



Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee
Senedd Cymru
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07 January 2022

Dear Huw,

I am writing to inform the Committee that I have given consent to the UK Government exercising a delegated legislative power in a devolved area in relation to Wales. Agreement has been given to the making of The Waste and Agriculture (Legislative Functions) Regulations 2022. This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 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.

Following the UK's exit from the European Union, this instrument transfers some technical functions in relation to waste from the European Commission to the Secretary of State and the devolved governments. It also corrects an error in the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020 ((SI 2020/1445), inserting a definition of 'appropriate authority' into Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (EUR 2013/1306) for the purposes of financing, management and monitoring of rural development and common organisation of the markets schemes.

The European Commission has powers related to Directives concerning waste, including those covering end-of life vehicles, batteries and accumulators, and electrical and electronic equipment specifically, as well as the overarching Waste Framework Directive. This instrument transfers several technical powers and functions relating to those resources and waste management Directives from the European Commission to the Secretary of State where the matter is reserved, and, depending on the power, to the devolved governments where this is devolved. This will allow for the correct functioning of the relevant retained EU legislation following the UK's departure from the EU. This will enable the UK and the devolved governments to maintain environmental standards on the safe handling of waste, levels of recovery, recycling and treatment of waste. The functions listed in this instrument

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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.

are routine, and in several cases, the standards, requirements or other functions set out are already in place and working well – the powers are purely to be able to change them in future should it be necessary, rather than seeking to actively update or amend them at the moment.

While it is not possible to amend Directives directly, as these are not retained EU law, the powers in the European Union (Withdrawal) Act 2018 enable the legislative powers they confer on the Commission to be transferred into domestic law. Without doing this, there would be no, or a limited, ability to make the kind of minor, technical changes to legislation that the powers cover without having to use primary legislation on every occasion. This would make changing such details very slow and cumbersome, and would remove flexibility to respond to scientific and technical changes. This instrument does not itself make any substantive policy changes. These standards are currently all operational, and we do not anticipate needing to alter them soon. However, without the power to alter these standards, it would not be possible to update them if necessary. For example, if this SI were to fail and the powers were not transferred to the Secretary of State and the devolved governments, should better sampling techniques or waste treatment methods be developed in future, we would not be able to adapt the regulations to take account of the new methods.

It will now allow the Secretary of State and the devolved governments to make regulations to set or alter the various technical criteria referenced in each section, primarily to keep up with future scientific and technical progress. Specifically, it provides for the ability of the Secretary of State and the devolved governments to retain functions from the following instruments:

- The Landfill Directive (Directive 1999/31/EC) (Regulation 5 of this instrument) – to set standards for waste sampling of waste going to landfill.
- The End-of-Life Vehicles Directive (Directive 2000/53/EC) (Regulations 6-9 of this instrument) - powers to update and modify exemptions covering the use of certain heavy metals in vehicles based on scientific or technical progress; to specify minimum requirements for the certificate of destruction; powers to modify conditions for storage and treatment in line with scientific or technical progress; and powers to specify material and component coding standards for vehicles.
- The Mining Waste Directive (Directive 2006/21/EC) (Regulations 10-11 of this instrument) – powers to modify non-essential elements such as guidelines for inspecting waste facilities and sampling methods, and to update regulations in line with scientific and technical progress.
- The Batteries Directive (Directive 2006/66/EC) (Regulations 12-13 of this instrument) – the power to specify export criteria and to grant exemptions from labelling requirements for batteries and accumulators.
- The Waste Framework Directive (Directive 2008/98/EC) (Regulations 14-17 of this instrument) – powers to prescribe criteria on the application of the by-products conditions; to prescribe criteria on the end of waste conditions; and to specify the application of the formula for incineration facilities.
- The Waste Electricals and Electronic Equipment (WEEE) Directive (Directive 2012/19/EU) (Regulations 18-20 of this instrument) - powers to update selective minimum treatment technologies; to update the technical requirements for WEEE treatment and storage operations and the non-exhaustive list of products listed as falling into each of the categories specified in the Directive; and to update the crossed out wheeled bin symbol.

Any regulations made under the new powers will also be made by an SI under the negative procedure, so will still be subject to individual Senedd scrutiny at that time.

Further, provision is made for the Secretary of State and, where relevant, the devolved governments, to consult relevant regulatory agencies and anyone else they consider appropriate before the exercise of these power functions.

Part 4 of these Regulations covers the definition of “appropriate authority” in EUR 2013/1306 insofar as it relates to rural development measures and the CMO. Among other things, EUR 2013/1306 lays down a framework for finance, management and monitoring of rural development and CMO schemes, and includes legislative functions to develop and refine the technical details required to operate schemes. Regulation 24 reinserts the definition of “appropriate authority” into that Regulation and regulation 25 revokes the ineffective definition in SI 2020/1445.

The First Minister has given a commitment that where time allows we will provide an opportunity for the Senedd to express a view before consent is formally given. Regrettably it was not possible to do so for this SI as although it has only just been laid, consent was given some weeks ago and before the commitment was implemented.

Yours sincerely,

A handwritten signature in blue ink, reading 'Mick Antoniw', with a horizontal line underneath the name.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution