

Explanatory Memorandum to the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Wales) Regulations 2023

This Explanatory Memorandum has been prepared by the European Transition, Constitution and Justice Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Wales) Regulations 2023.

Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and Trefnydd

7 November 2023

PART 1

1. Description

These Regulations make amendments to primary and subordinate legislation which apply in relation to Wales, in consequence of the renaming of retained EU law (and related terms) as assimilated law (and related terms) at all times after the end of 2023, as set out in section 5 of the Retained EU Law (Revocation and Reform) Act 2023 (REUL Act).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The powers being exercised to make these Regulations are those conferred by sections 19(1) and 20(1)(b) of the REUL Act. Section 19(1) provides a power for a relevant national authority to make provision that is considered appropriate in consequence of the REUL Act provisions, which by virtue of section 20(1) includes the ability to make supplementary, incidental, consequential, transitional, transitory or saving provision. Section 21(1) of the REUL Act confirms that the Welsh Ministers are a relevant national authority.

While section 21(1) of the REUL Act provides that a relevant national authority also includes a Minister of the Crown, or a Minister of the Crown and the Welsh Ministers acting jointly, this will be the first time that the Welsh Ministers have exercised powers under the REUL Act.

The Committee may want to note the Senedd twice refused consent to the REUL Bill, on 28 March 2023 and on 6 June 2023. The Bill received Royal Assent on 29 June 2023.

3. Legislative background

To maintain legal certainty after the UK had left the EU, the European Union (Withdrawal) Act 2018 (EUWA) provided for the retention of most EU law as it applied in one or more legal systems of the UK on 31 December 2020. EUWA incorporated that EU law onto the UK statute book as “retained EU law” (REUL).

The REUL Act facilitates the amendment, restatement or revocation and replacement of REUL. It also assimilates REUL remaining in force after the end of 2023 by setting out what REUL and related terms will be known as after the end of 2023, and by removing the special EU law features attached to it, such as supremacy, interpretive effects, and Section 4 rights.

This Statutory Instrument utilises powers conferred by the REUL Act to update references from “retained EU law” to “assimilated law” (and similar terms) within primary and secondary legislation made in Wales, to reflect the above renaming of REUL as assimilated law.

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 19(1) and 20(1)(b) of the REUL Act. Section 19(1) provides a power for a relevant national authority to make provision that is considered appropriate in consequence of the REUL Act provisions, which by virtue of section 20(1) includes the ability to make supplementary, incidental, consequential, transitional, transitory or saving provision.

Paragraph 8 of Schedule 5 to the REUL Act provides that regulations made by the Welsh Ministers under section 19 which amend, repeal or revoke primary legislation are subject to the draft affirmative procedure; and that regulations under section 19 which amend, repeal or revoke secondary legislation are subject to the negative procedure. Paragraph 2 of Schedule 5 confirms that provision subject to the negative procedure may be combined in the same instrument as provision subject to the draft affirmative procedure, and where regulations have been combined in this way the statutory instrument will be subject to the draft affirmative procedure. As such, in accordance with paragraph 8(1) of Schedule 5 to the REUL Act, these Regulations are being made under the draft affirmative resolution procedure.

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to update references from retained EU law (and related terms) to assimilated law (and related terms). This is in consequence of section 5 of the REUL Act, which establishes “assimilated law” as a new body of law and sets out what REUL and related terms will be known as after the end of 2023. These amendments are being made for reasons of legal certainty and accessibility.

The effect of these Regulations is that textual amendments will be made to update such references from retained EU law (and related terms) to assimilated law (and related terms) within the below legislation.

Part 1 of the Regulations amend the following pieces of primary legislation:

- The Learner Travel (Wales) Measure 2008;
- The Waste (Wales) Measure 2010; and
- The Tax Collection and Management (Wales) Act 2016

Part 2 of the Regulations amend the following pieces of subordinate legislation

- The Food Supplements (Wales) Regulations 2003;
- The Landfill Allowances Scheme (Wales) Regulations 2004;
- The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004;
- The Hazardous Waste (Wales) Regulations 2005;
- The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009;

- The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2009;
- The Beef and Veal Labelling (Wales) Regulations 2011;
- The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011;
- The Poultrymeat (Wales) Regulations 2011;
- The Trade in Animals and Related Products (Wales) Regulations 2011;
- The Natural Resources Body for Wales (Establishment) Order 2012;
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013;
- The Welfare of Animals at the Time of Killing (Wales) Regulations 2014;
- The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016;
- The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017;
- The Carcase Classification and Price Reporting (Wales) Regulations 2018;
- The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019;
- The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020;
- The Infant Formula and Follow-on Formula (Wales) Regulations 2020
- The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020; and
- The Feed Additives (Authorisations) (Wales) Regulations 2022.

There is no substantive change to policy or legislation that is to be brought into effect by these changes, which are made to update the Welsh statute book.

5. Consultation

No formal consultation has taken place as the Regulations make consequential technical amendments only.

6. Regulatory Impact Assessment (RIA)

As these Regulations make consequential amendments to update primary and subordinate legislation and the amendments do not alter the policy (or its impact) in any substantive way, or how it is applied in a given situation, a RIA is not required. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.