

## **Explanatory Memorandum to The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019**

This Explanatory Memorandum has been prepared by the Environment and Communities Division of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths, AM

**Minister for Environment, Energy and Rural Affairs**

28 February 2019

## **PART 1**

### **1. Description**

- 1.1 These Regulations (“the 2019 Regulations”) make amendments to The Air Quality Standards (Wales) Regulations 2010 (“the 2010 Regulations”) in order to address failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union.

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

- 2.1 This instrument is being made under powers conferred by section 11 of and paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 (“the 2018 Act”).
- 2.2 As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum it is proposed that the instrument be subject to negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.
- 2.3 The CLA Committee considered a draft of these regulations on 18 February 2019, and agreed that the negative procedure is appropriate for these regulations. A copy of the published CLA report can be accessed via the following link:  
<http://www.assembly.wales/laid%20documents/cr-ld12192/cr-ld12192-e.pdf>

### **3. Legislative background**

- 3.1 This instrument is being made using the power conferred by section 11 and paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union.

### **4. Purpose and intended effect of the legislation**

#### ***What did any relevant EU law do before exit day?***

- 4.1 The Regulations amended by this instrument are The Air Quality Standards (Wales) Regulations 2010 (S.I. 2010/1433) which transpose the requirements of Directives 2008/50/EC and 2004/107/EC on ambient air quality.

#### ***Why is it being changed?***

- 4.2 The instrument makes minor and technical amendments to The Air Quality Standards (Wales) Regulations 2010 to ensure the legislation is

operable once the UK leaves the EU. Some of the changes are described in the paragraphs below, and can generally be described as amending cross-references to EU institutions and legislation.

- 4.3 References to the Welsh Ministers acting in compliance with EU law by reference to an EU Directive are amended so they can be read with appropriate modifications. In some instances, references to EU Directives are replaced with the domestic legislation responsible for their transposition.
- 4.4 Cross-references to Member State functions and obligations under EU Directives have been modified as appropriate to read as functions and obligations of the Welsh Ministers.
- 4.5 References to the Welsh Ministers informing the EU Commission of limit value exceedances under regulation 13 of the 2010 Regulations have been replaced with a general requirement to publish such information.
- 4.6 The references (within Directive 2008/50/EC) to UK National Reference Laboratories' participation in Community-wide quality assurance programmes have been amended as UK laboratories will no longer have access to these EU-level programmes. National level quality assurance obligations are preserved.

#### ***What will it now do?***

- 4.7 The purpose of this instrument is to ensure that retained EU law operates effectively once the UK leaves the European Union. On Exit day, this means maintaining the substantive elements of the EU legislative regime governing air quality standards (following the work of addressing identified deficiencies).

#### **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 domestic 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 No impact assessment has been produced in relation to these Regulations as no impact on the private, voluntary or public sectors is foreseen. This legislation has no impact on the statutory duties (sections 77-79 of the Government of Wales Act 2006) or statutory partners (sections 72-75 of the Government of Wales Act 2006).

# Annex

## Statements under the European Union (Withdrawal) Act 2018

### 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)
Appropriateness	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 instrument 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	A statement to explain the 'good reasons' for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) 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	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Welsh Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
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 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p>	
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 instrument 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(s)

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 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 the changes made are minor and technical in nature.”

#### 2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Air Quality Standards (Wales) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

#### 3. Good reasons

The Minister for Environment, Energy and Rural Affairs 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. These are the benefits of continuing to have operable air quality standards legislation following EU exit, and the existence of inoperabilities in this legislation if changes are not made.”

#### 4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs 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 Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths, have had due 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**

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

## **6. Criminal offences**

Not applicable/required.

## **7. Legislative sub-delegation**

Not applicable/required.

## **8. Urgency**

Not applicable/required.