution. The Environmental Permitting (England and Wales) Regulations 2016 were made under this power.

Section 2(1) of the 1999 Act provides that regulations may make provision for any or the purposes listed in Part 1 of Schedule 1 to that Act. Paragraphs 1-19 contain purposes relevant to a permitting regime.

Paragraph 20(1)(b) of Schedule 1 to the 1999 Act also enables regulations made under Section 2 of that Act to make any provision made, or capable of being made under section 2(2) European Communities Act 1972 in connection with “a relevant directive”.

Paragraph 20(2)(c) enables the Welsh Ministers to, by order, designate any EU Directive as a 'relevant directive'. In order to make use of the wider purpose in paragraph 20(1)(b) of Schedule 1 to the 1999 Act, the BSSD 2013 has been designated as a 'relevant directive' - the Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2017.

Originally powers of the Secretary of State, functions under or in relation to section 2 of the 1999 Act were, in relation to Wales, transferred to the then National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, by the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

The Environmental Permitting (England & Wales) (Amendment) (No. 2) Regulations 2018 are being made on a composite basis and under the negative procedure.

4. Purpose & intended effect of the legislation

This Instrument amends the 2016 Regulations so as to transpose the revised requirements contained in the Directive, laying down basic safety standards for the protection against the dangers arising from exposure to ionising radiation. The Instrument ensures the highest standards of protection for members of the public from the dangers arising from ionising radiation, whilst also implementing some additional measures to streamline and clarify existing legislation.

Transposing BSSD requirements with regards public radiation exposures into domestic legislation will bring Wales into line with international standards (agreed at the IAEA and in the Euratom BSSD Directive) and will comply with Welsh Government's obligation under the Government of Wales Act 2006 to fully implement EU legislation.

5. Consultation

A UK-wide public consultation on the proposals for transposing the public exposures and justification requirements in the Directive took place between 5 October and 15 November 2017 (six weeks). The consultation included a draft of the proposed amendments to the 2016 Regulations. The consultation asked 12 substantive questions, of which 7 focused on the proposed amendments to radioactive substances regulation.

48 consultation responses were received from professional bodies, industry associations, private and public sector organisations engaged in radioactive substances activities and from individual respondents from across the UK. The majority of consultees supported the proposals. Below is an overview of the general responses from consultees on the proposed changes:

- In relation to the removal of the requirement for information about High Activity Sealed Sources (HASS) to be reported on an annual basis, 57%

of respondents agreed that annual reporting was unnecessary and the frequency of reporting should be reduced. Following consultation, it has decided that the appropriate interval for reporting is 5 years.

- 88% of people agreed with the proposed changes for Naturally Occurring Radioactive Material (NORM) waste, as long as the changes do not impact on public safety. All landfill sites are required to follow the As Low as Reasonably Practicable (ALARP) principle^[1], so the proposed changes do not increase public exposure.
- 84% of consultees agreed that geothermal energy production should be subject to radioactive substances regulation.
- 92% of respondents agreed that changes to reduce the regulatory burden for the remediation of sites contaminated with radium from legacy activities are proportionate. 36% of respondents thought “legacy” should not be defined by reference to a date, but by a description. It was agreed that, if a date were used, this should be the commencement date of the relevant legislation. Prior to the 1996 BSSD coming into force on 13 May 2000, activities involving radioactive substances were subject to less stringent regulation, so this is an appropriate date to use.
- 90% of respondents agreed that it would be proportionate to exempt accumulation and disposal of NORM wastes where flaring and venting are the only radioactive substances activity taking place in oil and gas production.
- The full government response to the consultation can be found at the gov.uk website.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been completed for these Regulations. The Regulations implement the Basic Safety Standards Directive (2013/59/Euratom) and failure to implement would risk infraction proceedings against the UK and the associated costs.

The Regulations are considered to be deregulatory, with the proposals around i) additional exemptions for ‘Naturally Occurring Radioactive Material’ (NORM) from certain regulatory requirements and ii) changes to the system for determining which sources are ‘High Activity Sealed Sources’ (HASS) both expected to generate cost-savings for private businesses and the regulators. The Regulations are expected to impose only small additional costs on private businesses operating in Wales, with those costs reflecting the time required for organisations to familiarise themselves with the new requirements.

^[1] “As low as reasonably practicable” - this principle of radiation protection involves weighing a risk against the trouble, time and cost needed to control it.

SL(5)206 – Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) (Diwygio) (Rhif 2) 2018

Cefndir a Diben

Mae'r Rheoliadau hyn ymhlith nifer o fesurau i drosi Cyfarwyddeb y Cyngor 2013/59/Euratom sy'n gosod safonau diogelwch sylfaenol ar gyfer diogelu rhag y peryglon sy'n deillio o ddod i gysylltiad ag ymbelydredd ìoneiddio ac yn diddymu Cyfarwyddebau'r Cyngor 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom a 2003/122/Euratom (y Gyfarwyddeb Safonau Diogelwch Sylfaenol).

Mae'r Rheoliadau hyn yn trosi darpariaethau'r Gyfarwyddeb Safonau Diogelwch Sylfaenol sy'n berthnasol i'r gyfundrefn trwyddedu amgylcheddol fel y mae'n berthnasol i weithgareddau sylweddau ymbelydrol, drwy ddiwygio Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) 2016 (OS 2016/1154). Mae'r Rheoliadau hyn hefyd yn gwneud diwygiadau i ddileu beichiau rheoleiddio dianghenraid.

Mae'r Rheoliadau hefyd yn diwygio cyfeiriadau presennol at gyfarwyddebau, a diffiniadau ohonynt, a ddiddymwyd gan y Gyfarwyddeb Safonau Diogelwch Sylfaenol.

Y weithdrefn

Penderfyniad negyddol – cyfansawdd.

Materion technegol: craffu

Nodir un pwynt i gyflwyno adroddiad arno o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Rheol Sefydlog 21.2 (ix): Mae'r Rheoliadau wedi'u gwneud yn Saesneg yn unig. Gwnaed y rheoliadau ar sail Cymru a Lloegr.

Craffu ar y rhinweddau

Ni nodir unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.3 mewn perthynas â'r offeryn hwn.

Y goblygiadau yn sgil gadael yr Undeb Ewropeaidd

Mae'r Rheoliadau hyn yn rhan o "ddeddfwriaeth ddomestig sy'n deillio o'r UE" o dan gymal 2 o Fil yr Undeb Ewropeaidd (Ymadael) (y Bil), felly bydd y Rheoliadau hyn yn cael eu cadw fel cyfraith ddomestig a byddant yn parhau i fod mewn grym yng Nghymru ar ôl y diwrnod ymadael. Mae'r Bil yn rhoi pŵer i Weinidogion Cymru addasu'r Rheoliadau hyn er mwyn ymdrin â diffygion sy'n deillio o ymadael â'r UE, yn amodol ar rai cyfyngiadau.

Ymateb y Llywodraeth

Nid oes angen ymateb y Llywodraeth.

Cynghorwyr Cyfreithiol

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Ebrill 2018





Mick Antoniwn AC
Cadeirydd
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru

SeneddCLA@assembly.wales

25 Ebrill 2018

Annwyl Mick

Ysgrifennaf atoch fel ymateb i'ch llythyr dyddiedig 17 Ebrill ynglŷn ag ymateb Llywodraeth Cymru i adroddiad eich Pwyllgor ar graffu ar reoliadau a wnaed o dan Fil yr Undeb Ewropeaidd (Ymadael).

Mae'n wir ddrwg gennyf os bu unrhyw benbleth ynglŷn ag agwedd Llywodraeth Cymru at argymhellion y Pwyllgor, yn arbennig argymhelliad dau, sef y dylai argymhelliad y pwyllgor sifftio fod yn orfodol, oni bai bod y Cynulliad yn penderfynu fel arall. Penderfyniad y Cynulliad i gyflymu'r broses o ystyried adroddiad eich Pwyllgor, am resymau yr wyf innau yn eu deall, sy'n gyfrifol am hyn i raddau helaeth.

Cafodd eich adroddiad ei gyhoeddi ar 16 Chwefror a chynhaliwyd y ddadl ar 7 Mawrth (gyda'r cynnig yn cael ei gyflwyno ar 28 Chwefror). Y pryd hwnnw, yn syml iawn, nid oedd Llywodraeth Cymru wedi cael digon o amser i ystyried goblygiadau'r holl argymhellion yn llawn. Mewn amgylchiadau o'r fath, fel arfer, gofynnir i'r Cynulliad wneud nodyn o adroddiad y Pwyllgor. Yn ystod y ddadl, eglurodd Arweinydd y Tŷ fod Llywodraeth Cymru yn llwyr ddeall pam roedd y Pwyllgor wedi ceisio cymeradwyaeth y Cynulliad cyn i Lywodraeth Cymru gael cyfle i ymateb yn ffurfiol. Fodd bynnag, roedd hi'r un mor glir hefyd, gan nad oeddem wedi cael y cyfle i ymateb yn ffurfiol, mai amodol oedd ein cefnogaeth i'r cynnig i'r graddau ein bod yn cadw ein safbwynt yn ôl mewn perthynas ag argymhelliad dau, a'n bod yn dymuno ystyried ymhellach cyn inni ymateb yn ffurfiol.

Wedi inni ystyried ein safbwynt yn ofalus, ymatebodd Arweinydd y Tŷ yn ffurfiol ichi ar 27 Mawrth, gan gadarnhau ein safbwynt ynglŷn ag argymhellion y Pwyllgor, a'r rhesymau pam nad ydym yn cytuno ag argymhelliad dau. Ysgrifennais innau wedi hynny at Ysgrifennydd Gwladol Cymru ar 29 Mawrth, gan anfon copi atoch chi, at Gadeirydd y Pwyllgor Materion Ewropeaidd ac Allanol, ac at y Llywydd.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Fel yr eglurwyd gennym yn y ddadl, ac yn ein hymateb ffurfiol i'ch Pwyllgor, rydym o'r farn y byddwn yn derbyn argymhelliad y pwyllgor sifftio yn y mwyafrif helaeth o achosion, yn arbennig gan gadw mewn cof fod unrhyw Aelod yn gallu cyflwyno cynnig dirymu o dan Reol Sefydlog 27.2 ar gyfer unrhyw offeryn statudol a wnaed yn amodol ar y weithdrefn penderfyniad negyddol. Er hynny, gallai fod sefyllfaoedd lle y bydd angen inni weithredu'n gyflymach nag y mae'r weithdrefn gadarnhaol yn darparu ar ei gyfer – a hynny oherwydd rhesymau brys – ac mae'n hanfodol bod y Llywodraeth yn cadw'r hyblygrwydd i wneud hynny.

Rwy'n anfon copi o'r llythyr hwn at y Llywydd ac Arweinydd y Tŷ a'r Prif Chwip.

Yn gywir

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES



Elin Jones AC, Llywydd

Cynulliad Cenedlaethol Cymru

Elin Jones AM, Presiding Officer

National Assembly for Wales

Mick Antoniw AC

Cadeirydd, Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Cynulliad Cenedlaethol Cymru

Bae Caerdydd

CF99 1NA

25 Ebrill 2018

Annwyl Mick,

Craffu ar reoliadau a wnaed o dan Fil yr Undeb Ewropeaidd (Ymadael)

Diolch am eich llythyr dyddiedig 17 Ebrill 2018 ynglŷn â chraffu ar reoliadau a wnaed o dan Fesur yr Undeb Ewropeaidd (Ymadael). Hefyd, am rannu â mi eich llythyr at y Prif Weinidog ynghylch penderfyniad y Cynulliad ar 7 Mawrth i gymeradwyo argymhellion 1, 2, 4 a 7 yn adroddiad diweddar eich Pwyllgor ar graffu ar reoliadau a wnaed o dan Fesur yr Undeb Ewropeaidd (Ymadael).

Rydych yn codi materion o bwys ac rwy'n rhannu eich pryderon. Byddaf yn rhoi ystyriaeth bellach i hyn yn dilyn eich Datganiad yfory i'r Cynulliad ar y mater hwn a derbyn ymateb y Prif Weinidog i'ch Pwyllgor.

Yn gywir,

Elin Jones AC

Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

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Tudalen y pecyn 31



David Rees AC
Cadeirydd
Y Pwyllgor Materion Ewropeaidd a Deddfwriaeth Ychwanegol
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SeneddEAAL@cynulliad.cymru

25 Ebrill 2018

Annwyl David

Ysgrifennaf mewn ymateb i'ch llythyr dyddiedig 23 Mawrth ynghylch trefniadau craffu ar gyfer y pwerau dirprwyedig sydd wedi'u gosod ym Mil yr Undeb Ewropeaidd (Ymadael).

Mae'ch llythyr yn cyfeirio at lythyr Ysgrifennydd Gwladol Cymru at y Llywydd ar 16 Mawrth, ac adroddiad diweddar y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ynghylch craffu ar reoliadau a wneir dan y Bil.

Amgaeaf gopi o lythyr Arweinydd y Tŷ a'r Prif Chwip at gadeirydd y Pwyllgor, dyddiedig 27 Mawrth, sy'n egluro safbwynt Llywodraeth Cymru mewn perthynas â phob un o'i argymhellion.

Rydych hefyd yn gofyn am ein safbwynt ynghylch deunydd esboniadol gwell y mae'r Bil yn gofyn amdano i gyd-fynd â rheoliadau sy'n cael eu gosod gerbron y Senedd dan y pwerau dirprwyedig sydd wedi'u cynnwys yn y Bil.

Ni wnaeth y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol wneud argymhellion mewn perthynas â'r wybodaeth hon, felly nid yw'n cael sylw yn ein hymateb i'w adroddiad. Fodd bynnag, gallaf gadarnhau mai safbwynt Llywodraeth Cymru yw bod yr wybodaeth y disgwylir iddi gael ei chynnwys yn y datganiadau yn ddeunydd y byddem yn disgwyl ei ddarparu beth bynnag, felly nid ydym yn gweld bod angen ymestyn y gofyniad i Weinidogion Cymru gynhyrchu deunydd esboniadol mewn perthynas â rheoliadau sy'n cael eu gosod gerbron y Cynulliad Cenedlaethol.

Rwy'n anfon copi o'r llythyr hwn at y Llywydd ac at gadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol.

Yn gywir

CARWYN JONES

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Chloe Smith MP
Parliamentary Secretary (Minister for the Constitution)
Cabinet Office

26 April 2018

Dear Minister

Understanding of devolution

On 2 February 2018 we published our report **UK governance post-Brexit**. A summary report of the evidence will be published shortly.

Our report made nine recommendations; the first four recommendations concern strengthening the existing Joint Ministerial Committee (JMC) followed by a more fundamental reform to create a decision-making UK Council with an independent dispute resolution, arbitration and adjudication mechanism.

Our report also considered the understanding of devolution by civil servants in Whitehall and indicated that we would write to the UK Government to seek clarification on how devolution is supported across Whitehall.

Many witnesses to our inquiry highlighted the poor knowledge and understanding of devolution that exists in parts of Whitehall, despite some laudable efforts to remedy the situation by successive administrations.

One of the drivers for our inquiry was our experience of, and a desire to learn lessons from, the UK Government's handling of the Wales Bill (our summary report will identify some of the evidence we heard on this issue). We had become concerned that Whitehall departments were able to exert too much influence over the architecture of devolution, despite partial and inconsistent understanding and knowledge. In our view this was the root cause of the problems that surrounded the draft Wales Bill and the Bill itself, which



meant that our extensive work on this legislation was largely focused on highlighting problems and identifying potential solutions, rather than contributing positively as part of a constructive constitutional dialogue.

We recognise that training is made available to civil servants on devolution. However it was surprising to hear in our evidence sessions that there is some way to go before there is a clear understanding within the civil service of the way in which powers are now held in the different nations of the UK. As if to emphasise this point, we were told that training on the new reserved powers model under the *Wales Act 2017* would be rolled out across the Civil Service prior to the Act's introduction. Given the central role of Whitehall departments in shaping the Act, these comments added to our sense that many Whitehall departments may have been making decisions on reserving powers without a clear understanding and knowledge of devolution, or the implications of the decisions that they were making.

Regrettably, the legislative outcome is that in our view the *Wales Act 2017* is an unnecessarily complex and restrictive settlement.

The lack of understanding about devolution was highlighted to us as recently as this week with the publication of a supplementary memorandum concerning the delegated powers in the European Union (Withdrawal) Bill relating to amendments tabled by the UK Government on 23 April. Paragraph 28 of the memorandum concerning the sifting of statutory instruments made under the Schedule 2 powers by the Welsh Ministers appears to confuse the roles of the National Assembly and Welsh Government as legislature and executive, stating:

“The UK Government has consulted the devolved administrations on where additional scrutiny requirements applied to UK ministers in the Bill should be extended to the corresponding powers for devolved authorities. The Welsh Government, having sought the views of the National Assembly for Wales, has requested the sifting committee procedure should apply where the Welsh Ministers lay negative instruments under their Schedule 2 powers.”

This text appeared despite the UK Government receiving notification of the National Assembly's formal position on these issues in a letter from the Llywydd on 22 March.



In light of our concerns, I would welcome clarification on the following points:

- The new devolution settlement came into force on 1 April. Are you satisfied that all civil service departments are fully conversant with the new reserved powers model in the *Wales Act 2017*?
- Recommendation 4 of our report included a call for Devolution Guidance Notes to be subject to a thorough overhaul and public consultation. In the meantime, it would be helpful to know the status of any revised Devolution Guidance Note that accompanies the new reserved powers model. The existing Devolution Guidance Note 9 was intended to help Whitehall departments have an understanding of the conferred powers model so that UK Government Bills were developed with devolution in mind. What guidance has been available to Whitehall departments over the last few months in respect of developing Bills on the basis that devolution in Wales would be moving to a reserved powers model?

Our observations not only influenced our recommendations advocating reform of the JMC, but also suggest that the civil service machinery that supports UK governance needs to adapt and change to the new UK constitutional position that will emerge as we leave the European Union.

In our report we said that the internal Civil Service apparatus supporting devolution as described to us appears complex and muddled. In order to help improve our understanding of how the civil service machinery works, it would be helpful to have your observations on the following:

- The staffing structure does not appear to mirror the political structure, with both Wales and Scotland having Secretaries of State but not Permanent Secretaries, while Northern Ireland has both. Why is this the case?
- What are your observations on our view that it is problematic for the most senior official in the Wales Office with the most direct contact with the Secretary of State for Wales and potentially knowledge and understanding of devolution, not to be involved in important discussions at Permanent Secretary level that may impact on Wales?
- Whether it is appropriate for the Head of UK Governance Group (with responsibilities for Wales and Scotland) and Permanent Secretary at the Department for Exiting the EU to be the person to whom the Head of the Wales Office is ultimately accountable? Is there a danger of blurring the lines of accountability and how are conflicts of interest resolved?



Another theme that emerged in our work and which is relevant to understanding of governance in the UK is that the Civil Service supports the UK Government in its role as the executive for the UK and, in devolved areas, England. We would welcome your observations on this anomaly and what plans the UK Government has to address it post-Brexit.

I am copying this letter to Rt Hon Alun Cairns MP, the Secretary of State for Wales and Philip Rycroft CB, Head of UK Governance Group and Permanent Secretary at the Department for Exiting the European Union.

I look forward to receiving your response.

Yours sincerely

A handwritten signature in black ink that reads "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Mae cyfyngiadau ar y ddogfen hon

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Mae cyfyngiadau ar y ddogfen hon

Eitem 9

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref

Rt Hon David Lidington CBE MP

24 April 2018

Dear David

European Union (Withdrawal) Bill: amendments and Intergovernmental Agreement

Further to the intensive trilateral discussions which have taken place between our two Governments and the Scottish Government, I am writing to tell you that the Welsh Government, on basis of the intergovernmental agreement, will support an LCM linked to the EU (Withdrawal) Bill. Although the position we have currently developed does not meet the whole of our aims I recognise that the trilateral discussion process represents very significant progress from where we started.

As you know, our position is that the best way forward within the framework of EU legislation is for the Governments of the UK to work together to create common approaches where we agree they are needed. We welcome the fact that this work is underway although I would have preferred such arrangements to have been developed without the need for legislative constraints, with respective Governments trusting each other's undertakings not to legislate in areas where we agree UK wide frameworks are needed until they have been agreed.

Nevertheless I recognise that the UK Government's latest amendments to Clause 11, together with the commitments and assurances set out in the Inter-Governmental Agreement, represent a significant step forward and a recognition that the default position is that responsibility for policy in areas devolved to Wales should continue to lie with the National Assembly.

Instead of the blanket restriction on the devolved legislatures amending retained EU law, with the possibility of specific areas being 'released' into devolved competence, the amendments recognise that only certain elements of EU law, specifically related to areas where it is agreed frameworks are needed, should be subject to a new, temporary, constraint. This is clearly much more compatible with the 'reserved powers' model of devolution.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Agreement also effectively means that secondary regulation-making powers which will not normally be used to put in place these new temporary restrictions on competence without the consent of the National Assembly for Wales. You have agreed not normally to put such regulations to Parliament for approval unless the devolved legislatures and administrations have given their consent. Moreover, in the event of a legislature withholding consent, Parliament will be asked, on the basis of even-handed information, to decide if the regulations should be made. We accept that, within our current constitutional system, this responsibility rests with Parliament, though as you know, we have put forward constructive proposals as to how inter-governmental working could be fundamentally reformed to minimise the risk of deadlock between the Governments. We look forward to the UK Government engaging more substantially with these ideas.


The Agreement also contains explicit assurance of a 'level playing field' in terms of legislation, in that you have undertaken not to bring forward new legislation relating to England in areas where our legislative competence is constrained. In addition your previous assurances that the constraints envisaged would be temporary are now reflected in the proposed amendments. Finally, the Agreement removes any doubt that primary legislation brought forward to put in place new UK-wide frameworks – for example, on agricultural support - could be construed as being outside the Sewel convention.

More generally, I believe the collaborative process of working set out in the Agreement will form the basis of a more equitable approach to inter-governmental working than has been the case with the JMC to date and will strengthen inter-governmental relations. In this context, we must all step up engagement on the development of frameworks and the broader work of the JMC (EN). Alongside our support for an LCM on the basis of the amendments laid in Westminster, the Welsh Government is committed to continued dialogue to explore refinements to the inter-governmental agreement on which we have all been working.

In summary, the Agreement and the new UK Government amendments to the EU (Withdrawal) Bill represent a substantive change in approach that balances our concerns on the risks to our devolution settlement and your position to seek certainty in law as we leave the European Union. On the basis of this Agreement, the Welsh Government intends to recommend to the National Assembly for Wales that it gives legislative consent to the EU (Withdrawal) Bill, we will also take steps to repeal our Law Derived from the European Union (Wales) Bill, and the Attorney General will withdraw his reference of the Bill to the Supreme Court.

I am copying this letter to the Minister for Negotiations on Scotland's Place in Europe, the Secretary of State for Exiting the European Union and the First Minister of Wales.

Yours sincerely

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

Mark Drakeford AM/AC
Cabinet Secretary for Finance



Cabinet Office

Rt Hon David Lidington CBE MP
Chancellor of the Duchy of Lancaster
Minister for the Cabinet Office
70 Whitehall
London
SW1A 2AS

Web www.cabinetoffice.gov.uk

Our Ref: CDL/1659

Mark Drakeford AM
Cabinet Secretary for Finance and Local Government
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

24 April 2018

Dear Mark

EU (WITHDRAWAL) BILL

Thank you for your letter of 24 April and for your telephone call earlier today. I am grateful for the work that you and your officials have put into our current proposals.

I am extremely pleased that we have been able to work together to develop a proposal on clause 11 that provides reassurance on the points you have raised, whilst also continuing to provide legal certainty across the UK. I am grateful to you for confirmation that you will put forward a recommendation of legislative consent for the EU (Withdrawal) Bill to the National Assembly for Wales.

I agree with you that our joint working over recent months has shown how successful our collaboration can be and the underlying strength of our intergovernmental relations. We are committed to continuing to work together on designing and implementing new frameworks that will replace the existing EU arrangements in place across the UK.

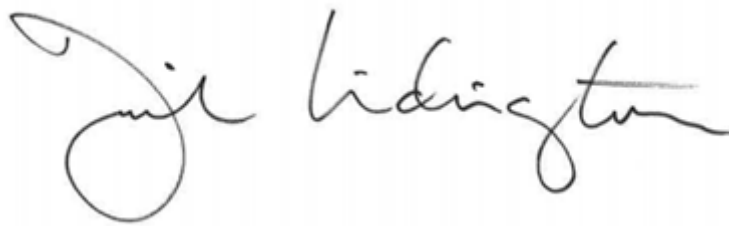
It is important that our governments have found a way forward that prioritises legal certainty for people and businesses across the UK. As was made clear in the Lords Committee debates on the EU (Withdrawal) Bill, we need to be able to protect the UK internal market as we leave the EU and give certainty that that will happen even where agreement between governments cannot be reached. That is why working with you we have developed a model which emphasises early, joint collaborative working and favours agreement with the devolved legislatures, while having a clear and transparent process when agreement cannot be reached. It is right that the UK Parliament provides that certainty.

We have come to an agreement which provides maximum reassurance and certainty and will be delivered through amendments to clause 11 and through the draft intergovernmental agreement that sits alongside the legislation. I hope that the Scottish Government will continue

to work with us so that we can maintain the prospects for its agreement both on the Bill and the inter-governmental agreement.

As part of our agreement, we have also agreed that steps will be initiated to secure the repeal of the Law Derived from the European Union (Wales) Bill before the EU (Withdrawal) Bill receives Royal Assent so that our statute book is clear. We have each also agreed to ask the Attorney General and the Counsel General to make or support applications to the Supreme Court to withdraw the Reference made in respect of that Bill.

I am copying this letter to the the First Minister of Wales, First Minister and Deputy First Minister of Scotland and Michael Russell MSP.

A handwritten signature in black ink, reading "David Lidington". The signature is written in a cursive style with a large initial 'D'.

Rt Hon David Lidington CBE MP

**Intergovernmental Agreement on the European Union (Withdrawal)
Bill and the Establishment of Common Frameworks¹**

1. The UK Government and the Devolved Administrations ('the governments') will work together to ensure that the European Union (Withdrawal) Bill ('the Withdrawal Bill') and associated secondary legislation creates a fully functioning statute book across the UK on exit from the European Union. Building on the principles on the establishment of common frameworks ('the principles') agreed by the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) in October 2017, the governments will also continue to work together to create future common frameworks where they are necessary.
2. This agreement and attached supplementary 'Memorandum on the EU (Withdrawal) Bill and the Establishment of Common Frameworks' ('the Memorandum'), together with agreed proposed amendments to the Withdrawal Bill, form the basis of an agreed approach between the governments. If the UK Parliament makes the amendments, the Devolved Administrations will recommend that the Devolved Legislatures give legislative consent to the Withdrawal Bill.
3. This agreement is without prejudice to the UK's Withdrawal Agreement (including any Implementation Period) and future relationship with the EU. It is also without prejudice to the Devolved Administrations' policy positions in relation to the UK's withdrawal from the EU.
4. This agreement respects established constitutional conventions and practices. Consistent with those, the governments reaffirm their commitment to seek to proceed by agreement.
5. The governments agree that EU law should be temporarily preserved where it is envisaged that future common frameworks with a legislative underpinning may be necessary. The governments agree that this is likely, in whole or in part, in 24 areas. For the devolved institutions, temporary preservation will be given effect through regulations made under the provisions in clause 11 of and Schedule 3 to the Withdrawal Bill ('clause 11 regulations'). For England, temporary preservation will be given effect by the UK Government committing not to bring forward legislation that would alter areas of policy in so far as the devolved legislatures are prevented from doing so by virtue of clause 11 regulations, for as long as those regulations are in force. It is possible that some additional areas that the UK Government believes are reserved, but are subject to ongoing discussions between the governments, will also be subject to clause 11 regulations.
6. The implementation of this agreement will result in the UK Parliament not normally being asked to approve clause 11 regulations without the consent of the devolved legislatures. The UK Government commits to make regulations through a collaborative process and

¹ As of 24 April 2018, the UK Government and the Welsh Government have agreed to the terms of this IGA and Memorandum. The IGA and Memorandum remain open to the Scottish Government and a future Northern Ireland Executive.

in accordance with this agreement and the Devolved Administrations commit not to unreasonably withhold recommendations of consent. In the absence of the consent of the devolved legislatures, UK Ministers will be required to make an explanatory written statement to the UK Parliament if a decision is taken to proceed. This will be accompanied by any statement from the relevant devolved Ministers on why, in their view, the consent of their legislature has not been provided.

7. The power to make clause 11 regulations will expire 2 years after exit day (if not repealed earlier) in line with other powers in the Withdrawal Bill, while the temporary clause 11 regulations themselves will last for a maximum of five years after they come into force.
8. Under this agreement, the UK Government has committed to ensure that clause 11 regulations will not affect the operation of the Sewel convention and that related practices and conventions in relation to future primary legislation, including legislation giving effect to common frameworks, will continue to apply. Accordingly, those established practices and conventions will operate as if clause 11 regulations had not been made.
9. In the interests of transparency and accountability, the Withdrawal Bill will contain a duty on UK Ministers regularly to report to the UK Parliament on progress on implementing common frameworks and removing temporary clause 11 regulations and powers. UK Ministers will formally send any such report to the devolved administrations. Ministers in the devolved administrations will share this report with their own legislatures as part of the reporting arrangements agreed between them.
10. As part of the implementation of this agreement, the governments agree that steps will be initiated to secure the repeal of Bills passed by the devolved legislatures as possible alternatives to the Withdrawal Bill, before the Withdrawal Bill receives Royal Assent. The governments will also ask their principal legal officers to make or support applications to the Supreme Court by consent to withdraw the references made to that Court in respect of such Bills.

Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks

1. This memorandum between the governments provides further detail on how the Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks will be put into operation by the governments.

Common frameworks

2. At the meeting of the Joint Ministerial Committee (EU Negotiations) on 16 October 2017, the governments agreed a set of principles that would determine the creation of common frameworks. Using these principles, the governments have made a joint initial assessment of the 153 areas of EU law that intersect with devolved competence in one or more settlement, assessing the impact that future divergence would have on the following criteria:
 - a. the functioning of the UK internal market, while acknowledging policy divergence;
 - b. compliance with international obligations;
 - c. the UK's ability to negotiate, enter into and implement new trade agreements and international treaties;
 - d. management of common resources;
 - e. the administration of and provision of access to justice in cases with a cross-border element; and
 - f. the security of the UK.
3. The UK Government published its analysis of the 153 areas, based on joint work between the governments, on 9 March 2018. This includes 24 policy areas where frameworks may require to be underpinned through subsequent primary legislation in whole or in part; 82 areas where non-legislative frameworks are being explored; and 49 areas where no further action is thought to be necessary. Also included in the analysis are 12 areas that the UK Government believes are reserved, subject to ongoing discussions between the governments.
4. 'Deep Dive' sessions between the governments, held without prejudice to the views of Ministers in each administration, have been used to begin to test and refine the analysis. These sessions indicate that legislative frameworks may not be necessary in all of the 24 areas identified, and that only specific elements of some areas will require legislation, with the remainder of the framework being established in a memorandum of understanding or other non-legislative approach. Deep dive sessions have also begun to explore areas where non-legislative frameworks are envisaged and cross-cutting issues, and the DAs role in them, including the governance of frameworks, the functioning of the UK internal market, and trade agreements.
5. Further discussions between the governments are now required to define the precise scope and form of future common frameworks. Deep dives in May and June 2018 will refine policy thinking on legislative frameworks and cross-cutting issues in conjunction

with a broader review of intergovernmental relations. Discussions on non-legislative frameworks are underway, but will be the focus on deep dive discussions from June onwards. The Joint Ministerial Committee (EU Negotiations) will retain oversight of the frameworks programme and will review the outcome of deep dive discussions periodically.

6. As these discussions proceed, It is anticipated that regulations made under clause 11 and related provisions will be made for all or part of the 24 areas where legislation may be required, and in such other relevant areas as the governments seek to agree to be appropriate, as set out in **Annex A**.

Clause 11 Regulations

7. Clause 11 regulations will be made in accordance with the following process, underpinned by provisions in the Withdrawal Bill:
 - a. Building on the 'Deep Dive' process, which has been a collaborative effort between the governments, discussions will take place between the governments to seek to agree the scope and content of regulations. This process will continue to report into JMC(EN).
 - b. Following those discussions between the governments, a UK Minister will formally send draft clause 11 regulations to the relevant devolved administration(s), notifying the relevant Presiding Officer(s) of the relevant devolved legislature(s) that the regulations have been sent.
 - c. Where the draft regulations have been developed in line with this agreement, the relevant devolved administration(s) will lay them before their legislature(s) and will not unreasonably withhold an accompanying recommendation to their respective legislature(s) to provide consent.
 - d. If the consent of a devolved legislature is not provided within 40 days of the draft regulations being sent to the relevant devolved administration, the UK Minister may decide either not to proceed with the regulations or to ask the UK Parliament to approve the regulations. If a UK Minister decides to proceed with the regulations, the Minister must provide a written statement to the UK Parliament indicating the reasons why, in the Minister's view, the devolved legislature did not provide consent.
 - e. The relevant devolved administration(s) will also provide a written a statement to the UK Parliament setting out why, in their view, the consent of their legislature has not been provided.
 - f. In these circumstances, the UK Minister may make the regulations where they are approved by the UK Parliament.

Use of Concurrent Powers in the Withdrawal Bill

8. The UK Government will be able to use powers under clauses 7, 8 and 9 to amend domestic legislation in devolved areas but, as part of this agreement, reiterates the commitment it has previously given that it will not normally do so without the agreement

of the devolved administrations. In any event, the powers will not be used to enact new policy in devolved areas; the primary purpose of using such powers will be administrative efficiency.

9. The UK Government will bring forward amendments to Schedule 2 to the Withdrawal Bill to enable the devolved administrations to amend retained directly applicable EU law which relates to areas that are otherwise devolved except where clause 11 regulations have been made. While the UK Government will also be able to use the powers in clause 7, 8 and 9 to amend this retained directly applicable EU law, as part of this agreement it commits it will not normally do so without the agreement of the devolved administrations. Where the UK Government is proposing to amend retained directly applicable EU law which relates to areas that are otherwise devolved, but which cannot be amended by the devolved administrations because clause 11 regulations have been made, the UK Government commits that it will first consult the relevant devolved administration(s).

Annex A: policy areas that are likely to be subject to clause 11 regulations

The governments are exploring the extent to which legislation could be required, in whole or in part, in 24 policy areas; these areas are likely to be subject, in whole or in part, to regulations made under the provisions in clause 11 of and Schedule 3 to the Withdrawal Bill ('clause 11 regulations') and are detailed below. It is possible that other areas that continue to be discussed by the governments will also be subject to clause 11 regulations - examples are provided below.

24 areas where legislation could be required, in whole or in part:

1. Agricultural support
2. Agriculture - fertiliser regulations
3. Agriculture - GMO marketing and cultivation
4. Agriculture - organic farming
5. Agriculture - zootech
6. Animal health and traceability
7. Animal welfare
8. Chemicals regulation (including pesticides)
9. Elements of reciprocal healthcare
10. Environmental quality - chemicals
11. Environmental quality - ozone depleting substances and F-gases
12. Environmental quality - pesticides
13. Environmental quality - waste packaging and product regulations
14. Fisheries management & support
15. Food and feed safety and hygiene law (food and feed safety and hygiene law, and the controls that verify compliance with food and feed law (official controls))
16. Food compositional standards
17. Food labelling
18. Hazardous substances planning
19. Implementation of EU Emissions Trading System
20. Mutual recognition of professional qualifications (MRPQ)
21. Nutrition health claims, composition and labelling
22. Plant health, seeds and propagating material
23. Public procurement
24. Services Directive

Other policy areas - which the UK Government believes are reserved (or excepted in the Northern Ireland Act 1998), but are subject to ongoing discussion with the devolved administrations - that could be subject to clause 11 regulations:

25. Food Geographical Indications (protected food names)
26. State aid