

UK MINISTERS ACTING IN DEVOLVED AREAS

The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018

Laid in the UK Parliament: 22 November 2018

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	4 December 2018
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	
Date sifting period ends in UK Parliament	10 December 2018
Written statement under SO 30C:	Paper xx
SICM under SO 30A (because amends primary legislation)	Not required

Scrutiny procedure

Outcome of sifting	Not known
Procedure	Negative or Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

The Regulations amend retained direct EU legislation relating to air quality, to ensure that it continues to operate effectively following withdrawal of the United Kingdom for the European Union. This includes addressing deficiencies, such as references to EU authorities (e.g. the Commission) being replaced with domestic equivalents.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 27 November 2018 regarding the effect of these Regulations:

1. The reference within the statement to the law which is amended by the Regulations is incorrect. The Regulations amend and revoke the following retained direct EU legislation:-
 - Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register
 - Decision 2004/279/EC concerning guidance for implementation of Directive 2002/3/EC of the European Parliament and of the Council relating to ozone in ambient air
 - Decision 2011/850/EU laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality
 - Decision 2012/115/EU laying down rules concerning the transitional national plans referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
 - Decision 2012/134/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the manufacture of glass
 - Decision 2012/135/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for iron and steel production 2
 - Decision 2012/249/EU concerning the determination of start-up and shut-down periods for the purposes of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
 - Decision 2013/84/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the tanning of hides and skins
 - Decision 2013/163/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the production of cement, lime and magnesium oxide
 - Decision 2013/732/EU establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the production of chlor-alkali
 - Decision 2014/687/EU establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of pulp, paper and board
 - Decision 2014/738/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the refining of mineral oil and gas

- Decision 2014/768/EU establishing the type, format and frequency of information to be made available by the Member States on integrated emissions management techniques applied in mineral oil and gas refineries, pursuant to Directive 2010/75/EU of the European Parliament and of the Council
- Decision 2015/6674/EU establishing a common format for the submission of Member State reports on the implementation of Directive 2004/42/EC of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products
- Decision 2015/2119/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of wood-based panels
- Decision 2016/902/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for common waste water and waste gas treatment/management systems in the chemical sector
- Decision 2016/1032/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the non-ferrous metals industries
- Decision 2017/302/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the intensive rearing of poultry or pigs
- Decision 2017/1442/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants
- Decision 2017/2117/EU establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for the production of large volume organic chemicals
- Decision 2018/1135/EU establishing the type, format and frequency of information to be made available by the Member States for the purposes of reporting on the implementation of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions
- Decision 2018/1147/EU establishing best available techniques (BAT) conclusions for waste treatment, under Directive 2010/75/EU of the European Parliament and of the Council 3
- Decision 2018/1522 laying down a common format for national air pollution control programmes under Directive (EU) 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants
- Annex 20 to EEA agreement

2. In addition it is not clear from the statement the impact the Regulations have on the Assembly's legislative competence and/or the Welsh Minister's executive competence.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas.

As it is unclear from the Welsh Government's statement dated 27 November 2018 the impact the Regulations may have on the Assembly's legislative competence and/or the Welsh Ministers' executive competence, Legal Advisers have been unable to assess whether any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

Legal Advisers have not identified any legal reason to seek a consent motion under Standing Order 30A.10 in relation to these Regulations.