

Explanatory Memorandum to: The Local Government Finance (Amendment) (EU Exit) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Welsh Government's Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A. The Constitutional and Legislative Affairs Committee agreed on 18 February 2019, that these Regulations met the sifting requirements and the appropriate procedure for these Regulations is the negative resolution procedure.

Minister's Declaration

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

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

Rebecca Evans AM
Minister for Finance and Trefnydd
5 March 2019

PART 1

1. Description

1.1 This instrument makes an amendment to:

- The Central Rating List (Wales) Regulations 2005;
- Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013.

1.2 Regulation 7 of the Central Rating List (Wales) Regulations 2005 makes provision about railway hereditaments. Amendments are required to be made in consequence of the Railway (Licensing of Railway Undertakings) (Amendment etc) (EU Exit) Regulations 2019. This SI will enable the legal framework for train operator licensing in Great Britain to continue after exit day. The amendments made to the Wales Regulations by this SI will remove the definition of “EEA State” and further amend the definition of “licence exempt operator” and “licence holder” to remove references to a “European licence and replace it with “railway undertaking licence”

1.3 The amendment to the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 amends the definitions of “bank” and insurer” to remove reference to EEA firms authorised under the Financial Services and Markets Act 2000.

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 Constitutional and Legislative Affairs Committee. The instrument makes minor and technical changes and has no substantive effect on the law in Wales and as such should be subject to annulment in pursuance of a resolution of the National Assembly for Wales.

2.1.1 Further Ministerial Statements can be found in Part 2 of this Explanatory Memorandum. These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A. The Constitutional and Legislative Affairs Committee agreed at its meeting on 18 February 2019 that these Regulations met the sifting requirements and the appropriate procedure for these Regulations is the negative resolution procedure. A link to the CLA Committee’s report can be found at: <http://www.assembly.wales/laid%20documents/cr-ld12192/cr-ld12192-e.pdf>

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 of and Schedule 2 to the European Union (Withdrawal) Act 2018. The Minister for Finance and Trefnydd has made the 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 Railway (Licensing of Railway Undertakings) Regulations 2005 (SI 2005/3050) created the concept of a “European licence”. Any operator established in Great Britain could be granted a European Licence subject to the Office of Rail and Road being satisfied that the applicant met certain conditions regarding their professional competence etc. Once granted, the licence was valid for the holder to provide train services in any EEA Member State. The 2005 Regulations implemented into domestic law the EU Directives that were introduced for this purpose (EU 95/18, as amended by EU 2001/13 and EU 2004/49).

4.2 Regulation 4 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 provides a power to billing authorities to require prescribed persons to provide information in certain circumstances. “Any bank” and “any insurer” are included in the list of the persons prescribed and those terms are defined. The current definitions of “bank” and “insurer” include reference to EEA firms authorised under the Financial Services and Markets Act 2000.

Why is it being changed?

4.3 The minor and technical changes made to these instruments address the failure of retained EU law to operate effectively following the withdrawal of the United Kingdom from the European Union.

What will it now do?

4.4 After exit day, the European licence regime in the Railway (Licensing of Railway Undertakings) Regulations 2005 will not be able to operate effectively unless the references they contain to Europe and European institutions are corrected. The amendments made to those Regulations will enable the legal framework for train operator licensing in Great Britain provided for in the 2005 Regulations to continue after exit day. The amendments made to provision made about railway hereditaments in the Central Ratings List (Wales) Regulations 2005 are made in consequence of the changes made to the licensing regime.

4.5 The amendment to the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (Wales) Regulations 2013 is consequential upon the EEA

Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 which repeals provision in the 2000 Act that deals with authorisations granted to EEA firms to carry on regulated activities. This SI makes amendments to the definitions of “bank” and insurer” to remove references to EEA firms which will no longer be automatically granted authorisations under the Financial Services and Markets Act 2000.

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 the 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.

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) |
| 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 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 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 | <p>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 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</p> | A statement to explain why it is appropriate to create such a sub-delegated power. |

| | | 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(s)

- 1.1 The Minister for Finance and Trefnydd, Rebecca Evans AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Service Charges (Consultation Requirements) (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 this instrument provides for necessary technical amendments and makes no substantive changes to the law in Wales”.

2. Appropriateness statement

- 2.1 The Minister for Finance and Trefnydd, Rebecca Evans AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Service Charges (Consultation Requirements) (Wales) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate. This is the case because the instrument makes amendments which are technical in nature and designed to address failures of retained EU Law to operative effectively after exit day”.

3. Good reasons

- 3.1 The Minister for Finance and Trefnydd, Rebecca Evans AM, 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 to substitute the e-notification system for the Official Journal of the European Union.”

4. Equalities

- 4.1 The Minister for Finance and Trefnydd, Rebecca Evans AM, 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 Finance and Trefnydd, Rebecca Evans AM, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“I 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

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.