



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019**

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The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019

The 2019 Regulations amend retained direct EU legislation within the field of: persistent organic pollutants; timber; the European Pollutant Release and Transfer Register; transfrontier shipments of waste; the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits; mercury; leghold traps; and the Convention on the International Trade in Endangered Species. The 2019 Regulations also provides for one legislative function which is currently contained in an EU Directive on industrial emissions relating to best available techniques (BAT).

The 2019 Regulations make amendments to a mix of devolved and reserved legislative areas and follow amendments made by earlier Defra UK SIs laid for scrutiny in late 2018.

European Directly Applicable Instruments amended by the 2019 Regulations

1. Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants
2. Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register
3. Regulation EU 2017/852 of the European Parliament and of the Council on mercury
4. Regulation (EU) No 511/2014 of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union
5. Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community
6. Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market
7. Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste

8. Council Regulation (EEC) No 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards
9. Commission Regulation (EC) No 35/97 laying down provisions on the certification of pelts and goods covered by Council Regulation (EEC) No 3254/91
10. Council Regulation (EC) No 338/1997 on the protection of species of wild fauna and flora by regulating trade therein

Other provisions

1. Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) – functions are being replicated from within the Directive, as directives are not being retained under the European Union (Withdrawal) Act 2018

Any impact the SI may have on the Assembly’s legislative competence and/or the Welsh Ministers’ executive competence

There is no impact on the Assembly’s legislative competence. Under the 2019 Regulations, functions of the EU Commission are transferred to Welsh Ministers for areas within competence including:

- persistent organic pollutants (Regulation (EC) No 850/2004);
- the Pollutant Release and Transfer Register (Regulation (EC) No 166/2006);
- mercury (Regulation EU 2017/852); and
- adopting BAT conclusions (Directive 2010/75/EU).

Alternatively, the 2019 Regulations provide for these functions to be exercised by the Secretary of State in relation to Wales, but only with the consent of the Welsh Ministers.

The Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization in the Union (Regulation (EU) No 511/2014) is an area of mixed competence. However, since it is not possible practically for the Welsh Ministers to exercise these functions independently, there is no divergence in policy and a UK wide system would be preferable, the 2019 Regulations maintain the status quo under existing legislation with functions exercised solely by the Secretary of State.

The remainder of the European Regulations being amended transfer EU Commission functions solely to the Secretary of State because they concern reserved legislative areas.

The purpose of the amendments

This affirmative procedure SI addresses the failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU.

The 2019 Regulations make a number of corrections to retained EU law, relating to legislative functions, which are necessary to preserve the underpinning legislation for the areas set out above and below, and that the EU legislation can continue to work across the UK once the UK leaves the EU. It brings together changes to legislative functions which triggers the affirmative resolution procedure whereas the non-legislative functions were included in earlier negative Defra SIs laid in late 2018 for each of the legislative areas.

The 2019 Regulations make corrections to address deficiencies within the legislation to enable the legislation to function post exit day. The 2019 Regulations change the identity of bodies carrying out the specified functions of a legislative nature and converts the EU procedures to UK procedures as appropriate.

The 2019 Regulations amend:

- Regulation (EC) No. 850/2004 of the European Parliament and of the Council on persistent organic pollutants to maintain the operability of Regulations, which implement the Stockholm Convention through the elimination and restriction of the use of chemicals that have been internationally recognised as toxic, persistent, bio-accumulative and highly mobile. The provisions in this instrument are related to amendments made by the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018.
- Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register to maintain a UK wide register post EU Exit and to continue to meet international obligations such as the United Nations Economic Commission for Europe (UNECE) PRTR Protocol. The provisions in this instrument are related to amendments made by the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018.
- Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury to maintain the operability of Regulations, which implement the Minamata Convention, which controls mercury and compounds of mercury that may be released into the environment as a result of human activities to protect human health and the environment. The provisions in this instrument are related to amendments made by the Control of Mercury (Amendment) (EU Exit) Regulations 2018.
- Regulation (EU) No 511/2014 of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union. The amendments ensure that the Regulations enable continued UK compliance with an international agreement, the Nagoya Protocol and create certainty for the research and development institutions carrying out their activities. The provisions in this instrument are related to amendments made by the Nagoya Protocol (Compliance) (Amendment) (EU Exit) Regulations 2018.

- Council Regulation (EC) No 2173/2005 on the establishment of a Forest Law Enforcement, Governance and Trade (FLEGT) licensing scheme; and Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market. The amendments maintain the operability of Regulations relating to the import of timber and placing timber and timber products on the market. The provisions in this instrument are related to amendments made by the Timber and Timber Products and FLEGT (EU Exit) Regulations 2018.
- Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste to maintain the operability of the Regulations which establish procedures and control regimes for the shipment of waste and the treatment to be applied at its destination. The provisions in this instrument are related to, and supplement, the amendments made by the International Waste Shipments (Amendment) (EU Exit) Regulations 2018.
- Council Regulation (EEC) No 3254/91 prohibiting the use of leghold traps in the Community; and Commission Regulation (EC) No 35/97 laying down provisions on the certification of pelts and goods covered by Council Regulation (EEC) No 3254/91. The amendments maintain the operability of Regulations in terms of the prohibition of leghold traps and the introduction into the UK of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards. The provisions in this instrument are related to amendments made by the Leghold Trap and Pelt Imports (Amendment etc.) (EU Exit) Regulations 2018.
- Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora to maintain the operability of the Regulations which regulate trade to protect species of wild fauna and flora and to guarantee their conservation by regulating their trade. The provisions in this instrument are related to amendments made by the Trade in Endangered Species of Wild Fauna and Flora (Amendment) (EU Exit) Regulations 2018.

The 2019 Regulations also transfer an EU Commission function contained in:

- Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) which lays down rules on integrated prevention and control of pollution arising from specified industrial activities. The inclusion of the function in the 2019 Regulations will enable the domestic legislation to operate effectively to maintain the operation of a single UK wide, post EU, Best Available Techniques (BAT) establishment and review process for industrial activities to eliminate or minimise pollution. The provisions in this instrument are related to amendments made by the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2018.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://beta.parliament.uk/work-packages/pOgYfClx>

Why consent was given

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. The amendments have been considered fully; and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.