

SL(5)382 – The Town and Country Planning (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to four statutory instruments related to town and country planning:

- The Town and Country Planning (Control of Advertisements) Regulations 1992 (S.I.1992/666) (the “1992 Regulations”);
- The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 (S.I. 2005/2839);
- The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (S.I. 2012/801);
- The Planning (Hazardous Substances) (Wales) Regulations 2015 (S.I 2015/1597).

Regulation 6 contains transitional provision in relation to the 1992 Regulations.

These Regulations have been made to address failures of retained EU law to operate effectively and other deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union.

Procedure

Negative.

Technical Scrutiny

Four points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) that for any particular reason its form or meaning needs further explanation.

Amendments to the 1992 Regulations are being made in consequence of changes being made by the Railway (Licensing of Railway Undertakings) (Amendment etc) (EU Exit) Regulations 2019 (the “2019 Regulations”) to The Railway (Licensing of Railway Undertakings) Regulations 2005. However, the 2019 Regulations are an affirmative instrument, laid before the UK Parliament on 28th January 2019, but not yet made. As such, the amendments rely on the draft as laid on that date. It is unclear what will happen if the 2019 Regulations are not made as laid in time for exit day. The Explanatory Memorandum accompanying these Regulations does not explain what will happen if the 2019 Regulations are not made as expected.

2. Standing Order 21.2(v) that for any particular reason its form or meaning needs further explanation.

Regulation 5 amends The Planning (Hazardous Substances) (Wales) Regulations 2015, and in places makes unspecific references to retained EU law which implements certain EU Directives, but does not specify the relevant legislation explicitly. Regulation 5(5) inserts into the definition of “relevant plan or programme” the wording “any provision of retained EU law which implemented”. This refers to the implementation of Article 13 of Directive 2012/18/EU of the European Parliament and the Council on the



control of major-accident hazards involving dangerous substances. Similar wording regarding “any provision of retained EU law which implemented the EIA Directive” is included in Regulation 6. The definition of EIA Directive is inserted by regulation 5(b) of these Regulations (and refers to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as it had effect immediately before exit day). It would be helpful if references to “any provision of retained EU law...” were more specific, to assist the reader in understanding which provisions of retained EU law will be applicable, even if there needed to be an additional catch all including, for example, “and any other provision of retained EU law...”.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

The subject heading of the Regulations should include “TOWN AND COUNTRY PLANNING, WALES” in addition to “EXITING THE EUROPEAN UNION, WALES”, to indicate the area of law to which the instrument relates.

4. Standing Order 21.2(vii) that there appear to be inconsistencies between the meaning of the English and Welsh texts.

The English text at regulations 5(2)(a) and (b) and 6(3) does not include corresponding Welsh terms for the relevant definitions. The Welsh text includes corresponding English terms in the appropriate place.

Merits Scrutiny

Two points 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.

The laid printed version of the Regulations were incorrectly stated to be made by Hannah Blythyn, who is described in the laid version as “Minister for Housing and Local Government, one of the Welsh Ministers”. This is incorrect, as Hannah Blythyn is the Deputy Minister. We understand that the Regulations were correctly made and signed by the Minister, Julie James. However, an administrative error has resulted in the wrong name being included on the printed, registered copy, laid before the Assembly.

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

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.

Implications arising from exiting the European Union

These Regulations are made in exercise of the powers in the European Union (Withdrawal) Act 2018 to address failures of EU law to operate effectively and other deficiencies in EU law arising from the UK’s withdrawal from the European Union.



Government Response

The Committee have raised 4 technical points and 2 merits points in relation to these Regulations. Each of the technical points will be addressed as well as the first merits point.

The Committee has identified that these Regulations make amendments to the Town and Country Planning (Control of Advertisements) Regulations 1992 ("the 1992 Regulations") as a consequence of the changes made by the Railway (Licensing of Railway Undertakings) (Amendment etc) (EU Exit) Regulations 2019 ("the UK Regulations") to The Railway (Licensing of Railway Undertakings) Regulations 2005. The UK Regulations have not yet been made. Welsh Government officials are liaising with Department for Transport officials responsible for the UK Regulations as to their passage through both Houses of Parliament. Should the UK Regulations not be passed by either House, due to the nature of the dependency of these Regulations on the UK Regulations, Welsh Ministers would need to draft a further statutory instrument revoking the part of these Regulations which amend the 1992 Regulations. This could be done after Exit Day as there would be no legal implications of having those amendments in force on Exit Day.

In relation to the second technical reporting point, we accept that the substituted wording can be construed as vague and unhelpful to the reader. During the drafting process, as there was a significant suite of other EU Exit instruments being drafted and developed in the EIA sphere, a decision was taken to adopt a drafting approach in these Regulations which ensured that all relevant legislation was captured. It was preferable to take this approach rather than referring to or listing specific legislation which would run the risk of missing something out or, alternatively, capturing something irrelevant. In accordance with DExEU Guidance on Retained EU Law, it is the view of Welsh Government Legal Services that this deficiency has not been fully remedied and continues to exist after Exit Day. Therefore it is intended to make further corrections to the Planning (Hazardous Substances) (Wales) Regulations 2015 by virtue of the powers under paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. Such corrections would replace the references to "any provision of retained EU law which implemented the EIA Directive" with references to specific provisions of retained EU law, whilst still providing an additional catch all provision to allow for the risks highlighted above.

From a legal perspective, it is now considered that the deficiencies identified and amended by these Regulations have now been corrected. Therefore, the powers under paragraph 1(1) to Schedule 2 to the European Union (Withdrawal) Act 2018 to correct deficiencies will not be available to make further amendments in the manner in which the Committee has suggested after Exit Day.

In relation to technical reporting points 3 and 4, these will be corrected by correction slip.

The Committee raises a merits point relating to the signature on the Regulations. We confirm that it was in fact Julie James, Minister for Housing and Local Government who signed the SI and we have provided CLAC legal advisers with a scanned copy of that signed SI as confirmation of this. Welsh Government officials have since liaised with the SI Registrar to arrange a correction slip for this error and this will be published alongside the Regulations.

We note the second merit reporting point and thank the Committee for their consideration of these Regulations as part of the sifting process.



Committee Consideration

The Committee considered the instrument along with the Government response at its meeting on 25 March 2019 and reports to the Assembly in line with the reporting points identified and also to highlight issues as a result on the UK exiting the EU.

