

STATUTORY INSTRUMENT CONSENT MEMORANDUM

The Flood and Water (Amendments etc.) (EU Exit) Regulations 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Flood and Water (Amendments etc.) (EU Exit) Regulations 2019 (“2019 Regulations”) were laid before the Houses of Parliament on 04 December 2018. The Regulations can be found at:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments>

Summary of the Statutory Instrument and its objective

3. The objective of the 2019 Regulations is to make minor and technical changes which are necessary to ensure that floods and water legislation will continue to be operable in the United Kingdom after the UK leaves the EU. The instrument addresses deficiencies in the retained EU law arising from the UK’s withdrawal from the EU. The purpose of the instrument is to preserve and protect the existing policy regime.
4. In accordance with this objective, the 2019 Regulations amend the following primary legislation:
 - The Water Act 1989
 - The Water Industry Act 1991
 - The Water Resources Act 1991
 - The Water Act 2014

All four Acts are amended so as to replace references to “EU obligations” with “retained EU obligations”, reflecting the change of status of EU derived obligations following exit day.

The Water Resources Act 1991 is amended so as to remove references to UK obligations as a Member State with the Water Framework Directive. The obligations will remain on a domestic footing through relevant domestic enactments including the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. The Water Resources Act 1991 is amended so as to include references to such legislation.

There are also other consequential amendments to the Acts as a result of the UK’s withdrawal from the EU.

Relevant provision to be made by the SI

5. The amendments made to the Water Act 1989 by the 2019 Regulations, are to the following provisions:

In section 174(2)(k) of the Water Act 1989(1), for “an EU obligation” substitute “a retained EU obligation”.

6. The amendments made to the Water Industry Act 1991 by the 2019 Regulations, are to the following provisions:

(1) The Water Industry Act 1991(2) is amended as follows.

In section 2(7)(3), for “EU obligation” substitute “retained EU obligation”.

In section 92(4)—

in the heading, at the end insert “etc.”;

in subsection (1)—

in the words before paragraph (a) omit “enabling Her Majesty’s Government in the United Kingdom to give effect”;

for paragraph (a) substitute—

“(a) giving effect to any retained EU obligations, or”;

at the beginning of paragraph (b) insert “enabling Her Majesty’s Government in the United Kingdom to give effect”.

In section 127(3)(a)(5), for the words from “enabling” to “obligation or” substitute “giving effect to any retained EU obligation or enabling Her Majesty’s Government in the United Kingdom to give effect”.

In section 131(3)(a)(6), for the words from “enabling” to “obligation or” substitute “giving effect to any retained EU obligation or enabling Her Majesty’s Government in the United Kingdom to give effect”.

In section 206(3)(k)(7), for “an EU obligation” substitute “a retained EU obligation”.

7. The amendments made to the Water Resources Act 1991 by the 2019 Regulations, are to the following provisions

—(2) The Water Resources Act 1991(8) is amended as follows.

In section 93(9)—

in subsection (1B), for the words from “enabling” to “in relation to” substitute “achievement of”;

omit subsection (2C);

(1) 1989 c. 15; section 174(2)(k) was amended by S.I. 2011/1043.

(2) 1991 c. 56.

(3) Section 2(7) was inserted by section 39(9) of the Water Act 2003 (c. 37) and amended by section 24(2) of the Water Act 2014 (c. 21) and by S.I. 2011/1043.

(4) Section 92(1)(a) was amended by S.I. 2011/1043.

(5) Section 127(3)(a) was amended by S.I. 2011/1043.

(6) Section 131(3)(a) was amended by S.I. 2011/1043.

(7) Section 206(3)(k) was amended by S.I. 2011/1043.

(8) 1991 c. 57.

(9) Section 93 was amended by S.I. 2009/3104, 2013/755 (W.90) and 2018/942.

in subsection (7), at the appropriate places insert the following definitions—

““environmental objectives”—

- (a) in relation to the Solway Tweed River Basin District, means the objectives as defined in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 (S.I. 2004/99);
- (b) in relation to the Northumbria River Basin District, means the objectives referred to in the WFD Regulations as applied and modified by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 (S.I. 2003/3245);
- (c) in relation to any other river basin district, within the meaning of the WFD Regulations, has the same meaning as in those regulations;

“hydromorphological quality element” has the same meaning as in the Water Framework Directive;

“the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (S.I. 2017/407).”.

In section 102(**10**)—

in the heading, at the end insert “etc.”;

in the words before paragraph (a), omit “enabling Her Majesty’s Government in the United Kingdom to give effect”;

for paragraph (a) substitute—

“(a) giving effect to any retained EU obligations, or”;

at the beginning of paragraph (b) insert “enabling Her Majesty’s Government in the United Kingdom to give effect”.

In section 116(**11**)—

in the heading, at the end insert “etc.”;

in subsection (1)—

in the words before paragraph (a), omit “enabling Her Majesty’s Government in the United Kingdom to give effect”;

for paragraph (a) substitute—

“(a) giving effect to any retained EU obligations, or”;

at the beginning of paragraph (b) insert “enabling Her Majesty’s Government in the United Kingdom to give effect”.

In each of sections 161ZA(**12**) and 161ZB(**13**) omit subsection (3).

In section 161ZC(**14**)—

in subsection (8), omit the words from “and in sections” to the end;

after subsection (8) insert—

“(9) In sections 161ZA and 161ZB “environmental objectives”, “hydromorphological quality element” and “Water Framework Directive” have the meanings given by section 93(7) of this Act.”.

In section 204(2)(k)(**15**), for “an EU obligation” substitute “a retained EU obligation”.

(10) Section 102(a) was amended by S.I. 2011/1043.

(11) Section 116(1)(a) was amended by paragraph 22 of Schedule 16 to the Marine and Coastal Access Act 2009 (c. 23) and by S.I. 2011/1043 and 2013/755 (W. 90). Article 4 of S.I. 1999/1746 disapplied section 116 in relation to part of the River Esk.

(12) Section 161ZA(3) was inserted by S.I. 2009/3104 and amended by S.I. 2013/755 (W. 90).

(13) Section 161ZB(3) was inserted by S.I. 2009/3104 and amended by S.I. 2013/755 (W. 90).

(14) Section 161ZC(8) was inserted by S.I. 2009/3104.

(15) Section 204(2)(k) was amended by S.I. 2011/1043.

8. The amendments made to the Water Act 2014 by the 2019 Regulations, are to the following provisions

In paragraph 5(b) of Schedule 8 to the Water Act 2014⁽¹⁶⁾, for the words from “obligations” to “treaties” substitute “retained EU obligations”.

9. The changes identified in paragraphs 5 and 8 relate to a subject matter that is within the legislative competence of the National Assembly for Wales, and which could be the subject of a National Assembly Bill.
10. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to flood and water.

Why it is appropriate for the SI to make this provision

11. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

December 2018