

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 4 – Tŷ Hywel

Meeting date: 2 July 2018

Meeting time: 14.30

For further information contact:

Gareth Williams

Committee Clerk

0300 200 6362

SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(Page 1)

CLA(5)–19–18 – Paper 1 – Statutory instruments with clear reports

Affirmative Resolution Instruments

2.1 SL(5)231 – The Regulation of Registered Social Landlords (Wales) Act 2018 (Consequential Amendments) Regulations 2018

3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

3.1 SL(5)230 – The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018

(Pages 2 – 14)

CLA(5)–19–18 – Paper 2 – Report

CLA(5)–19–18 – Paper 3 – Regulations

CLA(5)–19–18 – Paper 4 – Explanatory Memorandum



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

CLA(5)–19–18 – Paper 5 – Letter from the Leader of the House and Chief Whip, 18 June 2018

Composite Negative Resolution Instruments

3.2 SL(5)232 – Environment and Rural Affairs (Miscellaneous Revocations) Order 2018

(Pages 15 – 24)

CLA(5)–19–18 – Paper 6 – Report

CLA(5)–19–18 – Paper 7 – Order

CLA(5)–19–18 – Paper 8 – Explanatory Memorandum

4 Legislative Consent Memorandum on the Non–Domestic Rating (Nursery Grounds) Bill

(Pages 25 – 30)

CLA(5)–19–18 – Paper 9 – Legislative Consent Memorandum

CLA(5)–19–18 – Legal Advice Note (Private)

5 Papers to Note

5.1 Correspondence relating to Powers in the EU (Withdrawal) Bill to make subordinate legislation – operational matters

(Page 31)

CLA(5)–19–18 – Paper 10 – Letter from the Leader of the House and Chief Whip

6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

7 The Powers in the EU (Withdrawal) Bill to make subordinate legislation – operational matters: Draft Report

(Pages 32 – 84)

CLA(5)–19–18 – Paper 11 – Draft report

Date of the next meeting

9 July 2018

Statutory Instruments with Clear Reports

02 July 2018

SL(5)231 – The Regulation of Registered Social Landlords (Wales) Act 2018 (Consequential Amendments) Regulations 2018

Procedure: Affirmative

These Regulations make consequential amendments arising from the Regulation of Registered Social Landlords (Wales) Act 2018 (“the Act”).

The Regulations amend:

- primary legislation (to update cross-references to “exempt disposals”);
and
- the Land Registration Rules 2003

as a result of changes made by the Act which repeal the requirements to obtain Welsh Ministers’ consent to disposals of land by registered social landlords.

Parent Act: Regulation of Registered Social Landlords (Wales) Act 2018(1)

Date Made:

Date Laid:

Coming into force date: 15 August 2018



Agenda Item 3.1

SL(5)230 – The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018

Background and Purpose

These Regulations amend the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 ("the 2006 Regulations").

Part 2A of the Environmental Protection Act 1990 sets out a regime for the identification and remediation of contaminated land. The 2006 Regulations made provision for Part 2A to apply with modifications for the purpose of dealing with harm attributable to any radioactivity possessed by any substance.

These Regulations are part of a package of measures to transpose Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation ("the Directive").

These Regulations transpose requirements in Article 73(1) of the Directive and make amendments to reflect new definitions in the Directive.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

The 21-day rule requires 21 calendar days to pass between: (a) the date a statutory instrument which is subject to the negative procedure is laid before the Assembly, and (b) the date the statutory instrument comes into force. These Regulations come into force 19 days after they were laid before the Assembly, therefore there is breach of the 21-day rule.

We note the breach and thank Julie James AM, Leader of the House, for the explanation set out in her [letter dated 18 June 2018](#). We agree that the breach will have limited impact in Wales, given that there is no radioactive contaminated land identified in Wales.

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

We note how clear, helpful and transparent the Explanatory Memorandum is, and how helpful that has been to the Committee in scrutinising these Regulations.



3. Standing Order 21.3(iv) - that it inappropriately implements European Union legislation

These Regulations implement the Directive (i.e. Council Directive 2013/95 Euratom). However, implementation should have been completed by 6 February 2018. We welcome the reference to the delay in the Explanatory Memorandum and the explanation as to how most of the public exposure requirements of the Directive have already been implemented in previous domestic legislation. We also note the limited impact the delay might have in Wales by virtue of there being no radioactive contaminated land identified in Wales.

Nevertheless, we note the deadline has been missed by 4 months and we ask the Welsh Government to confirm whether it has been in correspondence with the European Commission in respect of the delay and whether there has been any realistic prospect of infraction proceedings being brought against the United Kingdom as a result of this delay.

Implications arising from exiting the European Union

With regard to the status of Euratom in the UK, the Nuclear Safeguards Bill (currently awaiting Royal Assent) makes provision for nuclear safeguards after the UK leaves Euratom.

The Nuclear Safeguards Bill provides, among other things, that the UK Government must make a request to the European Council for relevant Euratom arrangements to continue to have effect in the UK after exit day if, by 1 March 2019, sufficient arrangements have not been made in respect of new agreements between the UK and other international parties relating to nuclear safeguards and atomic energy.

In those circumstances, the UK Government request would be for the Euratom arrangements to continue to have effect in the UK after exit day until sufficient arrangements have been made in respect of the new international agreements.

Government Response

Response to Merits Scrutiny Points

Point 3.

The Welsh Government has not had any discussions with the European Commission regarding delayed transposition of the parts of the Basic Safety Standards Directive (BSSD) relating to radioactive contaminated land. The UK Government has been in contact with the Commission with regards the transposition of BSSD more broadly and it is not considered that there is a reasonable likelihood of infraction proceedings being brought against the UK Member State at this time.

Legal Advisers

Constitutional and Legislative Affairs Committee

21 June 2018



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 725 (W. 142)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Radioactive Contaminated
Land (Modification of Enactments)
(Wales) (Amendment) Regulations
2018**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988 (W. 277)) (“the 2006 Regulations”).

Part 2A of the Environmental Protection Act 1990 (c. 43) (“EPA 1990”) sets out a regime for the identification and remediation of contaminated land. The 2006 Regulations made provision for Part 2A to apply with modifications for the purpose of dealing with harm attributable to any radioactivity possessed by any substance.

These Regulations are part of a package of measures to transpose Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (“the Directive”). These Regulations transpose requirements in Article 73(1) of the Directive and make amendments to reflect new definitions in the Directive.

Regulations 3 and 5 amend the modifications made by the 2006 Regulations to the definition of remediation in Part 2A EPA 1990 in order to implement obligations under Article 73(1)(b) and (e) of the Directive. Regulation 3 also amends references to Council Directive 96/29/Euratom which is replaced by the Directive and makes other amendments to reflect the new definitions of “emergency”, “protective

measures”, “remedial measures”, “optimisation” and “justification” in the Directive.

These Regulations also replace certain references to the Secretary of State in the modifications made by the 2006 Regulations with references to the Welsh Ministers. The amendments made by regulations 3(2), 3(4) and 4 of these Regulations ensure that the relevant modified functions are exercisable by the Welsh Ministers, in line with the underlying functions within Part 2A EPA 1990.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 725 (W. 142)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Radioactive Contaminated
Land (Modification of Enactments)
(Wales) (Amendment) Regulations
2018**

Made 13 June 2018

Laid before the National Assembly for Wales
15 June 2018

*Coming into force in accordance with
regulation 1(2)*

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 78A(9) and 78YC of the Environmental Protection Act 1990(1).

Title and Commencement

1.—(1) The title of these Regulations is the Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018.

(2) These Regulations come into force 21 days after the day they are made.

(1) 1990 c. 43. Sections 78A to 78YC were inserted by section 57 of the Environment Act 1995 (c. 25). Section 78YC was amended by S.I. 2010/675 and 2016/1154. See the definition of “prescribed” and “regulations” in section 78A(9). Functions of the Secretary of State under sections 78A and 78YC were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). 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 (c. 32).

Amendments to the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006

2. The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006⁽¹⁾ are amended in accordance with regulations 3 to 5.

3.—(1) Regulation 5 (section 78A (preliminary)) is amended as follows.

(2) In paragraph (2), in the substituted section 78A(2) (definition of contaminated land), for “Secretary of State” substitute “Welsh Ministers”.

(3) In paragraph (3), in the substituted section 78A(4) (definition of harm)—

- (a) for “a radiological” substitute “an”;
- (b) after “activity” insert “(except in section 78E(4A)(a))”⁽²⁾.

(4) In paragraph (4), in the substituted section 78A(5) (supplement to definition of harm - guidance), for “Secretary of State” substitute “Welsh Ministers”.

(5) In paragraph (6), in the substituted section 78A(7) (definition of remediation), for “cognate expressions” substitute “references to remediating”.

(6) In paragraph (6), in the substituted section 78A(7A) (supplemental definition of remediation)—

- (a) after paragraph (a), insert—
 - “(aa) affected members of the public are identified;
 - (ab) assessment of the means available to the individuals identified under paragraph (aa) for controlling their own exposure is made;”;
- (b) omit paragraph (c) and the “and” following it;
- (c) at the end of paragraph (d), omit the full stop and insert “; and”;
- (d) after paragraph (d), insert—
 - “(e) any other appropriate protective or remedial measure is implemented.”

(7) In paragraph (8)—

- (a) for paragraph (d), substitute—
 - “(d) for the definition of “substance”, substitute—

(1) S.I. 2006/2988, amended by S.I. 2007/3250, 2008/521, 2010/2146, 2013/755 and 2016/1154. S.I. 2016/562 also makes amendments which are not yet in force.

(2) Section 78E of the Environmental Protection Act 1990 is modified by regulation 8(3) of the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006. Regulation 5 of these Regulations amends that modification.

“substance” means, whether in solid or liquid form or in the form of a gas or vapour, any substance containing radionuclides which have resulted from the after-effects of an emergency or have been processed as part of a past practice or past work activity;”;

(b) for paragraph (e), substitute—

“(e) after the definition of “unitary authority”, insert—

“and any other word or expression used both in this Part and in Council Directive 2013/59/Euratom, laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation and repealing Council Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom⁽¹⁾, has the same meaning for the purposes of this Part as it has in that Directive.””

4. In regulation 7(2) (section 78C (identification and designation of special sites)), in the substituted section 78C(10)(a), for “Secretary of State” substitute “Welsh Ministers”.

5. In regulation 8(3) (section 78E (duty of enforcing authority to require remediation of contaminated land etc)), for the substituted section 78E(4A) and (4B), substitute—

“(4A) Where remediation includes the implementation of a protective or remedial measure, that part of the remediation which consists of the implementation of any such measure may be considered reasonable only—

(a) where the measure does more good than harm; and

(b) where the form, scale and duration of the measure is optimised.

(4B) For the purpose of subsection (4A), the form, scale and duration of a protective or remedial measure shall be taken to be optimised if the magnitude of individual doses, the likelihood of exposure and the number of individuals exposed are kept as low as reasonably achievable taking into account the current state of technical knowledge and economic and societal factors.”

(1) OJ No L 13, 17.01.2014, p. 1-73.

Lesley Griffiths

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

13 June 2018

Explanatory Memorandum to the Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018

This Explanatory Memorandum has been prepared by the 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 Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) Regulations 2018

Lesley Griffiths
Cabinet Secretary for Environment, Planning & Rural Affairs
15 June 2018

1. Description

The primary purpose of the instrument is to amend the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988 (W. 277)) (“the 2006 Regulations”) to transpose parts of Council Directive 2013/59/EURATOM of 5 December 2013 (“the Directive”) relating to radioactive contaminated land.

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

Late transposition of an EU obligation

Article 106 of the Directive 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 regulations following consultation have meant this deadline has not been met.

3. Legislative background

This Instrument amends the 2006 Regulations and is made in order to transpose new requirements set out in the Directive in relation to the exposure of the public to ionising radiation (“public exposures”). The Directive updates and simplifies existing arrangements for protection against the dangers arising from exposure to ionising radiation by consolidating 5 earlier directives and a European Commission recommendation into one directive. In particular, it consolidates the old Basic Safety Standards Directive (Council Directive 96/29/Euratom) (“the 1996 Directive”) and the Directive on the control of high-activity sealed radioactive sources and orphan sources (Council Directive 2003/122/Euratom) (commonly referred to as “the HASS Directive”). Given that the Directive is primarily a consolidation of existing EU law, most of the public exposure requirements of the Directive are already implemented in existing legislation. In addition to the public exposure provisions, the Directive also covers radiation protection for workers and medical patients, and emergency preparedness and response. The transposition date is 6 February 2018.

Part 2A of the Environmental Protection Act 1990 (“the 1990 Act”) sets out a regime for the identification and remediation of contaminated land. Under section 78YC of the 1990 Act, the normal regime does not apply with respect to harm or water pollution that is attributable to radioactivity. However, section 78YC confers powers on the Welsh Ministers to make regulations applying the Part 2A regime, in relation to Wales, with any necessary modifications, to situations where harm is attributable to radioactive contamination.

Originally functions of the Secretary of State, functions Part 2A were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). 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 (c. 32)

The 2006 Regulations make provision for Part 2A of the 1990 Act to have effect in relation to Wales with modifications, for the purposes of dealing with, harm so far as attributable to radioactive contamination.

This Instrument amends the modifications made by the 2006 Regulations to the definition of remediation in s78A(7A) of the EPA 1990. The amendments transpose the two new requirements contained in Article 73(1) (b) and (e) of the Directive which concern the content of protection strategies for the management of radioactive contaminated land. This Instrument also updates and replaces terminology in line with the new language in the Directive.

This Instrument also replaces certain references to the Secretary of State in the modifications made by the 2006 Regulations with references to the Welsh Ministers. This ensures that the relevant modified functions are exercisable by the Welsh Ministers, in line with the underlying functions within Part 2A EPA 1990.

This instrument is part of a set of four which are being made to transpose the public exposure requirements of the Directive. The other instruments, which have already been made, are:

- the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2018;
- the Ionising Radiations (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018
- the Justification of Practices Involving Ionising Radiation (Amendment) Regulations 2018

The Environmental Permitting Regulations were made on a composite basis by the National Assembly and the UK Government whilst the Ionising Radiations and Justification Regulations were made by the UK Government.

4. Purpose & intended effect of the legislation

The Directive introduced a new requirement on Member States to ensure that protection strategies for managing land which is contaminated with radioactive material contain specific steps (Article 73.1). The 2006 Regulations together with the Radioactive Contaminated Land Statutory Guidance, which is due to be updated, already meet most of the requirements of the Directive. Only a few minor changes have been identified in order to transpose new requirements under the Directive. The key changes are:

- the Directive introduced a new requirement on Member States to ensure that protection strategies include steps to identify members of the public affected by the radioactive contaminated land (article 73.1(b)). A new provision has been introduced in the 2006 Regulations amending the definition of remediation to reflect this.
- the Directive requires that protection strategies include assessment of the means available to affected members of the public for controlling their own

exposure (article 73.1(e)). A new provision in the Regulations amending the definition of remediation reflects this.

- the term “intervention” is no longer used within the Directive. This term has been replaced with the new concept of “protective measure” and remedial measures”, which are defined within the Directive and considered to be equivalent to “intervention”.
- further updates have been made to reflect the new definitions in the Directive. The definitions of optimisation and justification have been updated to accord with the definitions in Article 5 of the Directive. The regulations now refer to “an emergency” which is defined in the Directive (rather than “a radiological emergency”). References to the 1996 Directive have been updated to refer to the Directive.

It should be noted that currently there is no land designated as radioactively contaminated land in Wales.

5. Consultation

A 6 week, UK wide, public consultation was undertaken between 5 October and 15 November 2017. One of the consultation questions focussed on proposed changes to the radioactive contaminated land regime. All comments were considered before legislative amendments were finalised.

A second, targeted consultation specifically on the proposed amendments was conducted on an England and Wales basis and lasted for two weeks (3 January to 19 January 2018). This second consultation was targeted at the environmental regulators, technical experts, local authorities and land owners and asked three substantive questions on draft guidance with regard to setting reference levels for existing exposure situations, the updated definition of ‘remediation’ and the tests of justification and optimisation. There were five responses all of which supported the proposals and had minor suggestions to improve drafting. The full government response (on an England and Wales basis) will be made available to consultees in due course.

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.

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-L-LG-0356-18

Elin Jones AM
Presiding Officer
National Assembly for Wales

By email: llywydd@assembly.wales

18 June 2018

Dear Elin,

**THE RADIOACTIVE CONTAMINATED LAND (MODIFICATION OF ENACTMENTS)
(AMENDMENT) (WALES) REGULATIONS 2018**

I am writing to notify you, pursuant to section 11A(4) of the Statutory Instruments Act 1946, that the Radioactive Contaminated Land (Modification of Enactments) (Amendment) (Wales) Regulations 2018 were not laid at least 21 days before they will come into force.

Due to an unfortunate drafting oversight, the date for coming into force is calculated from the date made and not the date laid, which means that they will breach the "21 day" rule. They will come into force on 4 July 2018. However there will be limited impact on the public as there is no radioactive contaminated land identified in Wales.

Please accept my apologies for this oversight.

Yours sincerely,

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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.

SL(5)232 – The Environment and Rural Affairs (Miscellaneous Revocations) Order 2018

Background and Purpose

This Order revokes six instruments relating to milk quotas, one instrument relating to Agricultural Wages Committees and one instrument relating to the importation of hay and straw. All of them are spent or otherwise superseded. The Order also revokes one instrument relating to flood defence procedures, which is no longer required.

All of the orders are revoked in relation to England and Wales, except the Agricultural Wages Committees (Transitional Provision) Order 1974 which is revoked only in relation to England.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(ix) – the instrument is not made in both English and Welsh

This Order has been made as a composite instrument, meaning the Order has been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament.

As a result, the Order has been made in English only.

The Explanatory Memorandum states that the Order needed to be made on a composite basis in order to “maintain the clarity, accessibility and transparency of the statute book for those required to comply with its provisions through the legislation being revoked in Wales and England”.

Given the legislative history behind the areas of law covered by the Order, we accept there are good reasons to make this Order on a composite basis, but we note the effect that has (i.e. there is no Welsh language version).

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

We note how clear, helpful and transparent the Explanatory Memorandum is (in particular, the table summarising the legislation that is being revoked), and how helpful that has been to this Committee in scrutinising the Order.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

21 June 2018



STATUTORY INSTRUMENTS

2018 No. 739

AGRICULTURE, ENGLAND AND WALES

AGRICULTURAL EMPLOYMENT, ENGLAND

AGRICULTURAL WAGES

ANIMALS, ENGLAND AND WALES

ANIMAL HEALTH

**ENVIRONMENTAL PROTECTION, ENGLAND AND
WALES**

LAND DRAINAGE

**The Environment and Rural Affairs (Miscellaneous
Revocations) Order 2018**

Made - - - - *19th June 2018*

Laid before Parliament *20th June 2018*

Laid before the National Assembly for Wales *20th June 2018*

Coming into force - - *11th July 2018*

The Secretary of State in relation to England and the Welsh Ministers in relation to Wales make this Order in exercise of the powers conferred by sections 1 and 10 of the Animal Health Act 1981^(a), paragraph 6 of Schedule 1 to the Agriculture Act 1986^(b), and section 61E(1) of the Land Drainage Act 1991^(c), and now vested in them^(d).

(a) 1981 c. 22. Section 10 was amended by S.I. 1990/2371 and 1993/1813. See the definition of “the Ministers” in section 86(1).

(b) 1986 c. 49. Paragraph 6 of Schedule 1 was amended by S.I. 2007/477. See the definition of “the Minister” in paragraph 18 of Schedule 1, as amended by S.I. 2002/794.

(c) 1991 c. 59. Section 61E was inserted by the Land Drainage Act 1994 (c. 25), section 1. See the definition of “the Ministers” in section 72(1).

(d) The functions under sections 1 and 10 of the Animal Health Act 1981 (“the 1981 Act”) were transferred, so far as exercisable by the Secretaries of State for Scotland and Wales, to the Minister of Agriculture, Fisheries and Food by S.I. 1999/3141. Those functions, and the functions under section 61E(1) of the Land Drainage Act 1991 (“the 1991 Act”) so far as exercisable by the Minister of Agriculture, Fisheries and Food jointly with the Secretary of State were transferred to the Secretary of State by S.I. 2002/794. The functions under section 1 and 10 of the 1981 Act so far as exercisable in relation to Wales and exercisable by the Secretary of State for Wales, and the functions under paragraph 6 of Schedule 1 to the Agriculture Act 1986 and section 61E of the 1991 Act so far as exercisable in relation to Wales, were transferred to the

The Secretary of State also makes this Order in relation to England in exercise of the powers conferred by sections 254(1)(a) and 2(a), (c) and (h) and 266(2) of the Local Government Act 1972(a).

The Secretary of State and the Welsh Ministers make this Order after consulting in accordance with section 61E(4) of the Land Drainage Act 1991.

Citation, commencement and application

1.—(1) This Order may be cited as the Environment and Rural Affairs (Miscellaneous Revocations) Order 2018 and comes into force on 11th July 2018.

(2) Article 3 applies to England only.

Revocation of orders relating to milk quotas

2. The following orders are revoked—

- (a) the Milk Quota (Calculation of Standard Quota) Order 1986(b);
- (b) the Milk Quota (Calculation of Standard Quota) (Amendment) Order 1987(c);
- (c) the Milk Quota (Calculation of Standard Quota) (Amendment) Order 1988(d);
- (d) the Milk Quota (Calculation of Standard Quota) (Amendment) Order 1990(e);
- (e) the Milk Quota (Calculation of Standard Quota) (Amendment) Order 1991(f);
- (f) the Milk Quota (Calculation of Standard Quota) (Amendment) Order 1992(g).

Revocation of the Agricultural Wages Committees (Transitional Provisions) Order 1974

3. The Agricultural Wages Committees (Transitional Provisions) Order 1974(h) is revoked.

Revocation of the Importation of Hay and Straw Order 1979

4. The Importation of Hay and Straw Order 1979(i) is revoked.

Revocation of the Code of Practice on Environmental Procedures for Flood Defence Operating Authorities (Internal Drainage Boards and Local Authorities) Approval Order 1996

5. The Code of Practice on Environmental Procedures for Flood Defence Operating Authorities (Internal Drainage Boards and Local Authorities) Approval Order 1996(j) is revoked.

National Assembly for Wales by S.I. 1999/672. The functions of the Secretary of State under sections 1 and 10 of the 1981 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 2004/3044. All of the above functions transferred to the National Assembly for Wales were further transferred to the Welsh Ministers by virtue of the Government of Wales Act 2006 (c. 32), Schedule 11, paragraphs 30 and 32.

- (a) 1972 c. 70.
- (b) S.I. 1986/1530, amended by S.I. 1987/626, 1988/653, 1990/48, 1991/1994 and 1992/1225.
- (c) S.I. 1987/626.
- (d) S.I. 1988/653.
- (e) S.I. 1990/48.
- (f) S.I. 1991/1994.
- (g) S.I. 1992/1225.
- (h) S.I. 1974/514, amended by S.I. 2004/2178.
- (i) S.I. 1979/1703, amended by S.I. 1990/2371. This Order was made under sections 1, 24 and 85(1) of the Diseases of Animals Act 1950 (c.36) and, by virtue of section 17(2)(b) of the Interpretation Act 1978 (c.30), has effect as if made under sections 1 and 10 of the Animal Health Act 1981.
- (j) S.I. 1996/3062.

19th June 2018

George Eustice
Minister of State
Department for Environment, Food and Rural Affairs

19th June 2018

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes six instruments relating to milk quotas, one instrument relating to Agricultural Wages Committees and one instrument relating to the importation of hay and straw. All of them are spent or otherwise superseded. The Order also revokes one instrument relating to flood defence procedures, which is no longer required.

All of the orders are revoked in relation to England and Wales, except the Agricultural Wages Committees (Transitional Provision) Order 1974 (S.I. 1974/514) which is revoked only in relation to England.

An impact assessment has not been produced for this instrument as no impact on the private, voluntary or public sectors is foreseen.

An Explanatory Memorandum is available, in relation to England, alongside the instrument at www.legislation.gov.uk, and in relation to Wales, from the Economy, Skills and Natural Resources Department of the Welsh Government.

**Explanatory Memorandum to the Environment and Rural Affairs
(Miscellaneous Revocations) Order 2018.**

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and 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's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environment and Rural Affairs (Miscellaneous Revocations) Order 2018.

LESLEY GRIFFITHS AM
Cabinet Secretary for Energy, Planning and Rural Affairs

20 June 2018

1. Description

This Order revokes eight pieces of legislation related to the environment or rural affairs in Wales which are now redundant or have been superseded.

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

The Order has been made on a composite basis to maintain the clarity, accessibility and transparency of the statute book for those required to comply with its provisions through the legislation being revoked in Wales and England.

3. Legislative background

The Welsh Ministers make the Environment and Rural Affairs (Miscellaneous Revocations) Order 2018, in relation to Wales, pursuant to powers conferred by sections 1 and 10 of the Animal Health Act 1981, paragraph 6 of Schedule 1 to the Agriculture Act 1986 and section 61E(1) of the Land Drainage Act 1991, now vested in them, and after consulting in accordance with section 61E(4) of that Act.

The relevant functions under sections 1 and 10 of the Animal Health Act 1981 so far as exercisable in relation to Wales and exercisable by the Secretary of State for Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672). The functions of the Secretary of State in those sections, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2004 (SI 2004/3044). The functions transferred to the National Assembly for Wales were further transferred to the Welsh Ministers by virtue of the Government of Wales Act 2006 (c. 32), Schedule 11, paragraphs 30 and 32.

The relevant functions under paragraph 6 of Schedule 1 to the Agriculture Act 1986 and section 61E of the 1991 Act so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672). The functions transferred to the National Assembly for Wales were further transferred to the Welsh Ministers by virtue of the Government of Wales Act 2006 (c. 32), Schedule 11, paragraphs 30 and 32.

The Environment and Rural Affairs (Miscellaneous Revocations) Order 2018 follows the negative procedure.

4. Purpose & intended effect of the legislation

As part of the UK Government's "Red Tape Challenge", DEFRA has developed a programme to revoke redundant legislation. The purpose of the exercise is to reduce the number of statutory rules and regulations in force, especially those which are redundant or obsolete. Some of the legislation that DEFRA proposes to revoke was made prior to devolution. The legislation therefore applies to Wales and the powers to make, amend, or revoke it in relation to Wales has, in many cases, transferred to the Welsh Ministers.

Following the “Working Smarter” report in Wales, the Welsh Ministers agreed to provide a measured and appropriate regulatory framework for farmers in Wales and this included a red tape review of existing legislation. As part of this, the Welsh Ministers agreed to work with DEFRA to revoke, where appropriate, legislation with cross territorial application to Wales and England where that legislation has become redundant or otherwise obsolete.

The Environment and Rural Affairs (Miscellaneous Revocations) Order 2018 will revoke six instruments relating to milk quotas, one instrument relating to agricultural wages committees but in relation to England only, and one instrument relating to the importation of hay and straw, all of which are now redundant or have been superseded. In addition, the Order will revoke one instrument relating to flood defence procedures which is no longer required. A full list of the legislation to be revoked, in relation to Wales by the Order is set out below:

| Title | Description | Reason for revocation |
|---|---|---|
| The Milk Quota (Calculation of Standard Quota) Order 1986 | Prescribes the quota per hectare and the average yield per hectare to be taken into account in determining the “standard quota” for the purposes of calculating the payment to which the tenant is entitled, in certain circumstances, by Schedule 1 to the Agriculture Act 1986, to obtain from their landlord in respect of milk quota on the termination of the tenancy of the land. | These regulations ceased to have effect on 1 April 2015 following the final day of operation of the EU Milk Quota regime. |
| The Milk Quota (Calculation of Standard Quota) (Amendment) Order 1987 | Amends the Milk Quota (Calculation of Standard Quota) Order 1986 by substituting for the Schedule to the 1986 Order, a new Schedule in which the quota per hectare prescribed by article 3 of that order is revised. | These regulations ceased to have effect on 1 April 2015 following the final day of operation of the EU Milk Quota regime. . |
| The Milk Quota (Calculation of Standard Quota) (Amendment) Order 1988 | Amends the Milk Quota (Calculation of Standard Quota) Order 1986 by substituting for the Schedule to the 1986 Order, a new Schedule in which the quota per hectare prescribed by article 3 of that order is revised. | These regulations ceased to have effect on 1 April 2015 following the final day of operation of the EU Milk Quota regime. |

| | | |
|---|--|--|
| The Milk Quota (Calculation of Standard Quota) (Amendment) Order 1990 | This Order further amends the Milk Quota (Calculation of Standard Quota) Order 1986, by substituting for the Schedule to that Order a new Schedule, in which the quota per hectare prescribed by article 3 of that Order is revised. | These regulations ceased to have effect on 1 April 2015 following the final day of operation of the EU Milk Quota regime. |
| The Milk Quota (Calculation of Standard Quota) (Amendment) Order 1991 | Amends the Milk Quota (Calculation of Standard Quota) Order 1986, by substituting for the Schedule to that Order a new Schedule, in which the quota per hectare prescribed by article 3 of that Order is revised (article 2). | These regulations ceased to have effect on 1 April 2015 following the final day of operation of the EU Milk Quota regime. |
| The Milk Quota (Calculation of Standard Quota) (Amendment) Order 1992 | Amends the Milk Quota (Calculation of Standard Quota) Order 1986 by substituting for the Schedule to that Order a new Schedule, in which the figures for quota per hectare prescribed by article 3 of that Order are revised, and amending article 2 of the 1986 Order to take account of the making of the Hill Livestock (Compensatory Allowances) Regulations 1992. | These regulations ceased to have effect on 1 April 2015 following the final day of operation of the EU Milk Quota regime. |
| The Importation of Hay and Straw Order 1979 | Prohibits the landing in Great Britain of the hay and straw from a place outside Great Britain except under the authority of a licence. | This order is now redundant as it has been superseded by the Trade in Animals and Related Products (Wales) Regulations 2011. |
| The Code of Practice on Environmental Procedures for Flood Defence Operating Authorities (Internal Drainage Boards and Local Authorities) Approval Order 1996 | Approves the code of practice issued by the Secretary of State and the Minister of Agriculture, Fisheries and Food entitled "Code of Practice on Environmental Procedures for Flood Defence Operating Authorities". | The code of practice is now embedded in good practice. |

5. Consultation

There is a statutory duty to consult with a list of relevant bodies before the power in section 61E of the Land Drainage Act 1991 is exercised. Natural

Resources Wales (NRW) is the relevant body in relation to Wales. NRW was consulted and did not raise any issues.

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted because the subordinate legislation imposes no costs or no savings. There is no impact on business, charities or voluntary bodies and there is no impact on the public sector.

LEGISLATIVE CONSENT MEMORANDUM

NON-DOMESTIC RATING (NURSERY GROUNDS) BILL

1. This Legislative Consent Memorandum is laid under Standing Order (SO) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Non-Domestic Rating (Nursery Grounds) Bill (the Bill) was introduced in the House of Commons on 23 May 2018. The Bill can be found at: <https://services.parliament.uk/Bills/2017-19/nondomesticratingnurserygrounds.html>

Policy Objective(s)

3. The UK Government's stated policy objective is to ensure that land and buildings at plant nursery grounds should benefit from the agricultural exemption for business rates.
4. Since at least 1928 there has been a general exemption for agricultural premises in relation to liability to pay non-domestic rates. The Valuation Office Agency (VOA) is responsible for applying exemptions to hereditaments that qualify for them by not including them in the non-domestic rating list. It has long been the practice of the VOA to treat buildings that are (or form part of) market gardens and buildings which are (or form part of) plant nursery grounds as exempt.
5. The Court of Appeal in *Tunnel Tech Ltd v Reeves* (VO) [2015] EWCA Civ 718 found that treating buildings which are plant nursery grounds (which are not occupied with and used solely in connection with agricultural operations on agricultural land) as exempt was an incorrect application of the law and that buildings at plant nurseries (including poly-tunnels) which are not used in connection with agricultural land are rateable. This reverses the VOA's previous approach to assessments for these types of properties.
6. Amending Schedule 5 to the Local Government Finance Act 1988 will be amended to enable the VOA to continue to treat land and buildings at plant nurseries as exempt from non-domestic rates and return the law to align with previous practice.

Summary of the Bill

7. The Bill is sponsored by the Ministry of Housing, Communities & Local Government (MHCLG).
8. The Bill amends Schedule 5 to the Local Government Finance Act 1988 to provide for an exemption for buildings which are, or form part of, plant nursery grounds if they are used solely in connection with agricultural

operations at the nursery ground. This ensures that the ratepayers for such hereditaments will continue to not pay non-domestic rates and aligns the law with the previous long-standing practice of the VOA and government policy.

Provisions in the Bill for which consent is required

9. MHCLG introduced a Bill (the Non-Domestic Rating (Nursery Grounds) Bill 2017-19) on 23 May which makes the provision for buildings which are used as, or form part of nursery grounds to be exempt from non-domestic rates in England and Wales.
10. The Bill amends the Local Government Finance Act 1988 and restores the VOA's treatment of plant nurseries prior to the decision of the Court of Appeal. Such properties were intended to be covered by the agricultural exemption and it is considered unfair that plant nurseries and market gardens are treated differently and in a way which could result in a competitive disadvantage. The Bill consists of two clauses. Consent is sought in relation to the Bill as a whole as it relates to Wales.

Reasons for making these provisions for Wales in the Non-Domestic Rating (Nursery Grounds) Bill

11. The possibility of making this change through a future Welsh Government Bill has been discounted because there is not currently a firm legislative opportunity within the timescale required. Also, using a Welsh Government Bill would result in different valuation approaches operating in Wales and England for a period, ie. until such time as a Welsh Government Bill became law. This would not be desirable or justifiable.
12. The UK Government's Bill provides an opportunity for the Welsh Government to align the NDR valuation methodology in Wales with that in England in a timely manner.

Financial implications

13. The Bill contains provisions which will ensure that plant nurseries in Wales continue to be exempt from non-domestic rates. As these properties have not previously been rated, no associated revenue has ever been collected and as such HM Treasury has agreed that such a provision is revenue neutral.
14. Under the legislation, any plant nursery owners who have been assessed for inclusion in the list as a result of the Court's judgment will be removed from the list and any that have been paying rates as a result of their inclusion will be able to apply for a backdated refund. In Wales, this will be limited to financial years beginning on or after 1 April 2017 being the date of the last revaluation and closure of the relevant list. The VOA has advised that, at present, no such properties in Wales have been assessed as needing to be included in the relevant list.

Conclusion

15. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill for reasons of timing and coherence. The interconnected nature of the relevant Welsh and English systems for administering valuation for rating purposes also supports provision being taken forward at the same time and in the same legislative instrument.

Mark Drakeford AM
Cabinet Secretary for Finance
June 2018

Document is Restricted

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales

28 June 2018

Dear Mick

I appeared before your committee on 11 June to give evidence about operational matters in relation to the powers in the EU (Withdrawal) Act to make subordinate legislation. I understand you are preparing your report for publication and wished to provide you with a point of clarification.

I was asked about the powers UK Ministers have to make regulations in devolved areas. I wish to make clear, that in the extraordinary circumstances of the UK leaving the EU, it is the case that the Welsh Government is willing to allow UK Ministers to make uncontroversial, technical correcting regulations in devolved areas under the Bill, with the consent of Welsh Ministers.

As the First Minister set out to the External Affairs and Additional Legislation Committee on 15 May, the capacity of both the UK Government and UK Parliament is much greater than our own. Unless there is a political or policy reason why we should make separate corrections on a Wales-only basis, much of the technical corrections to England and Wales or UK legislation may be made by the UK Government with our consent.

Yours sincerely



Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

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.

Agenda Item 7

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted