

Explanatory Memorandum to The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Planning Directorate 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 Town and Country Planning (Miscellaneous Amendments) (Wales) (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.

Julie James AM
Minister for Housing and Local Government
6 March 2019

PART 1

1. Description

- 1.1. This instrument makes amendments to four statutory instruments related to Town and Country Planning:
- The Town and Country Planning (Control of Advertisements) Regulations 1992;
 - The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005;
 - The Town and Country Planning (Development Management Procedure) (Wales) Order 2012; and
 - The Planning (Hazardous Substances) (Wales) Regulations 2015.
- 1.2. These amendments are to ensure that the statute book remains operable following the UK's exit from the EU and will address deficiencies in domestic legislation arising from EU Exit.
- 1.3. This instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 defines as 29 March 2019 at 11.00pm.

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

- 2.1 This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 ("the 2018 Act").
- 2.2 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to the 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 paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed 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 Directive 1995/18/EC on the licensing of railway undertakings (as amended by Directive 2001/13/EC and Directive 2004/49/EC) and Directive 2012/34/EU of the European Parliament and of the Council establishing a single European railway area (recast). The Railway (Licensing of Railway Undertakings) Regulations 2005 (“the 2005 Regulations”) transposed these directives into domestic law. The main effect of the 2005 Regulations was to create the “European licence”. Any operator established in Great Britain could be granted a European licence, subject to the Office of Railway Regulation being satisfied that the applicant met certain conditions regarding their professional competence, financial fitness and insurance cover. Once granted, the licence was valid for the holder to provide train services in any EEA Member State. This was within the context of a long term European programme to establish a “single European Railway Area” within which train operators would have equal access to infrastructure and competition, and be subject to common safety and operating rules. The Directives mentioned above were introduced for this purpose.
- 4.2 Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC seeks to prevent major accidents involving chemical storage and to limit their consequences for human health and the environment. The Directive, commonly known as the Seveso Directive has three strands, the first of which is to ensure on site safety controls are in place to prevent major accidents occurring. The second aspect of the Directive is to ensure emergency plans are prepared to respond to accidents if they happen. Thirdly, the Directive requires member states to use its land use planning policies and controls to keep development sufficiently away from establishments, so if an accident were to occur, the deaths, injuries, damage to buildings and to the environment are minimised. This third strand is a devolved matter which is transposed by a number of town and country planning statutory instruments.
- 4.3 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the “EIA Directive”), as amended by Directive 2014/52/EU, applies to a wide range of public and private projects, which are listed in Annexes I and II of the Directive. The EIA Directive sets out a formal process intended to ensure decisions on large, complex projects are taken with the full knowledge of their possible environmental effects. Those projects which fall within a project category in Annex 1 to the EIA Directive automatically require Environmental Impact Assessment (EIA). Whether projects listed in Annex 2 require EIA is dealt with on a case by case basis. This

screening process considers whether the project is likely to have significant effects on the environment and if so, it must be subject to EIA. The EIA Directive is transposed by separate regulations for each sector. Most EIAs in Wales are for projects consented through the town and country planning system.

Why is it being changed?

- 4.4 This instrument uses powers conferred by the 2018 Act to make the necessary changes to the domestic legislation to ensure that the Welsh legislation relating to Town and Country Planning listed in paragraph 1.1 of this memorandum will continue to operate effectively after the UK has left the EU.

The Town and Country Planning (Control of Advertisements) Regulations 1992

- 4.5 The Town and Country Planning (Control of Advertisements) Regulations 1992 (“the 1992 Regulations”) grants a ‘statutory undertaker’ deemed consent to display advertisements wholly for the purpose of announcement or direction in relation to any its functions. The definition of a ‘statutory undertaker’ set out in the 1992 Regulations includes persons who hold a licence to operate railway assets and includes a holder of a ‘European Licence’. The definition of “statutory undertaker” in regulation 2(1) of the 1992 is amended in so far as it applies to railway operators. The amendment replaces the term “European Licence” with the term “railway undertaking licence” and removes redundant references to the EU.

This amendment is made in consequence of changes made by The Railway (Licensing of Railway Undertakings) (Amendment etc) (EU Exit) Regulations 2019 (“The 2019 Regulations”) to the 2005 Regulations. The 2019 Regulations are an affirmative instrument which was laid before Parliament on 28th January 2019; they have not yet been made. The amendments rely on the draft as laid on that date.

- 4.7 The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 also contain a transitional provision. For the period of 2 years beginning with exit day, the reference in the Town and Country Planning (Control of Advertisements) regulations 1992 to a railway undertaking licence granted pursuant to the 2005 Regulations (found in the definition of “statutory undertaker”) will include a reference to a relevant European licence.

The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005

- 4.8 Article 13 of the Seveso Directive (2012/18/EU) requires land use polices to include the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the

environment. In Wales, Local Development Plans are required to include such objectives by Regulation 13 of The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005. Regulation 13(c) refers to controls described in Article 13 of the Directive, which duplicates the requirements of the paragraph, so the draft regulation omits this clause. Regulation 13(d) refers to technical measures set out in Article 5 of the Directive. The draft regulations substitute the reference to duties in Article 5 of the Seveso Directive to those set out in Regulation 5 of the Control of Major Accident Hazards Regulations 2015/583 stating clearly what is expected to be included within Local Development Plan policies, ensuring the clause remains operable.

The Town and Country Planning (Development Management Procedure) (Wales) Order 2012

- 4.9 The Seveso Directive also applies to the development management stage of the planning system. In Schedule 4 of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 is a list of statutory consultees to be informed of certain planning applications if they contain specified development characteristics. Paragraph (w) specifies developments which either include establishments storing hazardous substances or developments proposed in the vicinity of such establishments. It refers to Article 11 of Directive 2012/18/EU to describe establishments undergoing modification where the level of risk is increased. To ensure ongoing operability, this is amended to refer to the Control of Major Accident Hazards Regulations 2015 (“the COMAH Regulations”), which specifically transposes the Article and provides a clear definition of the developments to be notified to the statutory consultees. Similarly in the interpretation for this paragraph, definitions in the Regulations refer to the COMAH Regulations rather than the Directive.

The Planning (Hazardous Substances) (Wales) Regulations 2015

- 4.10 The 2015 Regulations set out the requirements for the operators of establishments to obtain consent before storing hazardous substances. They contain a number of references to the Seveso Directive which need to be amended to remain operable, particularly in respect of cases where transboundary consultation is being undertaken. The amending regulations provide that national and transboundary environmental impact assessments have the meaning in any retained EU law which implements the EIA Directive. The effect of this is that the definition of these terms depend on retained EU law, rather than the EIA Directive itself. References to consultations between Member States in accordance with Article 14(3) of the Directive is amended to refer to consultations between countries which the COMAH competent authority is required to undertake as per Regulation 20 of the COMAH Regulations (as amended by the Health and Safety (Amendment) (EU Exit) Regulations 2018/1370).

They also contain a number of references to the EIA Directive as the required assessment process before consent is granted is similar, both in terms of process and purpose. The references to the EIA Directive are glossed so that any references to that Directive in the 2015 Regulations refer to that Directive as it had effect immediately before Exit Day. This will mean that the 2015 Regs will continue to work based on the version of the Directive that is in force on Exit Day, but will not take into account any future amendments to that Directive.

- 4.11 The deficiencies which are subject to correction do not constitute policy changes – they are minor, technical amendments to ensure the legislation is operable once the UK leaves the EU through amending and removing legislative references that will become defunct.

What will it now do?

- 4.12 The instrument will address deficiencies in domestic legislation arising from the withdrawal of the UK from the EU, and ensures that advertisement consent and land use planning for hazardous substances continue to operate on EU exit to protect public health and the environment.

5. Consultation

- 5.1 No public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain operable by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

- 6.1 An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

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	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 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 Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		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	
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)

The Minister for Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Town and Country Planning (Miscellaneous Amendments) (Wales) (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 being made are technical in nature and make no substantive changes to how The Town and Country Planning (Control of Advertisements) Regulations 1992, The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005, The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and The Planning (Hazardous Substances) (Wales) Regulations 2015 operate.

2. Appropriateness statement

The Minister for Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Town and Country Planning (Miscellaneous Amendments) (Wales) (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 Housing and Local Government, Julie James, 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 provisions ensure that protections provided by The Town and Country Planning (Control of Advertisements) Regulations 1992, The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005, The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and The Planning (Hazardous Substances) (Wales) Regulations 2015 continue to be operable after the UK leaves the European Union.

4. Equalities

- 4.1 The Minister for Housing and Local Government, Julie James, has made the following statement(s):

“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 Housing and Local Government, Julie James, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Julie James, 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.”

- 4.3 Little or no impact on equalities is expected.

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

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.