

Explanatory Memorandum to the Elections (Wales) (Amendment) (EU Exit) Regulations 2018

This Explanatory Memorandum has been prepared by the Local Government Democracy Division 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 Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Elections (Wales) (Amendment) (EU Exit) Regulations 2018.

I have made the statements required by the European Union (Withdrawal) Act 2018.

Alun Davies, AM
Cabinet Secretary for Local Government and Public Services

11 December 2018

PART 1

1. Description

1.1 This instrument makes amendments to:

- The Local Government (Wales) Measure 2011 (“the Measure”);
- The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (“the Executive Arrangements Regulations”); and
- The Local Authorities (Conduct of Referendums) (Wales) Regulations 2008 (“the Conduct of Referendums Regulations”).

1.2 The amendment to the Measure amends provisions relating to the disqualification of membership to the Independent Remuneration Panel for Wales (“the IRP”). It removes Member of the European Parliament (MEPs) from the list of disqualified offices.

1.3 The amendment to the Executive Arrangements Regulations removes a duty to provide assistance at European Elections from the functions not to be the responsibility of a local authorities’ executive.

1.4 The amendments to the Conduct of Referendums Regulations remove references to the definition of European Parliament and European Parliamentary elections. It also makes amendments to forms that are used in relevant referendums.

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

2.1 This instrument is being made under section 11 of and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018. As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum it is proposed that the instrument be subject to annulment procedure. Instruments under the 2018 Act must first be laid for sifting by the CLA Committee. The instrument makes minor and technical changes and has no substantive effect on electoral law in Wales and as such should be subject to annulment.

2.2 The European Parliamentary Elections Etc. (Repeal, Revocation, Amendment and Saving Provisions) (United Kingdom and Gibraltar) (EU Exit) Regulations 2018 (“the UKSI”) has been made and will come into force on exit day. The amendments to the Conduct of Referendums Regulations are made in consequence to amendments within the UKSI.

2.3 Further Ministerial Statements can be found in Part 2 of this Explanatory Memorandum.

3. Legislative background

3.1 This instrument relates to the withdrawal of the United Kingdom from the European Union and is being made under section 11 and Schedule 2 to, the European Union (Withdrawal) Act 2018. The Cabinet Secretary has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The legislation outlined in paragraph 1.1. contained various references to European Parliamentary elections.

Why is it being changed?

4.2 The minor and technical changes made by this instrument addresses the failure of retained EU law to operate effectively, and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

What will it now do?

4.3 The instruments remove references to Members of the European Parliament, European Parliament and European Parliamentary Elections where these will no longer be applicable after exit day.

4.4 Regulation 2 makes amendments to the Measure. As the United Kingdom will no longer be a member of the European Union on exit day, the United Kingdom will have no MEPs. It is considered highly unlikely that MEPs of other member states will apply to be members of the IRP, as such the provision is no longer required. No provision is made in relation to members of legislatures of other states.

4.5 In relation to the amendments to the Executive Arrangements Regulations, after the United Kingdom's withdrawal from the European Union, there will be no European Elections. As a result, local authorities will be under no duty to provide assistance at European Elections.

4.6 The amendments to the Conduct of Referendum Regulations omit the definitions of "European Parliamentary election" and "European Parliamentary general election". After exit day, the United Kingdom will no longer hold elections to the European Parliament. The definitions refer to section 27(1) of the Representation of the People Act 1985. Section 27(1) will be repealed by the UKSI on exit day. Other amendments to the Conduct of Referendum Regulations (as outlined below) will omit references to these definitions; as a result, it is no longer required for definitions of them to be contained in the interpretation provisions.

4.7 The other amendment to the Conduct of Referendum Regulations makes amendments to the forms used in relevant referendums. If a referendum is held under these Regulations, relevant provisions (with modification) in other

enactments will apply to the referendum. The relevant provisions are outlined in Schedule 4 to the Conduct of Referendum Regulations. The final entry in Table 5 of Schedule 4 provides that the proxy voting paper that must be used at a relevant referendum is Form E of Schedule 3 to the Representation of the People (England and Wales) Regulations 2001 (with modification). Form E is used in a number of elections, including former elections to the European Parliament. After exit day, the United Kingdom will no longer elect members to the European Parliament therefore references to European Parliamentary electoral region currently provided for in Form E will no longer be required. The UKSI omits these references from Form E. As a result, the modification currently provided for in the Conduct of Referendums Regulation would not operate correctly. This is because the modifications refer to references to European Parliamentary electoral region which will no longer appear on the statue book on exit day (once the UKSI comes into force). The amendments correct this.

5. Consultation

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has not been conducted. No policy change is introduced through these amending Regulations. The Regulations are technical in nature and intended solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6.2 These amending Regulations have no impact on the statutory duties as set out in sections 77 to 79 of the Government of Wales Act 2006 or the statutory partners as set out in Sections 72 to 75 of the Government of Wales Act 2006.

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of	Applies to Ministers of the Crown exercising	A statement to explain what, if any, amendment, repeals or

	paragraph 28, Schedule 7	powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of	A statement to explain why it is appropriate to create such a sub-delegated power.

		Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement

1.1 The Cabinet Secretary for Local Government and Public Services has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Elections (Wales) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because this instrument provides for the necessary technical amendments and makes no substantive changes to electoral law in Wales”.

2. Appropriateness statement

2.1 The Cabinet Secretary for Local Government and Public Services has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Elections (Wales) (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate. This is the case because the amendments are technical in nature and designed to address failures of retained EU law to operate effectively after exit day”.

3. Good reasons

3.1 The Cabinet Secretary for Local Government and Public Services has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is because the instrument makes technical amendments in relation to the Independent Remuneration Panel for Wales, and the legal running of elections in Wales”.

4. Equalities

4.1 The Cabinet Secretary for Local Government and Public Services has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

4.2 The Cabinet Secretary for Local Government and Public Services has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

“I have had regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010”.

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

6.1 Not applicable.

7. Legislative sub-delegation

7.1 Not applicable.

8. Urgency

8.1 Not applicable.