

# Agenda – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video conference via Zoom	<b>Gareth Williams</b>
Meeting date: 18 January 2021	Committee Clerk
Meeting time: 10.00	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

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In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on [www.Senedd.TV](http://www.Senedd.TV)

## Informal pre-meeting (09.30–10.00)

On 11 January 2021, in accordance with Standing Order 17.42, the Committee resolved to exclude the public from item 1 of today's meeting.

### 1 Technical briefing on forthcoming socio-economic duty regulations

10.00–10.30

(Pages 1 – 9)

Alyson Francis, Deputy Director, Communities Division, Welsh Government

Shane Williams, Communities and Tackling Poverty Department, Welsh Government

Jodie Woodward, Lawyer Housing, Equalities and Regeneration Team, Welsh Government

CLA(5)–02–21 – Welsh Government briefing

### 2 Introduction, apologies, substitutions and declarations of interest

10.30



### **3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

10.30–10.35

(Page 10)

CLA(5)–02–21 – Paper 1 – Statutory instruments with clear reports  
Negative Resolution Instruments

#### **3.1 SL(5)712 – The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2020**

### **4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3**

10.35–10.40

Negative Resolution Instruments

#### **4.1 SL(5)695 – The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020**

(Pages 11 – 52)

CLA(5)–02–21 – Paper 2 – Report

CLA(5)–02–21 – Paper 3 – Regulations

CLA(5)–02–21 – Paper 4 – Explanatory Memorandum

#### **4.2 SL(5)700 – The Firefighters’ Pension Schemes and Compensation Scheme (Wales) (Amendment) Regulations 2020**

(Pages 53 – 74)

CLA(5)–02–21 – Paper 5 – Report

CLA(5)–02–21 – Paper 6 – Regulations

CLA(5)–02–21 – Paper 7 – Explanatory Memorandum

#### **4.3 SL(5)701 – The Planning Applications (Temporary Modifications and Disapplication) (No. 3) (Wales) (Coronavirus) Order 2020**

(Pages 75 – 103)

CLA(5)–02–21 – Paper 8 – Report

CLA(5)–02–21 – Paper 9 – Order

CLA(5)–02–21 – Paper 10 – Explanatory Memorandum

**4.4 SL(5)716 – The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021**

(Pages 104 – 115)

CLA(5)–02–21 – Paper 11 – Report

CLA(5)–02–21 – Paper 12 – Regulations

CLA(5)–02–21 – Paper 13 – Explanatory Memorandum

CLA(5)–02–21 – Paper 14 – Letter from the Minister for Finance and

Trefnydd, 5 January 2021

Made Affirmative Resolution Instruments

**4.5 SL(5)714 – The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020**

(Pages 116 – 135)

CLA(5)–02–21 – Paper 15 – Report

CLA(5)–02–21 – Paper 16 – Regulations

CLA(5)–02–21 – Paper 17 – Explanatory Memorandum

CLA(5)–02–21 – Paper 18 – Letter from the Minister for Environment, Energy and Rural Affairs, 23 December 2020

**4.6 SL(5)718 – The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021**

(Pages 136 – 156)

CLA(5)–02–21 – Paper 19 – Report

CLA(5)–02–21 – Paper 20 – Regulations

CLA(5)–02–21 – Paper 21 – Explanatory Memorandum

CLA(5)–02–21 – Paper 22 – Letter from the Minister for Housing and Local Government, 6 January 2021

CLA(5)–02–21 – Paper 23 – Written statement, 8 January 2021

**4.7 SL(5)719 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021**

(Pages 157 – 180)

CLA(5)–02–21 – Paper 24 – Report

CLA(5)–02–21 – Paper 25 – Regulations

CLA(5)–02–21 – Paper 26 – Explanatory Memorandum

**CLA(5)–02–21 – Paper 27 – Letter from the Minister for Health and Social Services, 8 January 2021**

**CLA(5)–02–21 – Paper 28 – Written statement, 7 January 2021**

**4.8 SL(5)720 – The Non–Domestic Rating (Multiplier) (Wales) Order 2021**

(Pages 181 – 197)

**CLA(5)–01–21 – Paper 29 – Report**

**CLA(5)–01–21 – Paper 30 – Order**

**CLA(5)–01–21 – Paper 31 – Explanatory Memorandum**

**CLA(5)–01–21 – Paper 32 – Letter from the Minister for Finance and Trefnydd, 7 January 2021**

**5 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered**

10.40–10.45

**5.1 SL(5)691 – The Digital Health and Care Wales (Establishment and Membership) Order 2020**

(Pages 198 – 200)

**CLA(5)–01–21 – Paper 33 – Report**

**CLA(5)–01–21 – Paper 34 – Welsh Government response**

**5.2 SL(5)692 – The Digital Health and Care Wales (Membership and Procedure) Regulations 2020**

(Pages 201 – 203)

**CLA(5)–01–21 – Paper 35 – Report**

**CLA(5)–01–21 – Paper 36 – Welsh Government response**

**5.3 SL(5)708 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020**

(Pages 204 – 208)

**CLA(5)–02–21 – Paper 37 – Report**

**CLA(5)–02–21 – Paper 38 – Welsh Government response**

**6 Subordinate legislation that raises issues to be reported to the Assembly under Standing Order 21.7**

10.45–10.50

**6.1 SL(5)704 – Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020**

(Pages 209 – 241)

CLA(5)–02–21 – Paper 39 – Report

CLA(5)–02–21 – Paper 40 – Code of Practice

CLA(5)–02–21 – Paper 41 – Explanatory Memorandum

**7 Written Statements under Standing Order 30C**

10.50–10.55

**7.1 WS–30C(5)211 – The Framework for the Free Flow of Non–Personal Data (Revocation) (EU Exit) Regulations 2021**

(Pages 242 – 247)

CLA(5)–02–21 – Paper 42 – Written statement

CLA(5)–02–21 – Paper 43 – Commentary

**7.2 WS–30C(5)212 – The International Waste Shipments (Amendment) (EU Exit) Regulations 2021**

(Pages 248 – 252)

CLA(5)–02–21 – Paper 44 – Written statement

CLA(5)–02–21 – Paper 45 – Commentary

**7.3 WS–30C(5)213 – The Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) (No.2) Regulations 2020**

(Pages 253 – 260)

CLA(5)–02–21 – Paper 46 – Written statement

CLA(5)–02–21 – Paper 47 – Commentary

**8 Legislative Consent Memorandum on the Trade Bill – update**

10.55–11.00

(Pages 261 – 271)

CLA(5)–02–21 – Paper 48 – Supplementary Legislative Consent Memorandum

CLA(5)–02–21 – Paper 49 – Letter from the Counsel General, 11 January 2021

CLA(5)–02–21 – Paper 50 – Letter from the Counsel General, 13 January 2021

**9 Papers to note**

11.00–11.05

**9.1 Correspondence from the Minister for Education: Curriculum and Assessment (Wales) Bill**

(Pages 272 – 309)

**CLA(5)–02–21 – Paper 51** – Letter from the Minister for Education, 11 January 2021

**CLA(5)–02–21 – Paper 52** – Letter from the Minister for Education to the Chair of the Children, Young People and Education Committee, 11 January 2021

**CLA(5)–02–21 – Paper 53** – Letter from the Minister for Education to the Chair of the Finance Committee, 11 January 2021

**9.2 Letter from the Minister for Housing and Local Government: The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020**

(Pages 310 – 312)

**CLA(5)–02–21 – Paper 54** – Letter from the Minister for Housing and Local Government, 13 January 2021

**CLA(5)–02–21 – Paper 55** – Letter to the Minister for Housing and Local Government, 21 December 2020

**10 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**

11.05

**11 Scrutiny of regulations made under the EU (Withdrawal) Act 2018 – update**

11.05–11.10

(Page 313)

**CLA(5)–02–21 – Paper 56** – Letter from the Minister for Finance and Trefnydd, 8 January 2021

**12 The European Union (Future Relationship) Act**

11.10–11.25

(Pages 314 – 323)

**CLA(5)–02–21 – Paper 57** – Letter from the Chair of the External Affairs and Additional Legislation Committee, 14 January 2021

**CLA(5)–02–21 – Paper 58** – Research Service briefing

**Date of the next meeting – 25 January 2021**

Document is Restricted



# Agenda Item 3

## Statutory Instruments with Clear Reports 18 January 2021

### SL(5)712 – The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) (Amendment) Regulations 2020

#### Procedure: Negative

These Regulations amend the Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020 (“the 2020 Regulations”). The 2020 Regulations amended the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, in certain circumstances relating to the incidence or transmission of coronavirus, to allow—(a) appeal panels of two members, and (b) appeal panels to hold hearings by remote access or to decide appeals on the basis of written information. Regulation 2(2) of the 2020 Regulations provides that those amendments cease to have effect on 31 January 2021. The main effect of regulation 2 of these Regulations is that the date of 31 January 2021 in the 2020 Regulations is amended to 30 September 2021. This means that the amendments made by the 2020 Regulations continue to have effect until 30 September 2021.

**Parent Act:** Schools Standards and Framework Act 1998

**Date Made:** 18 December 2020

**Date Laid:** 22 December 2020

**Coming into force date:** 30 January 2021



## **SL(5)695 – The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020**

### **Background and Purpose**

The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020 (“the Regulations”) amend:

- the Food Hygiene (Wales) Regulations 2006,
- the Official Feed and Food Controls (Wales) Regulations 2009, and
- the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016.

The Regulations are made by the Welsh Ministers in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the ECA 1972”). The Welsh Ministers are designated in relation to:

- measures relating to feed produced for or fed to food-producing animals (see European Communities (Designation) (No. 2) Order 2005/1971).
- measures in the veterinary and phytosanitary fields for the protection of public health (see European Communities (Designation) (No. 2) Order 2008/1792); and
- measures in relation to the common agricultural policy of the European Union (see the European Communities (Designation) (No. 5) Order 2010/2690).

The Regulations allow for the further implementation and enforcement of EU Implementing and Delegated Regulations (“EU tertiary legislation”) that are made under Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law (“the OCR”).

Implementation and enforcement of the OCR and such EU tertiary legislation as had been published in the Official Journal of the European Union by November 2019 was enabled by way of the Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019 (“The 2019 Regulations”). The amendments made by the 2019 Regulations also covered a package of EU tertiary legislation (Implementing and Delegated Regulations), made under the OCR. It was noted at the time that additional EU tertiary legislation was being prepared by the EU would not be published in time for provisions giving effect to that legislation to be included in the 2019 Regulations if those Regulations were to come into force by the 14 December 2019 deadline - the date the OCR took effect.

The Regulations captures that additional EU tertiary legislation within the lists of legislation set out in the Food Hygiene (Wales) Regulations 2006 and the Official Feed and Food Controls (Wales) Regulations 2009, and make limited consequential changes. This tertiary legislation sets out the detailed rules for applying the OCR in specific areas, such as the



frequency and methods of applying physical checks to consignments of food or feed at ports and some of the rules for further action required on completion of these checks.

In addition to the tertiary legislation, some limited errors/omissions have been identified in the amendments made by the 2019 Regulations that require correction. These required corrections are necessary to ensure that the OCR is properly implemented in relation to Wales and the Regulations will amend the necessary instruments to provide for enforcement of the tertiary legislation and fix these errors and omissions in the 2019 Regulations.

## Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

## Technical Scrutiny

The following two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts**

References to specific regulations in this point are to the Welsh text of the regulations.

The reference in regulation 2(2)(a)(ii) to text that is to be omitted from regulation 2 of the Food Hygiene (Wales) Regulations 2006 ("the 2006 Regulations") does not seem to be correct. We cannot see a definition that begins "*ystyr "Cyfarwyddeb 2004/41"*" in regulation 2 of the 2006 Regulations. We believe regulation 2(2)(a)(ii) should refer to the definition that begins "*mae i "Cyfarwyddeb 2004/41"*" (emphasis added).

Similarly, the reference in regulation 3(2)(a)(i) does not seem to be correct. We cannot see a definition that begins "*ystyr "Penderfyniad 2007/275"*" in regulation 2 of the Official Feed and Food Controls (Wales) Regulations 2009. We believe regulation 3(2)(a)(i) should refer to the definition that begins "*mae i "Cyfarwyddeb 2004/41"*" (emphasis added).

### **2. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In the English text of the Regulations, in the table inserted by Schedule 5 (replacing Schedule 6 to the Official Feed and Food Controls (Wales) Regulations 2009), the paragraph in the subject matter column for "Article 6(4) of Regulation 2019/2123" does not specify that the operator is the operator "responsible for the consignments", as is the case in the Welsh text and in other entries in the table.



## Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Welsh Government response

A Welsh Government response is required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**8 January 2021**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

**Legislation, Justice and Constitution Committee**

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1487 (W. 317)**

**AGRICULTURE, WALES**

**FOOD, WALES**

**The Official Feed and Food  
Controls (Miscellaneous  
Amendments) (Wales) Regulations  
2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make amendments to legislation in the field of feed and food safety and hygiene to provide for the implementation and enforcement of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

Regulation 2 replaces and updates the list of EU Regulations set out in Schedule 1 to the Food Hygiene (Wales) Regulations 2006 (S.I. 2006/31 (W. 5)), and makes consequential amendments as a result of the updated list.

Regulation 3 amends the Official Feed and Food Controls (Wales) Regulations 2009 (S.I. 2009/3376 (W. 298)).

- Paragraphs (2) and (8) replace and update the list of EU regulations set out in Schedule 1 to those Regulations, and make incidental and consequential amendments as a result of the updated list.
- Paragraph (3) substitutes a revised definition of “product” in regulation 22. Paragraph (4), makes a consequential amendment as a result of the revised definition.
- Paragraph (5) amends regulation 36 to make provision for the payment of costs of official controls under Article 79(2)(a) of Regulation 2017/625 in respect of Part 3. Paragraph (7)

inserts a new regulation 42A into Part 4 that makes provision for the payment of costs of official controls under Article 79(2)(c) of Regulation 2017/625.

- Paragraph (6) amends regulation 41(1A) to replace the reference to Article 3 of Regulation (EU) No. 211/2013, which has been repealed and replaced by Regulations (EU) 2019/625 and 2019/628 (part of the package of Regulations made under Regulation (EU) 2017/625).
- Paragraphs (9) and (10) substitute new Schedules 4 and 5 respectively to correct errors in the existing Schedules.
- Paragraph (11) substitutes a new Schedule 6 to update the list of ‘specified import provisions’.

Regulation 4 updates references to EU instruments in the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 (S.I. 2016/387 (W. 121)). In particular, it replaces references to Regulation (EC) No. 882/2004 and Regulation (EC) No. 669/2009, which have respectively been repealed and replaced by Regulation (EU) 2017/625 and Regulation (EU) 2019/1793.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1487 (W. 317)**

**AGRICULTURE, WALES**

**FOOD, WALES**

**The Official Feed and Food  
Controls (Miscellaneous  
Amendments) (Wales) Regulations  
2020**

*Made* 8 December 2020

*Laid before Senedd Cymru* 10 December 2020

*Coming into force* 31 December 2020

The Welsh Ministers, in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972<sup>(1)</sup>, make the following Regulations.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures in respect of food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-

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(1) 1972 c. 68. The European Communities Act 1972 (“the 1972 Act”) was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). “IP completion day” is defined in section 1A by reference to the meaning given in section 39 of the 2020 Act (31 December 2020 at 11pm). Section 2(2) of the 1972 Act was also previously amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 to the 1972 Act was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.

producing animals<sup>(1)</sup>, measures in the veterinary and phytosanitary fields for the protection of public health<sup>(2)</sup>, and measures in relation to the common agricultural policy of the European Union<sup>(3)</sup>.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for references to EU instruments inserted into the statutory instruments amended by these Regulations to be construed as a references to those EU instruments as amended from time to time.

There has been open and transparent public consultation during the preparation of these Regulations in accordance with Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(4)</sup>.

#### **Title and commencement**

**1.**—(1) The title of these Regulations is The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020.

(2) These Regulations come into force on 31 December 2020.

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- (1) S.I. 2005/1971, amended by S.I. 2005/2766. The functions conferred on the National Assembly for Wales by this designation are transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). The designation does not extend to measures concerning feed containing medicinal products (including growth regulators) or medicinal products when destined for use in feed except stabilisers, or substances which favourably affect the environment. S.I. 2005/1971 is prospectively revoked by S.I. 2018/1011 from implementation period completion day.
- (2) S.I. 2008/1792, which is prospectively revoked by S.I. 2018/1011 from implementation period completion day.
- (3) S.I. 2010/2690. The designation does not extend to making provision in respect of feed that contains medicinal products destined for use in feed, except provision concerning substances that favourably affect the environment, digestibility enhancers, or gut flora stabilisers. S.I. 2010/2690 is prospectively revoked by S.I. 2018/1011 from implementation period completion day.
- (4) OJ No. L 31, 1.2.2002, p. 1, as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council (OJ No. L 198, 25.7.2019, p. 241).



### **The Food Hygiene (Wales) Regulations 2006**

2.—(1) The Food Hygiene (Wales) Regulations 2006<sup>(1)</sup> are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of “the Community Regulations” (“*Rheoliadau'r Gymuned*”), for “, Regulation 2017/625 and the Regulation 2017/625 package” substitute “and the Regulation 2017/625 package”;

(ii) omit the definition that begins “Directive 2004/41”;

(iii) for the definition of “the Regulation 2017/625 package” substitute—

““the Regulation 2017/625 package” (“*pecyn Rheoliad 2017/625*”) means Regulation 2017/625 and the other Regulations listed in Schedule 1 below the heading “The Regulation 2017/625 package”;

(b) after paragraph (1) insert—

“(1A) Any reference in these Regulations to Regulation 2017/625 or any other Directive or Regulation referred to in Schedule 1 have the meanings respectively given to them in that Schedule.”

(3) For Schedule 1 (definitions of EU legislation) substitute the Schedule set out in Schedule 1 to these Regulations.

### **The Official Feed and Food Controls (Wales) Regulations 2009**

3.—(1) The Official Feed and Food Controls (Wales) Regulations 2009<sup>(2)</sup> are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) omit the definition that begins “Decision 2007/275”;

(ii) in the definition of “the Official Control Regulations”, for “Regulation 2017/625 or the Regulation 2017/625 package” substitute “the Regulation 2017/625 package”;

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(1) S.I. 2006/31 (W. 5), amended by S.I. 2019/1482; there are other amending instruments but none is relevant to these Regulations.

(2) S.I. 2009/3376 (W. 298), amended by S.I. 2011/1043, 2019/1482 (W. 266); there are other amending instruments but none is relevant to these Regulations.

(iii) for the definition of “the Regulation 2017/625 package” substitute—

““the Regulation 2017/625 package” (“*pecyn Rheoliad 2017/625*”) means Regulation 2017/625 and the other Regulations listed in Schedule 1 below the heading “The Regulation 2017/265 package”;;”;

(b) after paragraph (1), insert—

“(1A) Any reference in these Regulations to Regulation 2017/625 or any other Directive or Regulation referred to in Schedule 1 have the meanings respectively given to them in that Schedule.”

(c) for paragraph (3) substitute—

“(3) Unless the contrary intention appears, any expression used both in these Regulations and in Regulation 178/2002 or in the Regulation 2017/625 package has the meaning it bears in Regulation 178/2002 or in the Regulation 2017/625 package as the case may be.”

(3) In regulation 22 (interpretation of Part 3)—

(a) for the definition of “product” substitute—

““product” (“*cynnyrch*”) means feed and food of non-animal origin whose import is regulated by Article 44 or Article 47(1)(d), (e) or (f) of Regulation 2017/625 and includes composite products and foodstuffs which are not listed in Commission Decision 2007/275/EC concerning lists of composite products to be subject to controls at border control posts(1);”;

(b) in the definition of “specified import provision”, for “Regulation 2017/625 or the Regulation 2017/625 package” substitute “the Regulation 2017/625 package”.

(4) In regulation 29 (checks on products), for “and 45(1), (2) and (4)”, in each place it occurs, substitute “, 45(1), (2) and (4), and 49(1)”.

(5) In regulation 36(2) (costs and fees) after “as referred to in”, insert “Article 79(2)(a) and”.

(6) In regulation 41(1A) (offences and penalties), for the words from “Article 3” to “production of sprouts”, substitute “Article 13 of Regulation 2019/625, in so far as it applies to sprouts and seeds intended for the

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(1) OJ No. L 116, 4.5.2007, p. 9, as last amended by Commission Implementing Regulation (EU) 2019/2007 of 18 November 2019 laying down rules for the application of Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the lists of animals, products of animal origin, germinal products, animal by-products and derived products and hay and straw subject to official controls at border control posts (OJ No. L 312, 3.12.19, p. 1).

production of sprouts, as read with Article 27 of Regulation 2019/628”.

(7) In Part 4 (recovery of expenses), at the appropriate place insert—

**“Fees or charges arising from unplanned official controls**

**42A.** Fees or charges imposed by a competent authority on an operator pursuant to article 79(2)(c) of Regulation 2017/625 must be paid by the operator on the written demand of the competent authority.”

(8) For Schedule 1 (definitions of EU legislation) substitute the Schedule set out in Schedule 2 to these Regulations.

(9) For Schedule 4 (competent authorities for the purposes of certain provisions of Regulation 2017/625 in so far as they apply in relation to relevant feed law) substitute the Schedule set out in Schedule 3 to these Regulations.

(10) For Schedule 5 (competent authorities for the purposes of certain provisions of Regulation 2017/625 in so far as they apply in relation to relevant food law) substitute the Schedule set out in Schedule 4 to these Regulations.

(11) For Schedule 6 (specified import provisions) substitute the Schedule set out in Schedule 5 to these Regulations.

**The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016**

4.—(1) The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016<sup>(1)</sup> are amended as follows.

(2) In regulation 2 (interpretation and scope)—

(a) in paragraph (1)

(i) omit the definition of “Regulation 882/2004”;

(ii) at the appropriate places, insert the following definitions—

““Regulation 2017/625” (*Rheoliad 2017/625*) means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on

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(1) S.I. 2016/387 (W. 121), amended by S.I. 2018/40 (W. 12), 2018/806 (W. 162) and 2019/1482 (W. 266).

animal health and welfare, plant health and plant protection products (1);”

““Regulation 2019/1793” (“*Rheoliad 2019/1793*”) means Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries (2);”

- (b) in paragraph (2), for “Regulation 882/2004, Regulation 183/2005 or Regulation 152/2009”, substitute “Regulation 183/2005, Regulation 152/2009 and Regulation 2017/625”.

(3) In regulation 19 (analysis other than in the course of official controls), for paragraph (2) substitute—

“(2) In cases where there is no appropriate method of analysis in Regulation 152/2009, the analysis must be carried out in the manner referred to in Article 34(1) and (2) of Regulation 2017/625 as read with Regulation 2019/1793.”

(4) In Schedule 1 (specified feed law), in the table—

- (a) omit the entries for Regulation 882/2004 and for Commission Regulation (EC) No 669/2009;
- (b) at the appropriate place, insert the following entries—

“Regulation 2017/625 in so far as it relates to feed”

“Regulation 2019/1793 in so far as it relates to feed”.

*Eluned Morgan*

Minister for Mental Health, Wellbeing and Welsh Language, one of the Welsh Ministers

8 December 2020

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(1) OJ No. L 95, 7.4.2017, p. 1, as last amended by Commission Delegated Regulation (EU) 2019/2127 of 10 October 2019 amending Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the date of application of certain provisions of Council Directives 91/496/EEC, 97/78/EC and 2000/29/EC (OJ No. L 321, 12.12.2019, p.111).

(2) OJ L 277, 29.10.2019, p. 89, as last amended by Commission Implementing Regulation (EU) 2020/1540 of 22 October 2020 in relation to sesamum seeds originating in India. (OJ No. L 353, 23.10.20, p. 4).

**SCHEDULE 1** Regulation 2(3)

**Schedule to be substituted for Schedule 1  
to the Food Hygiene (Wales)  
Regulations 2006**

**“SCHEDULE 1** Regulation 2(1A)

**DEFINITIONS OF LEGISLATION**

“Directive 2004/41” means Directive 2004/41/EC of the European Parliament and of the Council repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC<sup>(1)</sup>;

“Regulation 178/2002” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(2)</sup>, as read with Regulation 931/2011, and Regulation 208/2013;

“Regulation 852/2004” means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs<sup>(3)</sup> as read with Regulation 2073/2005 and Regulation 210/2013;

“Regulation 853/2004” means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin<sup>(4)</sup> as read with Directive 2004/41, Regulation 1688/2005,

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(1) OJ No. L 157, 30.4.2004, p. 33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L 195, 2.6.2004, p. 12).

(2) OJ No. L 31, 1.2.2002, p. 1.

(3) OJ No. L 139, 30.4.2004, p. 1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L 226, 25.6.2004, p. 3) which should be read with a further Corrigendum (OJ No. L 204, 4.8.2007, p. 26).

(4) OJ No. L 139, 30.4.2004, p. 55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L 226, 25.6.2004, p. 22) which should be read with a further Corrigendum (OJ No. L 204, 4.8.2007, p. 26).

Regulation 2074/2005 and Regulation 2017/185;

“Regulation 1688/2005” means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs<sup>(1)</sup>;

“Regulation 2073/2005” means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs<sup>(2)</sup>;

“Regulation 2074/2005” means Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004<sup>(3)</sup>;

“Regulation 931/2011” means Commission Implementing Regulation (EU) No. 931/2011 on the traceability requirements set by Regulation (EC) No. 178/2002 of the European Parliament and of the Council for food of animal origin<sup>(4)</sup>;

“Regulation 1169/2011” means Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No. 1924/2006 and (EC) No. 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No. 608/2004<sup>(5)</sup>;

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(1) OJ No. L 271, 15.10.2005, p. 17.  
(2) OJ No. L 338, 22.12.2005, p. 1, as read with the Corrigenda at OJ No. L 278, 10.10.2006, p. 32 and OJ No. L 283, 14.10.2006, p. 62.  
(3) OJ No. L 338, 22.12.2005, p. 27.  
(4) OJ No. L 242, 20.9.2011, p. 2.  
(5) OJ No. L 304, 22.11.2011, p. 18.

“Regulation 208/2013” means Commission Implementing Regulation (EU) No. 208/2013 on traceability requirements for sprouts and seeds intended for the production of sprouts<sup>(1)</sup>;

“Regulation 210/2013” means Commission Regulation (EU) No. 210/2013 on the approval of establishments producing sprouts pursuant to Regulation (EC) No. 852/2004 of the European Parliament and of the Council<sup>(2)</sup>;

“Regulation 579/2014” means Commission Regulation (EU) No. 579/2014 granting derogation from certain provisions of Annex II to Regulation (EC) No. 852/2004 of the European Parliament and of the Council as regards the transport of liquid oils and fats by sea<sup>(3)</sup>;

“Regulation 2015/1375” means Commission Implementing Regulation (EU) 2015/1375 laying down specific rules on official controls for *Trichinella* in meat<sup>(4)</sup>;

“Regulation 2017/185” means Commission Regulation (EU) 2017/185 laying down transitional measures for the application of certain provisions of Regulations (EC) No. 853/2004 and (EC) No. 854/2004 of the European Parliament and of the Council<sup>(5)</sup>;

**The Regulation 2017/625 package**

“Regulation 2017/625” means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No. 999/2001, (EC) No. 396/2005, (EC) No. 1069/2009, (EC) No. 1107/2009, (EU) No. 1151/2012, (EU) No. 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No. 1/2005 and (EC) No. 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC

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(1) OJ No. L 68, 12.3.2013, p. 16.  
(2) OJ No. L 68, 12.3.2013, p. 24.  
(3) OJ No. L 160, 29.5.2014, p. 14.  
(4) OJ No. L 212, 11.8.2015, p. 7.  
(5) OJ No. L 29, 3.2.2017, p. 21.

and 97/78/EC and Council Decision 92/438/EEC(1) as read with Regulation 2074/2005, Regulation 2017/185 and the Regulation 2017/625 package;

“Regulation 2019/478” means Commission Delegated Regulation (EU) 2019/478 amending Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the categories of consignments to be subjected to official controls at border control posts(2);

“Regulation 2019/624” means Commission Delegated Regulation (EU) 2019/624 concerning specific rules for the performance of official controls on the production of meat and for production and relaying areas of live bivalve molluscs in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council(3);

“Regulation 2019/625” means Commission Delegated Regulation (EU) 2019/625 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption(4);

“Regulation 2019/626” means Commission Implementing Regulation (EU) 2019/626 concerning lists of third countries or regions thereof authorised for the entry into the European Union of certain animals and goods intended for human consumption, amending Implementing Regulation (EU) 2016/759 as regards these lists(5);

“Regulation 2019/627” means Commission Implementing Regulation (EU) 2019/627 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No. 2074/2005 as regards official controls(6);

“Regulation 2019/628” means Commission Implementing Regulation (EU) 2019/628 concerning model official certificates for certain animals and goods and amending Regulation (EC) No. 2074/2005 and Implementing

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(1) OJ No. L 95, 7.4.2017, p. 1.  
(2) OJ No. L 82, 25.3.2019, p. 4.  
(3) OJ No. L 131, 17.5.2019, p. 1.  
(4) OJ No. L 131, 17.5.2019, p. 18.  
(5) OJ No. L 131, 17.5.2019, p. 31.  
(6) OJ No. L 131, 17.5.2019, p. 51.



Regulation (EU) 2016/759 as regards these model certificates<sup>(1)</sup>;

“Regulation 2019/1012” means Commission Delegated Regulation (EU) 2019/1012 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts<sup>(2)</sup>;

“Regulation 2019/1013” means Commission Implementing Regulation (EU) 2019/1013 on prior notification of consignments of certain categories of animals and goods entering the Union<sup>(3)</sup>;

“Regulation 2019/1014” means Commission Implementing Regulation (EU) 2019/1014 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points<sup>(4)</sup>;

“Regulation 2019/1081” means Commission Delegated Regulation (EU) 2019/1081 establishing rules on specific training requirements for staff for performing certain physical checks at border control posts<sup>(5)</sup>;

“Regulation 2019/1602” means Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document accompanying consignments of animals and goods to their destination<sup>(6)</sup>;

“Regulation 2019/1666” means Commission Delegated Regulation (EU) 2019/1666 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards conditions for monitoring the transport and arrival of consignments of certain goods from the border control post of arrival to the establishment at the place of destination in the Union<sup>(7)</sup>;

“Regulation 2019/1715” means Commission Implementing Regulation (EU) 2019/1715 laying down rules for the functioning of the

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(1) OJ No. L 131, 17.5.2019, p. 101.  
(2) OJ No. L 165, 21.6.2019, p. 4.  
(3) OJ No. L 165, 21.6.2019, p. 8.  
(4) OJ No. L 165, 21.6.2019, p. 10.  
(5) OJ No. L 171, 26.6.2019, p. 1.  
(6) OJ No. L 250, 30.9.2019, p. 6.  
(7) OJ No. L 255, 4.10.2019, p. 1.

information management system for official controls and its system components<sup>(1)</sup>;

“Regulation 2019/1793” means Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No. 178/2002 of the European Parliament and of the Council and repealing Commission Regulations (EC) No. 669/2009, (EU) No. 884/2014, (EU) 2015/175, (EU) 2017/186 and (EU) 2018/1660<sup>(2)</sup>;

“Regulation 2019/1873” means Commission Implementing Regulation (EU) 2019/1873 on the procedures at border control posts for a coordinated performance by competent authorities of intensified official controls on products of animal origin, germinal products, animal by-products and composite products<sup>(3)</sup>.”

“Regulation 2019/2007” means Commission Implementing Regulation (EU) 2019/2007 laying down rules for the application of Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the lists of animals, products of animal origin, germinal products, animal by-products and derived products and hay and straw subject to official controls at border control posts and amending Decision 2007/275/EC<sup>(4)</sup>;

“Regulation 2019/2074” means Commission Delegated Regulation (EU) 2019/2074 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules on specific official controls on consignments of certain animals and goods originating from, and returning to the Union following a refusal of entry by a third country<sup>(5)</sup>;

“Regulation 2019/2122” means Commission Delegated Regulation (EU) 2019/2122 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers’ personal luggage and on small consignments of goods sent to natural persons which are not

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(1) OJ No. L 261, 14.10.2019, p. 37.  
(2) OJ No. L 277, 29.10.2019, p. 89.  
(3) OJ No. L 289, 8.11.2019, p. 50.  
(4) OJ No. L 312, 3.12.2019, p. 1.  
(5) OJ No. L 316, 6.12.2019, p. 6.

intended to be placed on the market and amending Commission Regulation (EU) No. 142/2011<sup>(1)</sup>;

“Regulation 2019/2123” means Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts<sup>(2)</sup>;

“Regulation 2019/2124” means Commission Delegated Regulation (EU) 2019/2124 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union, and amending Commission Regulations (EC) No. 798/2008, (EC) No. 1251/2008, (EC) No. 119/2009, (EU) No. 206/2010, (EU) No. 605/2010, (EU) No. 142/2011, (EU) No. 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/EC<sup>(3)</sup>;

“Regulation 2019/2126” means Commission Delegated Regulation (EU) 2019/2126 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for specific official controls for certain categories of animals and goods, measures to be taken following the performance of such controls and certain categories of animals and goods exempted from official controls at border control posts<sup>(4)</sup>;

“Regulation 2019/2129” means Commission Implementing Regulation (EU) 2019/2129 establishing rules for the uniform application of frequency rates for identity checks and physical checks on certain consignments of animals and goods entering the Union<sup>(5)</sup>;

“Regulation 2019/2130” means Commission Implementing Regulation (EU) 2019/2130 establishing detailed rules on the operations to be carried out during and after documentary checks, identity checks and physical checks on

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(1) OJ No. L 321, 12.12.2019, p. 45.  
(2) OJ No. L 321, 12.12.2019, p. 64.  
(3) OJ No. L 321, 12.12.2019, p. 73.  
(4) OJ No. L 321, 12.12.2019, p. 104.  
(5) OJ No. L 321, 12.12.2019, p. 122.

animals and goods subject to official controls at border control posts<sup>(1)</sup>;

“Regulation 2020/466” means Commission Implementing Regulation (EU) 2020/466 on temporary measures to contain risks to human, animal and plant health and animal welfare during certain serious disruptions of Member States’ control systems due to coronavirus disease<sup>(2)</sup>;

“Regulation 2020/1158” means Commission Implementing Regulation (EU) 2020/1158 on the conditions governing imports of food and feed originating in third countries following the accident at the Chernobyl nuclear power station<sup>(3)</sup>.”

## SCHEDULE 2 Regulation 3(8)

### Schedule to be substituted for Schedule 1 to the Official Feed and Food Controls (Wales) Regulations 2009

#### “SCHEDULE 1 Regulation 2(1A)

#### DEFINITIONS OF LEGISLATION

“Directive 2004/41” means Directive 2004/41/EC of the European Parliament and of the Council repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC<sup>(4)</sup>;

“Regulation 999/2001” means Regulation (EC) No. 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies<sup>(5)</sup>;

“Regulation 178/2002” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law,

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(1) OJ No. L 321, 12.12.2019, p. 128.

(2) OJ No. L 98, 31.3.2020, p. 30.

(3) OJ No. L 257, 6.8.2020, p. 1.

(4) OJ No. L 157, 30.4.2004, p. 33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L195, 2.6.2004, p. 12).

(5) OJ No. L 157, 30.4.2004, p. 33.

establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(1)</sup>;

“Regulation 852/2004” means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs<sup>(2)</sup> as read with Regulation 2073/2005;

“Regulation 853/2004” means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin<sup>(3)</sup> as read with Directive 2004/41, Regulation 1688/2005 and Regulation 2074/2005 and Regulation 2017/185;

“Regulation 1688/2005” means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs<sup>(4)</sup>;

“Regulation 2073/2005” means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs<sup>(5)</sup>;

“Regulation 2074/2005” means Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004<sup>(6)</sup>;

“Regulation 2017/185” means Commission Regulation (EU) 2017/185 laying down transitional measures for the application of certain provisions of Regulations (EC) No 853/2004 and (EC) No 854/2004 of the European Parliament and of the Council<sup>(7)</sup>;

**The Regulation 2017/625 package**

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- (1) OJ No. L 31, 1.2.2002, p. 1.  
(2) OJ No. L 139, 30.4.2004, p. 1.  
(3) OJ No. L 139, 30.4.2004, p. 55.  
(4) OJ No. L 271, 15.10.2005, p. 17.  
(5) OJ No. L 338, 22.12.2005, p. 1.  
(6) OJ No. L 338, 22.12.2005, p. 27.  
(7) OJ No. L 29, 3.2.2017, p. 21.

“Regulation 2017/625” means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No. 999/2001, (EC) No. 396/2005, (EC) No. 1069/2009, (EC) No. 1107/2009, (EU) No. 1151/2012, (EU) No. 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No. 1/2005 and (EC) No. 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC(1) as read with Regulation 2074/2005, Regulation 2017/185 and the Regulation 2017/625 package;

“Regulation 2019/478” means Commission Delegated Regulation (EU) 2019/478 amending Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the categories of consignments to be subjected to official controls at border control posts(2);

“Regulation 2019/624” means Commission Delegated Regulation (EU) 2019/624 concerning specific rules for the performance of official controls on the production of meat and for production and relaying areas of live bivalve molluscs in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council(3);

“Regulation 2019/625” means Commission Delegated Regulation (EU) 2019/625 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption(4);

“Regulation 2019/626” means Commission Implementing Regulation (EU) 2019/626 concerning lists of third countries or regions thereof authorised for the entry into the

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(1) OJ No. L 95, 7.4.2017, p. 1.  
(2) OJ No. L 82, 25.3.2019, p. 4.  
(3) OJ No. L 131, 17.5.2019, p. 1.  
(4) OJ No. L 131, 17.5.2019, p. 18.

European Union of certain animals and goods intended for human consumption, amending Implementing Regulation (EU) 2016/759 as regards these lists<sup>(1)</sup>;

“Regulation 2019/627” means Commission Implementing Regulation (EU) 2019/627 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No. 2074/2005 as regards official controls<sup>(2)</sup>;

“Regulation 2019/628” means Commission Implementing Regulation (EU) 2019/628 concerning model official certificates for certain animals and goods and amending Regulation (EC) No. 2074/2005 and Implementing Regulation (EU) 2016/759 as regards these model certificates<sup>(3)</sup>;

“Regulation 2019/1012” means Commission Delegated Regulation (EU) 2019/1012 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts<sup>(4)</sup>;

“Regulation 2019/1013” means Commission Implementing Regulation (EU) 2019/1013 on prior notification of consignments of certain categories of animals and goods entering the Union<sup>(5)</sup>;

“Regulation 2019/1014” means Commission Implementing Regulation (EU) 2019/1014 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points<sup>(6)</sup>;

“Regulation 2019/1081” means Commission Delegated Regulation (EU) 2019/1081 establishing rules on specific training requirements for staff for performing certain physical checks at border control posts<sup>(7)</sup>;

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(1) OJ No. L 131, 17.5.2019, p. 31.  
(2) OJ No. L 131, 17.5.2019, p. 51.  
(3) OJ No. L 131, 17.5.2019, p. 101.  
(4) OJ No. L 165, 21.6.2019, p. 4.  
(5) OJ No. L 165, 21.6.2019, p. 8.  
(6) OJ No. L 165, 21.6.2019, p. 10.  
(7) OJ No. L 171, 26.6.2019, p. 1.

“Regulation 2019/1602” means Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document accompanying consignments of animals and goods to their destination<sup>(1)</sup>;

“Regulation 2019/1666” means Commission Delegated Regulation (EU) 2019/1666 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards conditions for monitoring the transport and arrival of consignments of certain goods from the border control post of arrival to the establishment at the place of destination in the Union<sup>(2)</sup>;

“Regulation 2019/1715” means Commission Implementing Regulation (EU) 2019/1715 laying down rules for the functioning of the information management system for official controls and its system components<sup>(3)</sup>;

“Regulation 2019/1793” means Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No. 178/2002 of the European Parliament and of the Council and repealing Commission Regulations (EC) No. 669/2009, (EU) No. 884/2014, (EU) 2015/175, (EU) 2017/186 and (EU) 2018/1660<sup>(4)</sup>;

“Regulation 2019/1873” means Commission Implementing Regulation (EU) 2019/1873 on the procedures at border control posts for a coordinated performance by competent authorities of intensified official controls on products of animal origin, germinal products, animal by-products and composite products<sup>(5)</sup>;

“Regulation 2019/2007” means Commission Implementing Regulation (EU) 2019/2007 laying down rules for the application of Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the lists of animals, products of animal origin, germinal products, animal by-products and derived products and hay and straw subject to

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(1) OJ No. L 250, 30.9.2019, p. 6.  
(2) OJ No. L 255, 4.10.2019, p. 1.  
(3) OJ No. L 261, 14.10.2019, p. 37.  
(4) OJ No. L 277, 29.10.2019, p. 89.  
(5) OJ No. L 289, 8.11.2019, p. 50.



official controls at border control posts and amending Decision 2007/275/EC<sup>(1)</sup>;

“Regulation 2019/2074” means Commission Delegated Regulation (EU) 2019/2074 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules on specific official controls on consignments of certain animals and goods originating from, and returning to the Union following a refusal of entry by a third country<sup>(2)</sup>;

“Regulation 2019/2122” means Commission Delegated Regulation (EU) 2019/2122 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers’ personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market and amending Commission Regulation (EU) No. 142/2011<sup>(3)</sup>;

“Regulation 2019/2123” means Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts<sup>(4)</sup>;

“Regulation 2019/2124” means Commission Delegated Regulation (EU) 2019/2124 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union, and amending Commission Regulations (EC) No. 798/2008, (EC) No. 1251/2008, (EC) No. 119/2009, (EU) No. 206/2010, (EU) No. 605/2010, (EU) No. 142/2011, (EU) No. 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/EC<sup>(5)</sup>;

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(1) OJ No. L 312, 3.12.2019, p. 1.  
(2) OJ No. L 316, 6.12.2019, p. 6.  
(3) OJ No. L 321, 12.12.2019, p. 45.  
(4) OJ No. L 321, 12.12.2019, p. 64.  
(5) OJ No. L 321, 12.12.2019, p. 73.

“Regulation 2019/2126” means Commission Delegated Regulation (EU) 2019/2126 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for specific official controls for certain categories of animals and goods, measures to be taken following the performance of such controls and certain categories of animals and goods exempted from official controls at border control posts<sup>(1)</sup>;

“Regulation 2019/2129” means Commission Implementing Regulation (EU) 2019/2129 establishing rules for the uniform application of frequency rates for identity checks and physical checks on certain consignments of animals and goods entering the Union<sup>(2)</sup>;

“Regulation 2019/2130” means Commission Implementing Regulation (EU) 2019/2130 establishing detailed rules on the operations to be carried out during and after documentary checks, identity checks and physical checks on animals and goods subject to official controls at border control posts<sup>(3)</sup>;

“Regulation 2020/466” means Commission Implementing Regulation (EU) 2020/466 on temporary measures to contain risks to human, animal and plant health and animal welfare during certain serious disruptions of Member States’ control systems due to coronavirus disease<sup>(4)</sup>;

“Regulation 2020/1158” means Commission Implementing Regulation (EU) 2020/1158 on the conditions governing imports of food and feed originating in third countries following the accident at the Chernobyl nuclear power station<sup>(5)</sup>.”

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(1) OJ No. L 321, 12.12.2019, p. 104.  
(2) OJ No. L 321, 12.12.2019, p. 122.  
(3) OJ No. L 321, 12.12.2019, p. 128.  
(4) OJ No. L 98, 31.3.2020, p. 30.  
(5) OJ No. L 257, 6.8.2020, p. 1.

**SCHEDULE 3** Regulation 3(9)

Schedule to be substituted for Schedule 4  
to the Official Feed and Food Controls  
(Wales) Regulations 2009

“**SCHEDULE 4** Regulation 3(1)

**COMPETENT AUTHORITIES  
FOR THE PURPOSES OF  
CERTAIN PROVISIONS OF  
REGULATION 2017/625 IN SO  
FAR AS THEY APPLY IN  
RELATION TO RELEVANT  
FEED LAW**

<i>Column 1</i>	<i>Column 2</i>
<i>Competent Authority</i>	<i>Provisions of Regulation 2017/625</i>
The Agency	Articles 4, 5(1), (4) and (5), 6, 7, 8, 11, 12, 15, 28, 29, 30, 31, 32, 33, 35, 37, 38, 39, 40, 42, 63(4)(a), 65(5), 66(6), 73, 75, 76, 78, 79, 81, 82, 83, 84, 85, 87, 88, 89, 91, 93, 96, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 115, 116, 124, 130, 135, 137, 138, 140.
The feed authority	Articles 4, 5(1), (4) and (5), 6, 7, 8, 9, 10, 11, 12, 13, 15, 26, 28, 29, 30, 31, 32, 33, 35, 36, 38, 44, 45, 46, 47, 49, 50, 55, 56, 57, 63, 65(1), (2), (3), (4) and (5), 66, 67, 68, 69, 71, 72, 73, 75, 76, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 96, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 115, 116, 130, 135, 137, 138, 140.”

**SCHEDULE 4** Regulation 3(10)

**Schedule to be substituted for Schedule 5  
to the Official Feed and Food Controls  
(Wales) Regulations 2009**

**“SCHEDULE 5** Regulation 3(3)

**COMPETENT AUTHORITIES  
FOR THE PURPOSES OF  
CERTAIN PROVISIONS OF  
REGULATION 2017/625 IN SO  
FAR AS THEY APPLY IN  
RELATION TO RELEVANT  
FOOD LAW**

<i>Column 1</i>	<i>Column 2</i>
<i>Competent Authority</i>	<i>Provisions of Regulation 2017/625</i>
The Agency	Articles 4, 5(1), (4) and (5), 6, 7, 8, 9, 10, 11, 12, 13, 15, 18, 21, 26, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 42, 44, 45, 46, 47, 49, 50, 55, 56, 57(3), 63(4)(a), 65(5), 66(6), 68, 69, 71, 72, 73, 75, 76, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 93, 96, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 115, 116, 124, 130, 132, 133, 135, 137, 138, 140, 148, 150.
The food authority	Articles 4(2), 5(1), (4) and (5), 6, 7, 8, 9, 10, 11, 12, 13, 15, 18, 21, 26, 28, 29, 30, 31, 32, 33, 35, 36, 38, 44, 45, 46, 47, 49, 50, 55, 56, 57, 63, 65(1), (2), (3), (4) and (5), 66, 67, 68, 69, 71, 72, 73, 75, 76, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 96, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 115, 116, 130,

132, 133, 135, 137,  
138, 140, 148, 150.”

**SCHEDULE 5** Regulation 3(11)  
Schedule to be substituted for Schedule 6  
to the Official Feed and Food Controls  
(Wales) Regulations 2009

“**SCHEDULE 6** Regulations 22 and  
41(1)(a)

**SPECIFIED IMPORT  
PROVISIONS**

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of EU legislation</i>	<i>Subject matter</i>
Article 69(1) of Regulation 2017/625	Requirement that the operator responsible for the consignment is to carry out all the measures ordered by the competent authorities.
Article 1 of Regulation 2019/1013	Requirement that the operator responsible for a consignment give prior notification to the competent authority of the border control post, at least one working day before the expected arrival of the consignment.
Article 3 of Regulation 2019/1602	Requirement that a Common Health Entry Document (CHED) is to accompany each consignment irrespective of whether or not it is split at the border control post or subsequent to leaving the border control post.
Article 4(a) of Regulation 2019/1602	Requirement that where a consignment is not split before being released for free

	circulation, the operator responsible for the consignment is to ensure that a copy of the CHED accompanies the consignment to the place of destination and until it is released into free circulation.
Article 4(b) of Regulation 2019/1602	Requirement that where a consignment is not split before being released for free circulation, the operator responsible for the consignment is to indicate the reference number of the CHED in the customs declaration lodged with the customs authorities and is to keep a copy of the CHED at the disposal of the customs authorities.
Article 5(1)(a) of Regulation 2019/1602	Requirement that where a consignment is to be split at the border control post, when giving prior notification, the operator responsible for the consignment is to declare the border control post as the place of destination in the CHED for the entire consignment.
Article 5(1)(b) of Regulation 2019/1602	Requirement that where a consignment is to be split at the border control post, upon finalisation of the CHED for the entire consignment, the operator responsible for the consignment is to request that the consignment be split and is to submit, through the IMSOC, a CHED for each part of the split consignment and make a

Article 5(1)(d) of Regulation 2019/1602	declaration. Requirement that where a consignment is to be split at the border control post, the operator responsible for the consignment is to ensure that a copy of the CHED for each part of the split consignment accompanies the relevant part to the place of destination and until it is released into free circulation.
Article 5(1)(e) of Regulation 2019/1602	Requirement that where a consignment is to be split at the border control post, the operator responsible for the consignment is to indicate the reference number of the CHED for each part of the split consignment in the customs declaration lodged with the customs authorities and is to keep a copy of that CHED at the disposal of the customs authorities.
Article 5(2)(a) of Regulation 2019/1602	Requirement that where a non-compliant consignment is to be split at the border control post, upon finalisation of the CHED for the entire consignment, the operator responsible for the consignment is to submit a CHED for each part of the split consignment and make a declaration.
Article 6(a) of Regulation 2019/1602	Requirement that where a consignment is to be split after leaving the border control post and before being released

	for free circulation, the operator responsible for the consignment is to ensure that a copy of the CHED accompanies each part of the split consignment until it is released for free circulation.
Article 6(b) of Regulation 2019/1602	Requirement that where a consignment is to be split after leaving the border control post and before being released for free circulation, the operator responsible for the consignment is to indicate the reference number of the CHED for each part of the split consignment in the customs declaration lodged with the customs authorities and is to keep a copy of that CHED at the disposal of the customs authorities.
Article 3(1) of Regulation 2019/1666	Requirement that the operator responsible for the consignment is to, within one day upon arrival of the consignment, inform the competent authority responsible for performing the official controls at the establishment at the place of destination of the arrival of the consignment.
Article 6(1) of Regulation 2019/2123	Requirement that after the competent authorities of the border control post have authorised or decided on the transfer of the consignment to the control point indicated in the CHED, the operator



responsible for the consignment shall not present the consignment for identity and physical checks to a control point different from the one indicated in the CHED, unless the competent authorities of the border control post authorise the transfer of the consignment to another control point in accordance with point (a) of Article 3(1) and point (a) of Article 4(2).

Article 6(4) of Regulation 2019/2123

Requirement that the operator shall provide the reference number of the finalised CHED referred to in Article 6(3) in the customs declaration which is lodged for the consignment with the customs authorities and shall keep a copy of that CHED at the disposal of the customs authorities.

Article 6(1) of Regulation 2019/2124

Requirement that the operator responsible for the consignments authorised for onward transportation in accordance with Article 4 ensures that: (a) during transport to, and storage at, the onward transportation facility, the consignment is not tampered with in any manner; (b) the consignment is not subject to any alteration, processing, substitution or change of packaging; (c) the consignment does not leave the onward transportation facility pending the decision on the consignment

Article 6(2) of Regulation 2019/2124	being taken by the competent authorities of the border control post in accordance with Article 55 of Regulation 2017/625. Requirement that the operator responsible for the consignment shall transport the consignment under customs supervision directly from the border control post to the onward transportation facility, without the goods being unloaded during transport, and shall store it in the onward transportation facility.
Article 6(4) of Regulation 2019/2124	Requirement that the operator responsible for the consignment shall ensure that a copy, on paper or in electronic form, of the CHED referred to in Article 3 accompanies the consignment from the border control post to the onward transportation facility.
Article 6(5) of Regulation 2019/2124	Requirement that the operator responsible for the consignment notifies the competent authorities at the place of final destination of the arrival of consignment at the onward transportation facility.
Article 6(6) of Regulation 2019/2124	Requirement that after the competent authorities of the border control post have authorised the onward transportation of the consignment to the onward transportation facility, the operator responsible for the consignment shall not transport the consignment to a

onward transportation facility that is different from the one indicated in the CHED, unless the competent authorities of the border control post authorise the change in accordance with Article 4 and provided that the conditions laid down in paragraphs 1 to 5 of Article 6 are complied with.”

**Explanatory Memorandum to The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020.**

This Explanatory Memorandum has been prepared by Food Standards Agency 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 Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020

Eluned Morgan MS  
Minister for Mental Health, Wellbeing and Welsh Language  
10 December 2020

## **PART 1**

### **Description**

1. The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020 amend
  - the Food Hygiene (Wales) Regulations 2006,
  - the Official Feed and Food Controls (Wales) Regulations 2009, and
  - the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016.
2. This instrument allows for the further implementation and enforcement of EU Implementing and Delegated Regulations (“EU tertiary legislation”) that are made under Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law (“the OCR”).

### **Background**

3. Implementation and enforcement of the OCR and such EU tertiary legislation as had been published in the Official Journal of the European Union by November 2019 was enabled by way of the Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019 (“The 2019 Regulations”)
4. The amendments made by the 2019 Regulations also covered a package of EU tertiary legislation (Implementing and Delegated Regulations), made under the OCR.
5. It was noted at the time that additional EU tertiary legislation was being prepared by the EU would not be published in time for provisions giving effect to that legislation to be included in the 2019 Regulations if those Regulations were to come into force by the 14 December 2019 deadline - the date the OCR took effect.
6. This instrument captures that additional EU tertiary legislation within the lists of legislation set out in the Food Hygiene (Wales) Regulations 2006 and the Official Feed and Food Controls (Wales) Regulations 2009 (“the 2009 Regulations”), and make limited consequential changes.
7. In addition to the tertiary legislation, officials have identified some limited errors/omissions in the amendments made by the 2019 Regulations that

require correction. These required corrections are necessary to ensure that the OCR is properly implemented in relation to Wales.

8. The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020 will amend the necessary instruments to provide for enforcement of the tertiary legislation and fix the errors and omissions in the 2019 Regulations

### **Matters of special interest to the Legislative, Justice and Constitution Committee**

9. None

### **Legislative background**

10. The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the ECA 1972”). The Welsh Ministers are designated in relation to:
  - a. measures relating to feed produced for or fed to food-producing animals (see European Communities (Designation) (No. 2) Order 2005/1971).
  - b. measures in the veterinary and phytosanitary fields for the protection of public health (see European Communities (Designation) (No. 2) Order 2008/1792); and
  - c. measures in relation to the common agricultural policy of the European Union (see the European Communities (Designation) (No. 5) Order 2010/2690).
11. The ECA 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 with effect from exit day. Despite that repeal, section 2(2) of the 1972 Act continues to have effect with modifications until implementation period completion day by virtue of section 1A of EUWA.
12. These Regulations make provision for a purpose mentioned in section 2(2) of the ECA 1972, and it appears to the Welsh Ministers that it is expedient for references to EU instruments within the Regulations to be construed as references to those instruments as amended from time to time.
13. Section 2(2) of the European Communities Act 1972 (as read with section 59(3) of the Government of Wales Act 2006) offers a choice between negative and affirmative procedures. This instrument makes limited provision, which is technical in nature and which gives effect to EU law (including updating references to EU legislation), in relation to which the

Welsh Ministers have limited discretion. As such, these Regulations are being made under the negative resolution procedure

### **Purpose and intended effect of the legislation**

14. The purpose of this Instrument is to allow for the further implementation of tertiary legislation made under the OCR and to address omissions and errors in the provision made by the 2019 Regulations.
15. This tertiary legislation sets out the detailed rules for applying the OCR in specific areas, such as the frequency and methods of applying physical checks to consignments of food or feed at ports and some of the rules for further action required on completion of these checks.
16. The full set of tertiary legislation that this instrument provides for, as listed below, is predominantly connected to the import into and movement of food and feed through points of entry.
  - Commission Implementing Regulation (EU) 2019/2007
  - Commission Delegated Regulation (EU) 2019/2074
  - Commission Delegated Regulation (EU) 2019/2122
  - Commission Delegated Regulation (EU) 2019/2123
  - Commission Delegated Regulation (EU) 2019/2124
  - Commission Delegated Regulation (EU) 2019/2126
  - Commission Implementing Regulation (EU) 2019/2129
  - Commission Implementing Regulation (EU) 2019/2130
  - Commission Implementing Regulation (EU) 2020/1158
  - Commission Implementing Regulation (EU) 2020/466
17. The detailed titles of all the tertiary legislation, which gives further indications of the specific areas each Regulation applies to is given in Annex 1 below

### **Correction of address errors and omissions in the 2019 Regulations**

#### **Official Feed and Food Controls (Wales) Regulations 2009 (S.I. 2009/3376 (W. 298))**

18. This instrument:
  - a) Updates and replaces schedules 1,4,5 and 6 to ensure that all references to EU Regulations are up to date and correct.

- b) Corrects the definition of “product” in regulation 22 of the 2009 Regulations , which was amended incorrectly by regulation 18(a) of the 2019 Regulations.
- c) Corrects the list of OCR provisions listed in regulation 29 of the 2009 Regulations to include reference to an article omitted in error by regulation 23 of the 2018 Regulations.
- d) Corrects a charging provision in regulation 36 of the 2009 Regulations that was amended incorrectly by regulation 27 of the 2019 Regulations. This is required to implement the mandatory charging provisions within Article 79 of the OCR to allow competent authorities to levy the correct charge for official controls undertaken on consignments of high-risk food and feed of non-animal origin.
- e) Re-instates provision for expenses incurred by a competent authority from additional official controls to be recovered from the food or feed business operator as required by Article 79(2)(c) of the OCR. This provision was contained in regulation 43 of the 2009 Regulations, which was revoked in error by the 2019 regulations
- f) Corrects an out of date reference to a revoked EU Regulation to ensure the continuation of the offence of failing to comply with certification requirements for imports of sprouts or seeds intended to sprout.

#### **Food Hygiene (Wales) Regulations 2006 (S.I. 2006/31 (W. 5))**

19. This instrument replaces and updates the list of EU Regulations set out in Schedule 1

#### **Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 (S.I. 2016/387 (W. 121))**

20. This instrument replaces and updates references to EU instruments that are repealed and replaced by the OCR and Regulation (EU) 2019/1793

#### **Legislation in other parts of the UK**

21. Corresponding legislation is being made in relation to England, Scotland and Northern Ireland.



22. Due to financial implications to enforcement authorities at Border Control Posts (BCPs) in England and Northern Ireland, an error in the application of a provision for charging for official controls at BCPs has been made in earlier instruments in those parts of the UK.
23. As there are currently no BCPs in Wales, and therefore no additional financial implications arise, the implementation of this change has been held back for inclusion in the current instrument.
24. It is important to address this issue as it is likely that Welsh ports will seek to be designated as BCPs in future.

## **Consultation**

25. The FSA conducted an 8-week public consultation on the general principles outlined in the 2019 Regulations to offer interested parties sufficient opportunity to express their views. The FSA also undertook focused stakeholder engagement with stakeholders across industry and enforcement communities, both at a Wales and a UK-wide level. Minimal interest was expressed by stakeholders in relation to the proposed changes, with only four responses being received to the consultation.
26. The changes made by this instrument are entirely technical in nature and make no alteration to the principles outlined in the consultation on the 2019 Regulations.
27. Therefore, no additional consultation has been undertaken in connection with this instrument

## **Regulatory Impact Assessment (RIA)**

28. A full impact assessment was prepared for the 2019 Regulations and it is not considered that additional costs will accrue from this instrument that has not already been accounted for in that impact assessment, which forms part of the Explanatory Memorandum to the 2019 Regulations.

## **Annex 1 full titles of tertiary legislation included in this instrument**

**Commission Implementing Regulation (EU) 2019/2007** of 18 November 2019 laying down rules for the application of Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the lists of animals, products of animal origin, germinal products, animal by-products and derived products and hay and straw subject to official controls at border control posts and amending Decision 2007/275/E

**Commission Delegated Regulation (EU) 2019/2074** of 23 September 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules on specific official controls on consignments of certain animals and goods originating from, and returning to the Union following a refusal of entry by a third country

**Commission Delegated Regulation (EU) 2019/2122** of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market and amending Commission Regulation (EU) No 142/201

**Commission Delegated Regulation (EU) 2019/2123** of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts (Text with EEA relevance)

**Commission Delegated Regulation (EU) 2019/2124** of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union, and amending Commission Regulations (EC) No 798/2008, (EC) No 1251/2008, (EC) No 119/2009, (EU) No 206/2010, (EU) No 605/2010, (EU) No 142/2011, (EU) No 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/EC

**Commission Delegated Regulation (EU) 2019/2126** of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for specific official controls for certain categories of animals and goods, measures to be taken following the performance of such controls and certain categories of animals and goods exempted from official controls at border control posts

**Commission Implementing Regulation (EU) 2019/2129** of 25 November 2019 establishing rules for the uniform application of frequency rates for identity checks and physical checks on certain consignments of animals and goods entering the Union

**Commission Implementing Regulation (EU) 2019/2130** of 25 November 2019 establishing detailed rules on the operations to be carried out during and after documentary checks, identity checks and physical checks on animals and goods subject to official controls at border control posts

**Commission Implementing Regulation (EU) 2020/1158** of 5 August 2020 on the conditions governing imports of food and feed originating in third countries following the accident at the Chernobyl nuclear power station

**Commission Implementing Regulation (EU) 2020/466** of 30 March 2020 on temporary measures to contain risks to human, animal and plant health and animal welfare during certain serious disruptions of Member States' control systems due to coronavirus disease (COVID-19)

## **SL(5)700 – The Firefighters’ Pension Schemes and Compensation Scheme (Wales) (Amendment) Regulations 2020**

### **Background and Purpose**

These Regulations amend—

- (a) the Firemen’s Pension Scheme Order 1992 which sets out, in Schedule 2, the Firefighters’ Pension (Wales) Scheme (“the 1992 Order”),
- (b) the Firefighters’ Pension Scheme (Wales) Order 2007 which sets out, in Schedule 1, the New Firefighters’ Pension Scheme (Wales) (“the 2007 Order”),
- (c) the Firefighters’ Compensation Scheme (Wales) Order 2007 which sets out, in Schedule 1, the Firefighters’ Compensation Scheme (Wales) 2007 (“the 2007 Compensation Order”), and
- (d) the Firefighters’ Pension Scheme (Wales) Regulations 2015 which set out the Firefighters’ Pension Scheme (Wales) 2015 (“the 2015 Regulations”).

Regulations 3 to 5 make amendments to the 1992 Order. The amendments made by regulation 3(a), (c) and (d), ensure that a firefighter is not disadvantaged by the provision which allows for two pensions to be awarded, calculated separately, after a significant reduction in pay, and also make other minor updates.

Regulation 3(b) clarifies that where a firefighter has an entitlement to two pensions under the 1992 Order, the amount of the first pension is uprated annually from the date that the firefighter ceased to earn the higher rate of pay.

The effect of the amendments in regulation 4 is to bring the benefits payable to survivors of civil partnerships and same sex marriages into line with the benefits payable to survivors of opposite-sex marriages.

Regulation 5 updates an out of date statutory reference in the 1992 Order.

Regulations 7 to 9 make amendments to the 2007 Order. Regulation 7 clarifies that where a firefighter has an entitlement to two pensions under the 2007 Scheme, the amount of the first pension is uprated annually from the date that the firefighter ceased to earn the higher rate of pay.

Regulation 8 updates an out of date statutory reference in the 2007 Order.

Regulation 9 substitutes the table of commutation factors for special members set out in Annex ZA to the 2007 Order to include factors beyond age 65, up to age 75. The commutation factors as on 31 March 2014 (up to age 65) have been replicated in the substituted table and have not changed.



Regulations 11 and 12 make amendments to the 2007 Compensation Order. The effect of the amendments in regulation 11 is to bring the benefits payable to survivors of civil partnerships and same sex marriages into line with the benefits payable to survivors of opposite-sex marriages.

Regulation 12 amends rule 3 (child's special allowance: limitations) in Part 4 of the 2007 Compensation Order by removing some of the limitations applied to dependent, step and adopted children, as well as to children of unmarried parents. It also amends the heading of rule 3 and clarifies a cross reference in rule 3(5)(a).

Regulation 14 makes an amendment to the 2015 Regulations to clarify that protected members of the Scheme constituted by the 1992 Order transferring to Wales from England, Scotland and Northern Ireland continue to be entitled to remain as members of that Scheme.

## Procedure

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

## Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

The following point 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 Senedd**

We note that these Regulations make changes as a result of the following two Supreme Court judgments:

**Walker v Innospec:**<sup>1</sup> As a result of the judgment, the Regulations make amendments to bring the benefits payable to surviving civil partners and same sex spouses in-line with those payable to surviving widows of opposite sex marriages. The amendments made by the Regulations to comply with the judgment are backdated to 5 December 2005, the date that civil partnerships were introduced.

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<sup>1</sup> [\[2017\] UKSC 47](#)



**McLaughlin:**<sup>2</sup> The Supreme Court said that denying benefits payable to (or on behalf of) children based on their parent's marital status was unlawful. Therefore, the Regulations make amendments to remove provisions that discriminate against unmarried scheme members. The amendments also eliminate differential treatment currently applied to dependent, step and adopted children. These amendments are backdated to 1 April 2006, the date from which the original provision had effect.

## Welsh Government response

A Welsh Government response is not required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**11 January 2021**

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<sup>2</sup> [\[2018\] UKSC 48](#)



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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1511 (W. 323)**

**PUBLIC SERVICE PENSIONS,  
WALES**

**The Firefighters' Pension Schemes  
and Compensation Scheme (Wales)  
(Amendment) Regulations 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend—

- (a) the Firemen's Pension Scheme Order 1992 which sets out, in Schedule 2, the Firefighters' Pension (Wales) Scheme ("the 1992 Order"),
- (b) the Firefighters' Pension Scheme (Wales) Order 2007 which sets out, in Schedule 1, the New Firefighters' Pension Scheme (Wales) ("the 2007 Order"),
- (c) the Firefighters' Compensation Scheme (Wales) Order 2007 which sets out, in Schedule 1, the Firefighters' Compensation Scheme (Wales) 2007 ("the 2007 Compensation Order"), and
- (d) the Firefighters' Pension Scheme (Wales) Regulations 2015 which set out the Firefighters' Pension Scheme (Wales) 2015 ("the 2015 Regulations").

Certain of the regulations have retrospective effect – these are set out in regulation 1(3). The following provisions in the enabling legislation permit regulations made under those provisions to have retrospective effect—

- (a) section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act in relation to orders made under section 26 of the Fire Services Act 1947,
- (b) section 34(3) of the Fire and Rescue Services Act 2004, and
- (c) section 3(3)(b) of the Public Service Pensions Act 2013.

Regulations 3 to 5 make amendments to the 1992 Order. The amendments made by regulation 3(a), (c) and (d), ensure that a firefighter is not disadvantaged by the provision which allows for two pensions to be awarded, calculated separately, after a significant reduction in pay, and also make other minor updates. Regulation 3(b) clarifies that where a firefighter has an entitlement to two pensions under the 1992 Order, the amount of the first pension is uprated annually from the date that the firefighter ceased to earn the higher rate of pay.

The effect of the amendments in regulation 4 is to bring the benefits payable to survivors of civil partnerships and same sex marriages into line with the benefits payable to survivors of opposite-sex marriages.

Regulation 5 updates an out of date statutory reference in the 1992 Order.

Regulations 7 to 9 make amendments to the 2007 Order. Regulation 7 clarifies that where a firefighter has an entitlement to two pensions under the 2007 Scheme, the amount of the first pension is uprated annually from the date that the firefighter ceased to earn the higher rate of pay.

Regulation 8 updates an out of date statutory reference in the 2007 Order.

Regulation 9 substitutes the table of commutation factors for special members set out in Annex ZA to the 2007 Order to include factors beyond age 65, up to age 75. The commutation factors as on 31 March 2014 (up to age 65) have been replicated in the substituted table and have not changed.

Regulations 11 and 12 make amendments to the 2007 Compensation Order.

The effect of the amendments in regulation 11 is to bring the benefits payable to survivors of civil partnerships and same sex marriages into line with the benefits payable to survivors of opposite-sex marriages.

Regulation 12 amends rule 3 (child's special allowance: limitations) in Part 4 of the 2007 Compensation Order by removing some of the limitations applied to dependent, step and adopted children, as well as to children of unmarried parents. It also amends the heading of rule 3 and clarifies a cross reference in rule 3(5)(a).

Regulation 14 makes an amendment to the 2015 Regulations to clarify that protected members of the Scheme constituted by the 1992 Order transferring to Wales from England, Scotland and Northern Ireland



continue to be entitled to remain as members of that Scheme.

The amendments made by—

- (a) regulations 4(1), 4(2), 4(4) and 11 have effect from 5 December 2005;
- (b) regulation 12 has effect from 1 April 2006;
- (c) regulation 7 has effect from 6 April 2006;
- (d) regulation 3 has effect from 1 April 2007;
- (e) regulations 5 and 8 have effect from 1 December 2009;
- (f) regulation 4(3) has effect from 13 March 2014;
- (g) regulation 14 has effect from 1 April 2015;
- (h) regulation 9 has effect from 23 February 2021.

The Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation has been considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1511 (W. 323)**

**PUBLIC SERVICE PENSIONS,  
WALES**

**The Firefighters' Pension Schemes  
and Compensation Scheme (Wales)  
(Amendment) Regulations 2020**

*Made* 10 December 2020

*Laid before Senedd Cymru* 14 December 2020

*Coming into force* 23 February 2021

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 26(1), (2) and (5) of the Fire Services Act 1947<sup>(1)</sup>; section 12 of

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(1) 1947 c. 41, repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 (c. 21). Subsections (1), (2) and (5) of section 26 continue to have effect, in relation to Wales, for the purposes of the scheme established under that section as the Firemen's Pension Scheme and set out in the Firemen's Pension Scheme Order 1992 (S.I. 1992/129), by virtue of article 3 of S.I. 2004/2918 (W. 257). The name of the scheme was changed to the Firefighters' Pension (Wales) Scheme by article 4 of that instrument. Section 26 of the Fire Services Act 1947 was amended by section 1 of the Fire Services Act 1951 (c. 27), section 42 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65), section 33 of, and Schedule 3 to, the Theft Act 1968 (c. 60), sections 16 and 29 of, and Schedule 8 to, the Superannuation Act 1972 (c. 11), sections 100 and 101 of, and Schedule 27 to, the Social Security Act 1973 (c. 38), section 1 of, and Schedule 1 to, the Social Security (Consequential Provisions) Act 1975 (c. 18), section 32(2) of the Magistrates' Courts Act 1980 (c. 43), section 1 of the Police and Firemen's Pensions Act 1997 (c. 52), section 256 of, and Schedule 25 to, the Civil Partnership Act 2004 (c. 33), and by S.I. 1976/551. In so far as the Firefighters' Pension Scheme is continued in force, in relation to Wales, by virtue of S.I. 2004/2918 (article 3(1)), section 26(1), (2) and (5) have effect as if for each reference to the "Secretary of State" there were substituted a reference to the "National Assembly for Wales"; see article 2 of S.I. 2006/1672 (W. 160). By virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32), functions under section 26 of the Fire Services Act 1947 are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales.

the Superannuation Act 1972<sup>(1)</sup>, as applied by section 16(3) of that Act<sup>(2)</sup>; and section 34(1) to (4) of the Fire and Rescue Services Act 2004<sup>(3)</sup><sup>(4)</sup>, now vested in the Welsh Ministers.

The Welsh Ministers also make these Regulations in exercise of the powers conferred by sections 1(1) and (2)(f)<sup>(5)</sup>, 2(1), 3(1) to (3) and 18(5)(a) and (6) of, and Schedules 2 (paragraph 6(b)) and 3 (paragraphs 1 to 4) to, the Public Service Pensions Act 2013<sup>(6)</sup>.

Before making these Regulations, and in accordance with section 34(5) of the Fire and Rescue Services Act 2004, the Welsh Ministers consulted such persons as they considered appropriate.

In accordance with section 21(1) of the Public Service Pensions Act 2013, the Welsh Ministers have consulted the representatives of such persons as appear to the Welsh Ministers likely to be affected by these Regulations.

## PART 1

### General

#### **Title, commencement and application**

**1.**—(1) The title of these Regulations is the Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Regulations 2020.

(2) These Regulations come into force on 23 February 2021.

(3) The provisions in—

- (a) regulations 4(1), 4(2), 4(4) and 11 have effect from 5 December 2005;

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(1) 1972 c. 11; section 12 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).

(2) Section 16 was repealed by section 52 of, and Schedule 2 to, the Fire and Rescue Services Act 2004 but continues to have effect, in relation to Wales, by virtue of article 3(2) of S.I. 2004/2918 (W. 257).

(3) 2004 c. 21. The powers conferred by section 34(1) to (4) of the Fire and Rescue Services Act 2004 are now vested in the Welsh Ministers so far as they are excisable in relation to Wales. They were previously vested in the National Assembly for Wales by virtue of section 62 of that Act. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006, they were transferred to the Welsh Ministers.

(4) The power to make an order under section 34(4) of the Fire and Rescue Services Act 2004 may be exercised to make regulations by virtue of section 39 of the Legislation (Wales) Act 2019 (anaw 4).

(5) See also section 1(3) and Schedule 1.

(6) 2013 c. 25.

- (b) regulation 12 has effect from 1 April 2006;
  - (c) regulation 7 has effect from 6 April 2006;
  - (d) regulation 3 has effect from 1 April 2007;
  - (e) regulations 5 and 8 have effect from 1 December 2009;
  - (f) regulation 4(3) has effect from 13 March 2014;
  - (g) regulation 14 has effect from 1 April 2015<sup>(1)</sup>.
- (4) These Regulations apply in relation to Wales.

## PART 2

### Firemen's Pension Scheme Order 1992

#### **Amendments to the Firemen's Pension Scheme Order 1992**

2. Schedule 2 to the Firemen's Pension Scheme Order 1992<sup>(2)</sup> (in which is set out the Firefighters' Pension (Wales) Scheme<sup>(3)</sup> ("the 1992 Scheme")) is amended as set out in regulations 3 to 5.

#### **Increases to split pensions: the 1992 Scheme**

3. In Part B (personal awards), in rule B5A (entitlement to two pensions)<sup>(4)</sup>—

- (a) in paragraph (2), for "exceeds" substitute "is lower than";
- (b) after paragraph (3) insert—

"(3A) The amount of the first pension determined under paragraph (3) or (4B)(a), is increased for each year before the firefighter's last day of service by an amount equivalent to that which would apply if the first pension were a pension in payment commencing from the day after the date of the firefighter's last day of service at the higher rate of pay, to which the Pensions (Increase) Act 1971<sup>(5)</sup> applied.";
- (c) in paragraph (6), after "B1," insert "B1A,";

- 
- (1) Power to give retrospective effect is conferred by section 12 of the Superannuation Act 1972, section 34(3) of the Fire and Rescue Services Act 2004 and by section 3(3)(b) of the Public Service Pensions Act 2013.
  - (2) S.I. 1992/129; amended by S.I.s 1997/2309 and 2851, 1998/1010, 2001/3649 and 3691, 2004/1912 and 2918 (W. 257), 2006/1672 (W. 160), 2007/1074 (W. 112), 2009/1226 (W. 109), 2010/234, 2013/736 (W. 88), 2014/522 (W. 63) and 3242 (W. 329), 2014/560, 2015/1016 (W. 71) and 2018/577 (W. 104).
  - (3) S.I. 2004/2918, article 4(2) renamed the 1992 Scheme.
  - (4) Rule B5A was inserted by article 2 of, and paragraph 1 of the Schedule to, S.I. 2009/1226 (W. 109) and was amended by S.I. 2014/3242 (W. 329), 2015/1016 (W. 71) and S.I. 2018/577 (W. 104).
  - (5) 1971 c. 56.

- (d) in paragraph (9), for “paragraph (3)” substitute “paragraph (4)”.

**Survivor benefits for civil partners and same sex spouses: the 1992 Scheme**

- 4.**—(1) In Part C (awards on death – spouses)—
- (a) in rule C1 (spouse’s ordinary pension)—
    - (i) in paragraph (2)(1), after “spouse” insert “or surviving civil partner”;
    - (ii) omit paragraph (2A)(2);
  - (b) in rule C4 (spouse’s accrued pension), in paragraph (3)(3)—
    - (i) in sub-paragraph (a), after “spouse” insert “or surviving civil partner”;
    - (ii) omit sub-paragraph (b) and the “and” preceding it;
  - (c) in rule C5 (limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership)(4)—
    - (i) in paragraph (2), after “spouse” insert “or surviving civil partner”;
    - (ii) omit paragraph (3);
  - (d) in rule C6 (spouse or civil partner’s requisite benefit and temporary pension), in paragraph (4)(5)—
    - (i) in sub-paragraph (a), omit “in the case of a surviving spouse,”;
    - (ii) omit sub-paragraph (b) and the “and” preceding it;
  - (e) in rule C8 (limitation where spouses living apart), in paragraph (2)(6)—
    - (i) in sub-paragraph (a), omit “in the case of a surviving spouse,”;
    - (ii) omit sub-paragraph (b) and the “and” preceding it.

- 
- (1) Paragraph (2) of rule C1 was substituted by article 2 of, and paragraph 3(a) of Schedule 1 to, S.I. 2014/3242 (W. 329).
  - (2) Paragraph (2A) of rule C1 was inserted by article 2 of, and paragraph 3 of Schedule 2 to, S.I. 2006/1672 (W. 160).
  - (3) Paragraph (3) of rule C4 was substituted by article 2 of, and paragraph 6 of Schedule 2 to, S.I. 2006/1672 (W. 160).
  - (4) Rule C5 was substituted by article 2 of, and paragraph 7 of Schedule 2 to, S.I. 2006/1672 (W. 160); paragraphs (2) and (3) were amended by article 2 of, and paragraph 17 of Schedule 1 to, S.I. 2007/1074 (W. 112).
  - (5) Rule C6 was substituted by article 2 of, and paragraph 18 of Schedule 1 to, S.I. 2007/1074 (W. 112).
  - (6) Paragraph (2) of rule C8 was substituted by article 2 of, and paragraph 10 of Schedule 2 to, S.I. 2006/1672 (W. 160); and amended by article 2 of, and paragraph 20 of Schedule 1 to, S.I. 2007/1074 (W. 112).

(2) In Part J (special cases), in rule J1 (guaranteed minimum pensions)(1)—

(a) in paragraph (2)—

(i) for sub-paragraph (b) substitute—

“(b) in the case of a person who dies at any time and leaves a widow, a surviving same sex spouse or surviving civil partner, that person is entitled to a pension of a weekly rate equal to half the deceased person’s guaranteed minimum, and”;

(ii) omit sub-paragraph (d) and the “and” preceding it;

(b) in paragraph (4), for “, (c) or (d)” substitute “or (c)”.

(3) In Schedule 1 (interpretation) to the 1992 Scheme, omit paragraphs 1 and 2 of Part 3 (provision relating to same sex couples)(2).

(4) In Schedule 3 (awards on death – spouses) to the 1992 Scheme—

(a) in Part 3 (spouse’s accrued pension)—

(i) in paragraph 2(1), after “spouse’s” insert “, or surviving civil partner’s,”;

(ii) in paragraph 3(1), after “spouse” insert “or surviving civil partner”;

(b) in Part 4 (pension for surviving spouse of post-retirement marriage), in paragraphs 1(1)(3) and 2(1), after “surviving spouse” insert “or surviving civil partner”.

### **Commutation of small pension credits: the 1992 Scheme**

5. In Part IA (pension credit members), in rule IA2(1)(4) (commutation of the pension credit benefits), for “In the circumstances described in regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension credit benefit: small pensions)” substitute “Where the amount of pension payable under rule IA1

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(1) Paragraph 2(d) of rule J1 was substituted by article 2 of, and paragraph 11 of Schedule 1 to, S.I. 2014/3242 (W. 329); paragraph (4) was amended by article 2 of, and paragraph 21 of Schedule 2 to, S.I. 2006/1672 (W. 160).

(2) Part 3 of Schedule 1 to the 1992 Scheme was inserted by article 4 of, and paragraph 17 of Part 2 of Schedule 3 to, S.I. 2014/560; there is an amendment to paragraph 1 not relevant to this instrument.

(3) Part 4 was substituted by article 2 of, and paragraph 83(b) of Schedule 1 to, S.I. 2006/1672 (W. 160); paragraph 1(1) was amended and paragraph 1(2) was substituted by article 2 of, and paragraph 63(c) of Schedule 1 to, S.I. 2007/1074 (W. 112).

(4) Rule IA2(1) was amended by article 2 of, and paragraph 10(b) of Schedule 1 to, S.I. 2014/3242 (W. 329).

does not exceed the trivial commutation lump sum limit in paragraph 7 of Schedule 29 to the Finance Act 2004 (lump sum rule)(1)".

## PART 3

### Firefighters' Pension Scheme (Wales) Order 2007

#### **Amendments to the Firefighters' Pension Scheme (Wales) Order 2007**

6. Schedule 1 to the Firefighters' Pension Scheme (Wales) Order 2007(2) (in which is set out the New Firefighters' Pension Scheme (Wales) ("the 2007 Scheme")) is amended as set out in regulations 7 to 9.

#### **Increases to split pensions: the 2007 Scheme**

7. In Part 3 (personal awards), in rule 7 (entitlement to two pensions)(3)—

- (a) in paragraph (2) for "paragraphs (3) and (4)" substitute "paragraphs (3), (3A) and (4)";
- (b) after paragraph (3) insert—

"(3A) The amount of the first pension determined under paragraph (3), is increased for each year before the firefighter's last day of service by an amount equivalent to that which would apply if the first pension were a pension in payment commencing from the date that paragraph (1) first applied to the member, to which the Pensions (Increase) Act 1971 applied.

#### **Commutation of small pension credits: the 2007 Scheme**

8. In Part 6 (pension sharing on divorce), in rule 2 (commutation of whole of pension credit benefits), in paragraph (1), for "In the circumstances described in regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension credit benefit: small pensions)" substitute "Where the amount of pension payable under this Part does not exceed the trivial commutation lump sum

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- (1) 2004 c. 12; there are amendments to Part 1 of Schedule 29 which is not relevant.
  - (2) S.I. 2007/1072 (W. 110); amended by S.I.s 2009/1225 (W. 108), 2010/234, 2012/972 (W. 127), 2013/735 (W. 87), 2013/1577 (W. 145), 2014/560, 2014/3254 (W. 330), 2015/1013 (W. 69), 2015/1016 (W. 71) and 2018/577 (W. 104).
  - (3) Rule 7, in Part 3, was amended by S.I. 2014/3254 (W. 330) and 2015/1016 (W. 71).

limit in paragraph 7 of Schedule 29 to the Finance Act 2004 (lump sum rule)(1)".

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(1) 2004 c. 12; there are amendments to Part 1 of Schedule 29 not relevant to these Regulations.



**Commuted portion: special members: the 2007 Scheme**

9. In Annex ZA, for the Table substitute—

“ Years	<i>Age in years and completed months on day pension commences</i>											
	0	1	2	3	4	5	6	7	8	9	10	11
<b>Below 50</b>	23.4											
<b>50</b>	22.4	22.3	22.3	22.3	22.3	22.2	22.2	22.2	22.2	22.1	22.1	22.1
<b>51</b>	22.1	22.0	22.0	22.0	22.0	21.9	21.9	21.9	21.9	21.8	21.8	21.8
<b>52</b>	21.8	21.7	21.7	21.7	21.7	21.6	21.6	21.6	21.6	21.5	21.5	21.5
<b>53</b>	21.5	21.4	21.4	21.4	21.3	21.3	21.3	21.3	21.2	21.2	21.2	21.1
<b>54</b>	21.1	21.1	21.1	21.0	21.0	21.0	21.0	20.9	20.9	20.9	20.9	20.8
<b>55</b>	20.8	20.8	20.8	20.7	20.7	20.7	20.6	20.6	20.6	20.5	20.5	20.5
<b>56</b>	20.4	20.4	20.4	20.4	20.3	20.3	20.3	20.2	20.2	20.2	20.1	20.1
<b>57</b>	20.1	20.0	20.0	20.0	19.9	19.9	19.9	19.8	19.8	19.8	19.7	19.7
<b>58</b>	19.7	19.6	19.6	19.6	19.5	19.5	19.5	19.4	19.4	19.4	19.3	19.3
<b>59</b>	19.3	19.2	19.2	19.2	19.1	19.1	19.1	19.0	19.0	19.0	18.9	18.9
<b>60</b>	18.9	18.8	18.8	18.7	18.7	18.7	18.6	18.6	18.6	18.5	18.5	18.5
<b>61</b>	18.4	18.4	18.4	18.3	18.3	18.2	18.2	18.2	18.1	18.1	18.1	18.0
<b>62</b>	18.0	18.0	17.9	17.9	17.8	17.8	17.8	17.7	17.7	17.7	17.6	17.6
<b>63</b>	17.5	17.5	17.5	17.4	17.4	17.4	17.3	17.3	17.2	17.2	17.2	17.1
<b>64</b>	17.1	17.1	17.0	17.0	16.9	16.9	16.9	16.8	16.8	16.8	16.7	16.7
<b>65</b>	16.6	16.6	16.6	16.5	16.5	16.5	16.4	16.4	16.3	16.3	16.3	16.2
<b>66</b>	16.2	16.2	16.1	16.1	16.0	16.0	16.0	15.9	15.9	15.9	15.8	15.8
<b>67</b>	15.7	15.7	15.7	15.6	15.6	15.6	15.5	15.5	15.4	15.4	15.4	15.3
<b>68</b>	15.3	15.2	15.2	15.2	15.1	15.1	15.1	15.0	15.0	14.9	14.9	14.9
<b>69</b>	14.8	14.8	14.7	14.7	14.7	14.6	14.6	14.5	14.5	14.5	14.4	14.4
<b>70</b>	14.3	14.3	14.3	14.2	14.2	14.1	14.1	14.0	14.0	14.0	13.9	13.9
<b>71</b>	13.8	13.8	13.8	13.7	13.7	13.6	13.6	13.5	13.5	13.5	13.4	13.4
<b>72</b>	13.3	13.3	13.2	13.2	13.2	13.1	13.1	13.0	13.0	12.9	12.9	12.8
<b>73</b>	12.8	12.8	12.7	12.7	12.6	12.6	12.5	12.5	12.4	12.4	12.3	12.3
<b>74</b>	12.3	12.2	12.2	12.1	12.1	12.0	12.0	11.9	11.9	11.8	11.8	11.7
<b>75</b>	11.7	”										

## PART 4

### Firefighters' Compensation Scheme (Wales) Order 2007

#### **Amendments to the Firefighters' Compensation Scheme (Wales) Order 2007**

**10.** Schedule 1 to the Firefighters' Compensation Scheme (Wales) Order 2007<sup>(1)</sup> (in which is set out the Firefighters' Compensation Scheme (Wales) 2007 ("the 2007 Compensation Scheme")) is amended as set out in regulations 11 and 12.

#### **Survivor benefits for civil partners and same sex spouses: the 2007 Compensation Scheme**

**11.** In Part 3 (awards on death: spouses and civil partners)—

- (a) in rule 1 (special award for spouse or civil partner), in paragraph (3)<sup>(2)</sup>—
  - (i) in sub-paragraph (a), after "spouse" insert "or surviving civil partner";
  - (ii) omit sub-paragraph (b);
- (b) in rule 3 (limitation on award to spouse or civil partner by reference to date of marriage or formation of partnership)—
  - (i) in paragraph (2), after "spouse" insert "or surviving civil partner";
  - (ii) omit paragraph (3);
- (c) in rule 4 (limitation where spouse or civil partner is living apart), in paragraph (2)<sup>(3)</sup>—
  - (i) in sub-paragraph (a), after "spouse" insert "or surviving civil partner";
  - (ii) omit sub-paragraph (b) and the "and" preceding it.

#### **Awards on death: children: the 2007 Compensation Scheme**

**12.** In Part 4 (awards on death: children), in rule 3 (child's special allowance or gratuity: limitations)—

- (a) in the heading, omit "or gratuity";

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(1) S.I. 2007/1073 (W. 111); amended by S.I.s 2010/234, 2014/3256 (W. 331), 2015/1013 (W. 69) and 2018/577 (W. 104).

(2) Paragraph (3) of rule 1 was amended by article 2 of, and paragraph 3(2) of Schedule 1 to, S.I. 2014/3256 (W. 331), article 2 of, and paragraph 3(2)(a)(i) and (ii) of Schedule 1 to, S.I. 2015/1013 (W. 69).

(3) Paragraph 2 of rule 4 was amended by article 2 of, and paragraph 3(3) of Schedule 1 to, S.I. 2015/1013 (W. 69).

- (b) omit paragraph (1);
- (c) in paragraph (5)(a), for “(b) or (c)” substitute “(2)(b) or (c)”.

## PART 5

### Firefighters’ Pension Scheme (Wales) Regulations 2015

#### **Amendments to the Firefighters’ Pension Scheme (Wales) Regulations 2015**

**13.** The Firefighters’ Pension Scheme (Wales) Regulations 2015, which establishes the Firefighters’ Pension Scheme (Wales) 2015(1) (“the 2015 Scheme”), are amended in accordance with regulation 14.

#### **Club transfer value payments: the 2015 Scheme**

**14.** In Schedule 2 (transitional provisions), in paragraph 45 (acceptance of club transfer value payments), after “relates to a member’s final salary benefit” insert “, apart from a payment from the 1992 Scheme as that scheme has effect in England, Scotland and Northern Ireland,”.

*Hannah Blythyn*

Deputy Minister for Housing and Local Government,  
one of the Welsh Ministers  
10 December 2020

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(1) S.I. 2015/622 (W. 50); amended by S.I.s 2015/1016 (W. 71) and 2018/576 (W. 103).

## **Explanatory Memorandum to The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Regulations 2020**

This Explanatory Memorandum has been laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Deputy Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Regulations 2020**. I am satisfied that the benefits justify the likely costs.

**Hannah Blythyn MS**  
**Deputy Minister for Housing and Local Government**  
**14 December 2020**

## PART 1

### 1. Description

The Firefighters' Pension Schemes and Compensation Scheme (Wales) (Amendment) Regulations 2020 ("the Regulations") amend the following:-

- the Firemen's Pension Scheme Order 1992 ("the 1992 Order") which sets out, in Schedule 2, the Firefighters' Pension (Wales) Scheme ("the 1992 Scheme"),
- the Firefighters' Pension Scheme (Wales) Order 2007 ("the 2007 Order") which sets out, in Schedule 1, the New Firefighters' Pension Scheme (Wales) ("the 2007 Scheme"),
- the Firefighters' Compensation Scheme (Wales) Order 2007 ("the 2007 Compensation Order") which sets out, in Schedule 1, the Firefighters' Compensation Scheme (Wales) 2007 ("the 2007 Compensation Scheme"), and
- the Firefighters' Pension Scheme (Wales) Regulations 2015 ("the 2015 Order") which sets out the Firefighters' Pension Scheme (Wales) 2015 ("the 2015 Scheme").

The 1992 Scheme and the 2007 Compensation Scheme currently provide surviving civil partners and same sex spouses with entitlement to a survivors' pension based on pensionable service from 6 April 1988. Following the Supreme Court judgment in the case of Walker v Innospec<sup>1</sup>, the Regulations amend these provisions to remove the 1988 limitation date, which will bring the benefits payable to surviving civil partners and same sex spouses in line with those payable to surviving widows of opposite sex marriages and comply with the ruling. The amendments are backdated to 5 December 2005, the date that civil partnerships were introduced.

In addition, the Regulations also remove the provisions that equate opposite sex civil partnerships with same sex marriages or civil partnerships, in the 1992 Scheme. Following the introduction of the Civil Partnership (Opposite-sex Couples) Regulations 2019, which allow civil partnerships to be formed by opposite sex couples, this provision is no longer appropriate. The amendment is backdated to 13 March 2014, the date that same sex marriages were introduced.

Following the Supreme Court ruling in the case of McLaughlin<sup>2</sup>, in which it was held that denying benefits payable to (or on behalf of) children based on their parents' marital status was unlawful, the Regulations amend the 2007 Compensation Scheme to remove the provisions that discriminate against children of unmarried scheme members. The proposed amendment also eliminates differential treatment currently applied to dependent, step and adopted children. This regulation is backdated to the date from which the original provision had effect (1 April 2006).

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<sup>1</sup> [2017] UKSC 47 (<https://www.supremecourt.uk/cases/uksc-2016-0090.html>)

<sup>2</sup> [2018] UKSC 48 (<https://www.supremecourt.uk/cases/uksc-2017-0035.html>)

The Regulations also amend the 1992 Scheme and the 2007 Scheme to clarify that where a firefighter has an entitlement to two pensions, the amount of the first pension is up-rated annually (as if subject to the Pension (Increase) Act 1971) from the date that the firefighter ceased to earn the higher rate of pay until retirement.

The Regulations amend the 1992 Scheme and 2007 Scheme in relation to pension sharing on divorce. On divorce from a pension scheme member, under pension sharing provisions, spouses or civil partners of scheme members can be awarded part of their pension as a credit. Amendments have been made to update the out of date statutory reference and ensure that pension credit members (those who have rights under the 1992 Scheme or 2007 Scheme which are attributable, directly or indirectly, to a pension credit under a pension order following divorce or nullity of marriage) continue to commute their benefit as permitted by overarching legislation (trivial commutation lump sum limit in paragraph 7 of Schedule 29 to the Finance Act 2004). On divorce from a pension scheme member, Current provisions of the 1992 Scheme and 2007 Scheme do not take account of changes to the related legislation on pension sharing.

The Regulations also make amendments to update the 2007 Scheme to include special commutation factors (that is, the rates at which pension can be exchanged for a lump sum) up to age 75, instead of age 65.

The Regulations amend the 2015 Scheme to clarify that members of the 1992 Scheme with protected rights transferring to Wales from England, Scotland or Northern Ireland continue to be entitled to remain as members of that Scheme.

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

Certain regulations make retrospective provision – these are set out in regulation 1(3) of this statutory instrument (namely, regulations 3, 4, 5, 7, 8, 11, 12 and 14). The following provisions in the enabling legislation permit regulations made under those provisions to have retrospective effect—

- (a) section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act in relation to orders made under section 26 of the Fire Services Act 1947,
- (b) section 34(3) of the Fire and Rescue Services Act 2004, and
- (c) section 3(3)(b) of the Public Service Pensions Act 2013.

This is to ensure that certain provisions can be applied to pensions already in payment or being accrued.

### 3. Legislative background

The powers of the Welsh Ministers in relation to the 1992 Scheme to make these Regulations are conferred by section 26(1), (2) and (5) of the Fire Services Act 1947; section 12 of the Superannuation Act 1972, as applied by section 16(3) of that Act.

In respect of the 2007 Scheme and the 2007 Compensation Scheme, the powers of the Welsh Ministers to make these Regulations are conferred by section 34(1) to (4) of the Fire and Rescue Services Act 2004.

The powers of the Welsh Ministers in relation to the 2015 Scheme to make these Regulations are conferred by sections 1(1) and (2)(f), 2(1), 3(1) to (3) and 18(5)(a) and (6) of, and Schedules 2 (paragraph 6(b)) and 3 (paragraphs 1 to 4) to, the Public Service Pensions Act 2013.

This instrument is subject to the negative resolution procedure.

### 4. Purpose and intended effect of the legislation

**Regulation 3** makes amendments to the 1992 Order in relation to split pensions. Currently, both the 1992 Scheme and 2007 Scheme allow a “two pension” option if a firefighter has a reduction in pensionable pay when taking up a different role. This enables pension rights before the reduction in pay to be “preserved”. The amendments made by **regulations (a), (c) and (d)**, ensure that a firefighter is not disadvantaged by the provision which allows for two pensions to be awarded, calculated separately, after a significant reduction in pay. This clarifies that two pensions should not be awarded if their total is lower than the single pension. Other minor updates to Rule B5A of the 1992 Scheme are also being made. **Regulation 3(b)** clarifies that where a firefighter has an entitlement to two pensions under the 1992 Order, the amount of the first pension is uprated annually (as if subject to the Pensions (Increase) Act 1971) from the time of the reduction in pay until retirement.

**Regulation 4** amends the 1992 Order to bring the benefits payable to survivors of civil partnerships and same sex marriages into line with the benefits payable to survivors of opposite sex marriages under the 1992 Scheme. In addition, the regulations also remove the provisions that equate opposite sex civil partnerships with same sex marriages or civil partnerships, which is no longer appropriate following the introduction of the Civil Partnership (Opposite-sex Couples) Regulations 2019 (which allow civil partnerships to be formed by opposite sex couples).

**Regulation 5** amends an out of date statutory reference in the 1992 Order in relation to commutation of small pension credits. This ensures that pension credit members can continue to commute their benefit as permitted by the trivial commutation lump sum limit as set out in the Finance Act 2004.

**Regulation 7** amends the 2007 Order in relation to split pensions. The amendment clarifies that where a firefighter has an entitlement to two pensions under the 2007 Scheme, the amount of the first pension is uprated annually (as if subject to the Pensions (Increase) Act 1971) from the date that the firefighter ceased to earn the higher rate of pay until retirement.

**Regulation 8** amends an out of date Statutory Reference in the 2007 Order in relation to commutation of small pension credits. This ensures that pension credit members can continue to commute their benefit as permitted by the trivial commutation lump sum limit as set out in the Finance Act 2004.

**Regulation 9** substitutes the table of commutation factors within Annex ZA of the 2007 Order to include special commutation factors up to age 75 years. The commutation factors as at 31 March 2014 (up to age 65) have been replicated in the substituted table and have not changed.

**Regulation 11** amends the 2007 Compensation Order to bring the benefits payable to survivors of civil partnerships and same sex marriages into line with the benefits payable to survivors of opposite sex marriages under the 2007 Compensation Scheme.

**Regulation 12** amends the 2007 Compensation Order to remove some of the limitations applied to dependent, step and adopted children, as well as to children of unmarried parents. It also amends the heading of rule 3 of the 2007 Compensation Scheme and clarifies a cross-reference in rule 3(5)(a).

**Regulation 14** makes an amendment to the 2015 Regulations to clarify that protected members of the 1992 Scheme transferring to Wales from England, Scotland and Northern Ireland continue to be entitled to remain as members of that Scheme.

## **5. Consultation**

Section 34(5) of the Fire and Rescue Services Act 2004 requires the Welsh Ministers to consult either those who are likely to be affected by them, or the representatives of those persons, before making any amendments.

Section 21(1) of the Public Service Pensions Act 2013 requires the authority responsible for making the regulations to consult either those who are likely to be affected by them, or the representatives of those persons, before making any regulations.

A 12 week consultation ran from 10 July 2020 to 02 October 2020 inviting stakeholder views on the proposed amendments. The consultation was brought to the attention of key stakeholders such as the Fire and Rescue Authorities and



Trade Unions via the Firefighters' Pension Scheme Advisory Board for Wales' meetings.

There were no responses to the consultation exercise. This may be due to the technical nature of the proposed amendments and the fact that the Regulations seek only to confer benefits. Accordingly, there is no summary of the consultation responses to publish. Welsh Government lawyers have concluded that no amendments were necessary to the draft Regulations which were published (in both English and Welsh) alongside the Welsh Government's consultation document.

## **6. Regulatory Impact Assessment (RIA)**

A Regulatory Impact Assessment has been considered, but has not been conducted in this instance as the Regulations will not introduce any additional costs to charities, and the private or third sector.

The changes to scheme rules which implement the Walker and McLaughlin judgments will increase pension benefits for survivors of same-sex relationships, and survivors who are adopted or step-children. We do not know (and have no way of knowing) exactly how many firefighters are in same-sex relationships, or are unmarried or adoptive parents. However, if these numbers are broadly similar to those in the population as a whole, then the impact on Fire and Rescue Authorities (FRAs) is not expected to be significant. Costs will be taken into account in future pension scheme valuations and will be reflected in any required changes to overall scheme benefits, employer and employee contribution rates.

## **SL(5)701 – The Planning Applications (Temporary Modifications and Disapplication) (No. 3) (Wales) (Coronavirus) Order 2020**

### **Background and Purpose**

This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“the 2012 Order”) and the Developments of National Significance (Procedure) (Wales) Order 2016 (“the 2016 Order”). It amends provisions in those Orders to extend the period during which certain requirements are modified or disapplied.

Article 2 amends article 2G(2)(b) of the 2012 Order to extend the emergency period during which the publicity and notice requirements for pre-application consultation are modified. It also extends the emergency period for the purpose of the time which community councils have to make representations on applications notified to them. The emergency period ends on 8 October 2021.

Article 3 amends article 12(6A)(b) of the 2016 Order to extend the period during which hard copies of applications for developments of national significance are not required. That period ends on 8 October 2021.

### **Procedure**

Negative.

### **Technical Scrutiny**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **Merits Scrutiny**

The following point 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 Welsh Government has not undertaken a consultation on these proposals. Paragraph 5.1 of the Welsh Government’s Explanatory Memorandum states as follows:

*5.1 The Welsh Government has not undertaken a consultation on these proposals due to the limited time before the order needed to be made in anticipation of maintaining the temporary arrangements without a break.*



*5.2 The amendment is required immediately to extend mitigation measures put in place to manage the effects of COVID-19 restrictions on travel and the opening of premises on specific parts of the planning system. The amendment will enable planning applications to continue to be submitted by developers, avoiding an increasing backlog of cases, and enabling implementation of consents as COVID-19 restrictions ease.*

*5.3 A public consultation will be published shortly in respect of a long-term solution.*

However, The Welsh Government has laid a detailed Explanatory Memorandum, and a Regulatory Impact Assessment has been prepared in respect of this Order. A public consultation is due to be published shortly, as noted in paragraph 5.3 of the Explanatory Memorandum (see above).

## **Welsh Government response**

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**12 January 2021**



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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1516 (W. 324)**

**TOWN AND COUNTRY  
PLANNING, WALES**

**The Planning Applications  
(Temporary Modifications and  
Disapplication) (No. 3) (Wales)  
(Coronavirus) Order 2020**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“the 2012 Order”) and the Developments of National Significance (Procedure) (Wales) Order 2016 (“the 2016 Order”). It amends provisions in those Orders to extend the period during which certain requirements are modified or disappplied.

Article 2 amends article 2G(2)(b) of the 2012 Order to extend the emergency period during which the publicity and notice requirements for pre-application consultation are modified. It also extends the emergency period for the purpose of the time which community councils have to make representations on applications notified to them. The emergency period ends on 8 October 2021.

Article 3 amends article 12(6A)(b) of the 2016 Order to extend the period during which hard copies of applications for developments of national significance are not required. That period ends on 8 October 2021.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff, CF10 3NQ and is published on the Welsh Government website at [www.gov.wales](http://www.gov.wales).

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1516 (W. 324)**

**TOWN AND COUNTRY  
PLANNING, WALES**

**The Planning Applications  
(Temporary Modifications and  
Disapplication) (No. 3) (Wales)  
(Coronavirus) Order 2020**

*Made* 10 December 2020

*Laid before Senedd Cymru* 14 December 2020

*Coming into force* 9 January 2021

The Welsh Ministers, in exercise of the powers conferred on them by sections 61Z(8) and (9), 62(11), 62R and 333(4B) of the Town and Country Planning Act 1990(1), and in exercise of the powers conferred on the Secretary of State by sections 59, 62(1) and (2), 71(1), (2)(a) and (2A) and 333(7) of that Act(2) now

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- (1) 1990 c. 8. Section 61Z was inserted by section 17(2) of the Planning (Wales) Act 2015 (anaw 4) (“the 2015 Act”). Section 62(11) was inserted by section 17(3) of the 2015 Act (see also section 59(4) of the Town and Country Planning Act 1990 (“the 1990 Act”) (referred to in the next footnote) which provides that a development order in relation to Wales means a development order made by the Welsh Ministers). Section 62R was inserted by section 25 of the 2015 Act. Section 333(4B) was substituted by section 55 of, and paragraph 6(3) of Schedule 7 to, the 2015 Act. There are other amendments which are not relevant to this instrument.
- (2) Section 59(2) was amended by section 1 of, and paragraph 4 of Schedule 1 to, the Growth and Infrastructure Act 2013 (c. 27) and by section 27 of, and paragraph 3 of Schedule 4 to, the 2015 Act. Section 59(4) was inserted by section 55 of, and paragraph 5 of Schedule 7 to, the 2015 Act. For the meaning of “prescribed” see section 71(4). Section 71 was amended by section 16(2) of the Planning and Compensation Act 1991 (c. 34). There are other amendments which are not relevant to this instrument.

exercisable by them<sup>(1)</sup> (as applied in the case of section 62(1) with modifications by the Development of National Significance (Application of Enactments) (Wales) Order 2016<sup>(2)</sup>), make the following Order.

#### **Title and commencement**

**1.**—(1) The title of this Order is the Planning Applications (Temporary Modifications and Disapplication) (No. 3) (Wales) (Coronavirus) Order 2020.

(2) This Order comes into force on 9 January 2021.

#### **Pre-application consultation: making information available**

**2.**—(1) The Town and Country Planning (Development Management Procedure) (Wales) Order 2012<sup>(3)</sup> is amended as follows.

(2) In article 2G(2)(b), for “8 January 2021” substitute “8 October 2021”.

#### **Developments of national significance: making applications**

**3.**—(1) The Developments of National Significance (Procedure) (Wales) Order 2016<sup>(4)</sup> is amended as follows.

(2) In article 12(6A)(b), for “8 January 2021” substitute “8 October 2021”.

*Julie James*

Minister for Housing and Local Government, one of  
the Welsh Ministers  
10 December 2020

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- (1) The functions of the Secretary of State so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry in Schedule 1 for the 1990 Act. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
- (2) S.I. 2016/54 (W. 24).
- (3) S.I. 2012/801 (W. 110), amended by S.I. 2016/59 (W. 29), S.I. 2017/567 (W. 136), S.I. 2020/514 (W. 121) and S.I. 2020/1004 (W. 223); there are other amending instruments but none is relevant.
- (4) S.I. 2016/55 (W. 25), amended by S.I. 2020/514 (W. 121) and S.I. 2020/1004 (W. 223); there are other amending instruments but none are relevant.

**Explanatory Memorandum to the Planning Applications (Temporary Modifications and Disapplication) (No. 3) (Wales) (Coronavirus) Order 2020**

This Explanatory Memorandum has been prepared by the Planning Directorate 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 Planning Applications (Temporary Modifications and Disapplication) (No. 3) (Wales) (Coronavirus) Order 2020. I am satisfied that the benefits justify the likely costs.

Julie James MS  
Minister for Housing and Local Government  
14 December 2020

## **PART 1**

### **1. Description**

- 1.1 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (the “DMPWO”) provides for procedures connected with planning applications, consultations in relation to planning applications, the determination of planning applications, appeals, local development orders, certificates of lawful use or development, the maintenance of registers of planning applications and related matters.
- 1.2 The Developments of National Significance (Procedure) (Wales) Order 2016 (“the DNSPWO”) makes provision for the manner in which applications for planning permission in respect of Developments of National Significance (“DNS”) are to be dealt with by the Welsh Ministers.
- 1.3 The Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 (“the first 2020 Order”) came into force on 19 May 2020 and modifies or disapplies certain requirements in the DMPWO and DNSPWO in relation to the period beginning with the coming into force date of the Order and ending on 18 September. In particular the Order does the following:

#### *The pre-application procedure for major development*

- In relation to pre-application consultation which must be carried out before submitting an application for planning permission for certain development known as major development, the requirement to make copies of documents associated with a proposed planning application available locally for inspection, is replaced with a requirement to make such documents available on a website and in hard copy on request.
- Changes to reflect the above are made to the requisite site notices and letters to owners and occupiers of adjoining land, as well as to notices to community consultees. If hard copies of any documents have been requested, an application must not be submitted before the end of the period of 14 days beginning with the day on which the last document is sent.
- A pre-application consultation report is to include confirmation requirements have been discharged, relating to making information about the proposed application available on a website and to provide hard copies of such information where requested. A statement confirming whether hard copies have been requested is also to be included.

#### *Time for community councils to respond to notifications*

- The period of time which community councils have to respond to planning applications notified to them is extended from 14 to 21 days.



### *Deposit of hard copy DNS applications*

- The current requirement in the DNSPWO to deposit a hard copy of an application for planning permission for a DNS, where an application has been submitted by electronic communication is disapplied.

1.4 The Planning Applications (Temporary Modifications and Disapplication) (No. 2) (Wales) (Coronavirus) Order 2020 (“the second 2020 Order”) extended the period during which the temporary procedures apply to the 8 January 2021.

1.5 The Planning Applications (Temporary Modifications and Disapplication) (No. 3) (Wales) (Coronavirus) Order 2020 extends this period by a further nine months, with the temporary procedures applying to the 8 October 2021

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

2.1 None.

## **3. Legislative background**

3.1 Section 61Z (8) and (9) of the Town and Country Planning Act 1990 (the “1990 Act”) enables the Welsh Ministers to make provision about or in connection with consultation required to be carried out in relation to proposed applications for development specified in a development order. (Major development is specified for these purposes in article 2B(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and major development is defined in article 2 of the same.)

3.2 Section 62(11) enables the Welsh Ministers to make provision by development order about pre-application consultation reports.

3.3 Section 62R enables development orders to make provision about applications for planning permission made to the Welsh Ministers.

3.4 Section 333(4B) of the 1990 Act enables different provision for different purposes, cases and areas.

3.5 The powers conferred on the Secretary of State by sections 59 (power to make development orders), 62(1) and (2) (provision as to applications for planning permission), 71(1), (2)(a), (2A) (consultation on applications for planning permission) and 333(7) (power to vary order) of the 1990 Act were, so far as exercisable in relation to Wales, transferred to and are now vested in the Welsh Ministers by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and the entry in Schedule 1 for the Town and Country Planning Act 1990.

- 3.6 The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
- 3.7 Section 62(1) has been applied with modifications by the Developments of National Significance (Application of Enactments) (Wales) Order 2016.
- 3.8 This Order is being made under the negative resolution procedure.

#### **4. Purpose and intended effect of the provisions**

- 4.1 The COVID-19 emergency remains in effect in the United Kingdom. While workplaces, public buildings, council offices and community centres can now legally open, many remain closed, or subject to limited access.
- 4.2 In addition, whilst most restrictions on travel have been lifted, the imposition of a recent national lockdown and the potential for further lockdowns in the near future in response to increased transmission of COVID-19, will have the effect of re-imposing limitations on movement.
- 4.3 The provisions set out in the first 2020 Order, and extended by the second 2020 Order, therefore remain necessary into 2021 to maintain the efficient operation of the planning system in Wales.
- 4.4 The Planning Applications (Temporary Modifications and Disapplication) (No. 3) (Wales) (Coronavirus) Order 2020 seeks to extend the periods prescribed in the second 2020 Order to 8 October 2021. The scope of the provisions is described in part 1, the purpose for which is as follows:

##### *Requirement to carry out pre-application consultation*

- 4.5 As part of the measures introduced as part of the ongoing response to COVID-19, all non-essential public buildings were closed and non-essential travel is not permitted. As a consequence, it is difficult for developers to comply with article 2C(1)(b) of the DMPWO.
- 4.6 The pre-application consultation procedure must be completed before planning applications for major development can be submitted to Local Planning Authorities.
- 4.7 The aim of the changes to the pre-application procedure provisions described in section 1 above is to enable developers to make information about proposed major development available locally in a practical way while Coronavirus restrictions impede this, so that interested parties have an opportunity to consider and comment if they wish. To maximise inclusivity, the information is available electronically and in hard copy on request.

- 4.8 The completion of this pre-application process will in turn enable developers to proceed to submit applications for planning permission for major development, avoiding an increasing backlog of planning applications waiting to be taken forward. If the applications are subsequently granted, the construction sector can then implement them as soon as the restrictions are eased, lessening the longer term economic and social damage being caused.

*Representations by community councils before determination of applications*

- 4.9 Community councils are the grassroots tier of government in Wales. Community councils have an important role in acting as the local link with communities to improve their understanding of, and participation in, the planning process.
- 4.10 The extension of the period during which they may make representations on applications notified to them is intended to alleviate the difficulties experienced by community councils in undertaking regular scheduled meetings due to control measures introduced as part of the COVID-19 response.

*Removal of the requirement to deposit hard copy of DNS planning application*

- 4.11 Applications for DNS are typically submitted electronically, however, where such an application is made, there is the requirement to deposit a hard copy with the Welsh Ministers and the local planning authority. As a consequence of the ongoing restrictions in response to COVID-19, and the closure of non-essential public buildings, relevant offices are not currently staffed for the purpose of receiving hard copies of applications, and as such, it can be difficult to verify this.
- 4.12 The purpose of the amendment to the DNSPWO is to disapply an aspect of the current procedure with which it is difficult to verify compliance while Covid-related restrictions are in place.

## **5. Consultation**

- 5.1 The Welsh Government has not undertaken a consultation on these proposals due to the limited time before the order needed to be made in anticipation of maintaining the temporary arrangements without a break.
- 5.2 The amendment is required immediately to extend mitigation measures put in place to manage the effects of COVID-19 restrictions on travel and the opening of premises on specific parts of the planning system. The amendment will enable planning applications to continue to be submitted by developers, avoiding an increasing backlog of cases, and enabling implementation of consents as COVID-19 restrictions ease.
- 5.3 A public consultation will be published shortly in respect of a long-term solution.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **1. Pre-application consultation**

#### **Options**

1.1. Three options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.
- Option 2 - Introduce an Amending Order to extend the emergency period specified in Article 2G(2), maintaining the removal of the requirement that developers make information available for inspection at a location in the vicinity of the proposed development until 8 October 2021.
- Option 3 - Introduce an Amending Order to extend the emergency period specified in Article 2G(2), maintaining the removal of the requirement that developers make information available for inspection at a location in the vicinity of the proposed development until 8 May 2021.

#### **Option 1 – Do nothing**

##### **Description**

1.2. The provisions inserted into the DMPWO by the second 2020 Order will lapse on 8 January. Developers would have to fully comply with Article 2C of the DMPWO before they submit a valid planning application for major development. However, as long as buildings normally open to the public remain closed due to COVID-19, developers would find it difficult to fully comply.

##### **Costs**

##### The Welsh Government

1.3. There would be no financial cost to the Welsh Government.

1.4. There would however be a knock-on effect on the delivery of locally and nationally strategic developments as a result of the delay that would inevitably occur as a result of the inability of developers to fully carry out pre-application consultation and then submit a valid application for major development. Major development is development involving any one or more of the following:

- a) the winning and working of minerals or the use of land for mineral-working deposits;
- b) waste development;
- c) the provision of dwellinghouses where—
  - i. the number of dwellinghouses to be provided is 10 or more; or

- ii. the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- e) development carried out on a site having an area of 1 hectare or more;

### Local Planning Authorities

- 1.5. Option 1 would result in few to no applications for major development being submitted to local planning authorities for as long as developers are unable to comply with the procedural requirements of the DMPWO.
- 1.6. The primary source of funding for LPAs is generated from fee income received for determining applications. Our evidence suggests this funding is heavily reliant upon the fees associated with the determination of these types of applications<sup>1</sup>.
- 1.7. A pause in the submission of applications for major development would therefore have detrimental impact upon the funding of local planning authorities.

### Development Industry

- 1.8. The total cost for the developer of undertaking a basic level of pre-application community consultation is estimated to be between £390 and £1,430<sup>2</sup>. Whilst the pausing of the pre-application consultation process would result in these costs being saved, these are likely to be significantly outweighed by the costs incurred as a result of delay. Whilst it is difficult to estimate the exact cost, it is apparent that delayed planning decisions place a financial burden on developers and the Welsh economy.
- 1.9. Delay is likely to lead to a detrimental impact on how the development and management of land in Wales is delivered by the planning system, which is one of the main levers for economic, social and environmental progress. A healthy, functioning development industry is likely to play a significant role in the recovery process once COVID-19 measures are relaxed.

### The Local Community

- 1.10. Pausing the pre-application system would delay the development of a wide-range of large-scale, socially and economically beneficial, developments to the detriment of local communities, particularly those where there is a need for affordable housing or employment.

### **Benefits**

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<sup>1</sup> Changes to planning and related application fees. Welsh Government. December 2019.

<sup>2</sup> EMRIA Planning (Wales) Act 2015 (uprated to current prices using the GDP deflator series')

## The Welsh Government

1.11. There are no recognisable benefits to the Welsh Government.

## Local Authorities

1.12. At the current time, local authority resources are stretched due to the impacts of COVID-19. A reduction in the number of planning applications will enable planning department staff resources to be reassessed and potentially redeployed to other key areas to meet the temporary needs of the local authority.

1.13. However, the redeployment of staff, if not returned as COVID-19 restrictions begin to lift, could impact upon the functioning of the planning service to the detriment of the ability of the planning system being able to function in its role as a key tool, assisting with the recovery process.

## Development Industry

1.14. There are no benefits to the development industry.

## The Local Community

1.15. Under option 1, the pre-application consultation process will likely be paused until public buildings widely reopen so developers can use these facilities to host information relating to the proposed development for inspection by the public.

## **Option 2 - Introduce an Amending Order extending the emergency period until 8 October.**

### **Description**

1.16. Option 2 would result in the provisions originally inserted into the DMPWO by the first 2020 Order being extended until 8 October 2021. The first 2020 Order had the following effect:

- Removes the requirement to make information available for inspection at a location in the vicinity of the proposed development and replaces it with a requirement to make the information available on a website.
- Replaces Schedule 1B, the 'requisite notice', to reflect all information being stored online only. The notice must now also include a contact telephone number for the developer/agent. Upon request, information must be provided in hard copy at the developers cost.

1.17. These changes would be temporary until 8 October 2021, or until such time a further amending Order is made to implement the long term solution that will be subject to public consultation.

## **Costs**

### The Welsh Government

- 1.18. There would be no additional financial cost to the Welsh Government.
- 1.19. All costs associated with the making of the legislation and dissemination of relevant guidance will be met from existing budgets.

### Local Planning Authorities

- 1.20. There would be no additional costs to local planning authorities. Normal pre-COVID-19 business would continue.

### Development Industry

- 1.21. There may be an additional cost to the development industry for the posting a hard copies of information requested by those who do not have internet access. Of all households in Great Britain, 93% had access to the internet in 2019<sup>3</sup> therefore such requests are expected to be minimal.
- 1.22. The cost of producing a printed copy of a major planning application varies on a case by case basis, and depends on the extent of the application and the supporting material required to describe the development. Those who request information may only want to see a particular plan or survey and not the all the information relevant to the application. Nonetheless, the additional costs incurred are insignificant compared to the potential costs incurred through delay.

### The Local Community

- 1.23. There are no financial costs to the local community, normal pre-Covid-19 business would continue.
- 1.24. Mitigation has been put in place to ensure those who do not have internet access can still access the relevant information. A telephone number will be provided on the site notice which those without internet access can contact to request a hard copy of the relevant information. They may also discuss the development with the developer/agent.
- 1.25. There is a risk that, due to people observing social distancing and/or self-isolating, those who are not directly consulted may not see the site notice and therefore may not be aware of the consultation. Whilst the publication of a site notice and direct neighbour notification are the only statutory publicity requirements, developers often go beyond the minimum requirements to ensure their consultation has maximum exposure, such as posting on local social media pages.

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<sup>3</sup> Office for National Statistics. Internet Users, UK 2019.

- 1.26. Developers have been reminded to exploit social media to publicise their consultations to ensure the widest possible reach. Word of mouth will also continue to assist with awareness within communities.
- 1.27. Notwithstanding this, following the submission of a planning application, a formal consultation and publicity process will be undertaken by the local planning authority. This will provide a second opportunity for those with an interest in the development to make representations before a final decision is made to grant or refuse planning permission.

## **Benefits**

### The Welsh Government

- 1.28. The legislative amendment proposed under option 2 would enable the pre-application consultation process to continue.
- 1.29. Prosperity for All<sup>4</sup> acknowledges planning decisions affect every area of a person's life and sends a message of working differently. The strategy states the right planning system is critical to delivering the Welsh Government's objectives. Amending procedures will ensure the smooth functioning of the planning application system, supporting local planning authorities to deliver sustainable development, and supporting businesses by maintaining an effective planning system which provides the means for creating economic opportunities for all.

### Local Planning Authorities

- 1.30. Local planning authorities would continue to receive fee income from applications for major development.
- 1.31. Planning departments would retain staff to ensure they are sufficiently resourced. This will ensure they are in a state of readiness for applications to be submitted post-Covid-19 as part of the economic recovery process.

### Development Industry

- 1.32. The limited evidence which is available suggests that the previous temporary measures have achieved their objective. Pre-application consultation has been taking place over the last six months and developers have been able to submit applications to LPAs. This is expected to continue under this Option, preventing widespread delays in the submission of planning applications and the knock-on impacts for the construction sector.

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<sup>4</sup> Prosperity for All: the national strategy. Taking Wales Forward. The Welsh Government. 2017



1.33. The development industry can maintain business continuity through the continued submission of planning applications. This will contribute towards ensuring people with roles linked to the planning system remain in employment during this national emergency, supporting wealth creation and a vibrant economy.

1.34. Extending the emergency period for nine months (as opposed to four months) provides industry with greater certainty while a permanent solution is developed

### The Local Community

1.35. Under option 2, the local community will benefit directly from the development industry being able to continue – from affordable housing to business building new premises which will create employment, both in the construction industry and to the end user of those facilities. There is no evidence of the local community being disadvantaged by the change in pre-application processes.

### **Option 3 - Introduce an Amending Order extending the emergency period until 8 May (4 month extension).**

#### **Description**

1.36. Option 3 would result in the provisions originally inserted into the DMPWO by the first 2020 Order being extended until 8 May 2021. This would replicate the previous 4 month extension made in September 2020. These changes would be temporary until 8 May 2021.

1.37. Notwithstanding this, there are two areas of risk by only extending the emergency period by 4 months:

- The Welsh Government intends to undertake a public consultation on a long-term solution, removing the need for future amending Orders. Consultation must run for a minimum of 12 weeks. Post consultation, time is required to consider the consultation responses and to draft the necessary legislation. This cannot be undertaken within 4 months. As a result, there would be a break between the temporary measures ending and the permanent solution coming into force. If COVID-19 restrictions remain in place that prevents the widespread opening of public buildings, developers will be unable to undertake pre-application consultation. As a consequence, the submission of planning applications for major development will be paused.
- The 2021 Senedd election takes place on 6 May 2021. Observing the pre-election period and the post-election period when a Government is established, will likely impact upon the ability of the Welsh Government to bring forward an additional extension period should COVID-19 restrictions remain in place post May 2021.

#### **Costs**

### The Welsh Government

1.38. There would be no financial cost to the Welsh Government. However, the costs set out in option 1 may occur if there is a break between the temporary provisions ending and a long-term solution coming into force that prevents the submission of planning applications.

### Local Planning Authorities

1.39. There would be no additional costs to local planning authorities.

1.40. However any break between the temporary provisions ending and a long-term solution coming into force that prevents the submission of planning applications for major development may result in a loss of planning fee income, as set out in option 1.

### Development Industry

1.41. The development industry would continue the pre-application consultation process, the end product of which is the ability to submit planning applications for major development for 4 additional months.

1.42. However any break between the temporary provisions ending and a long-term solution coming into force that prevents the submission of planning applications may delay projects and result in the development industry incurring costs as set out in option 1.

### The Local Community

1.43. There are no financial costs to the local community.

## **Benefits**

### The Welsh Government

1.44. The legislative amendment proposed under option 3 would enable the pre-application consultation process to continue for 4 more months. However, any break between the temporary provisions ending and a long-term solution coming into force will have a detrimental impact upon the operation of the planning system in Wales

1.45. The potential halting of the pre-application consultation process after four months and the subsequent prevention of planning applications for major developments would be expected to have a negative impact on the Welsh economy.

### Local Planning Authorities

1.46. Local planning authorities would continue to receive fee income from applications for major development during the 4 month extension.

#### Development Industry

1.47. The development industry would continue to develop schemes for major development, undertaking pre-application consultation and submitting planning applications for a 4 month period.

#### The Local Community

1.48. There are no notable benefits to the community as a result of option 3.

#### **Summary and Preferred Option**

1.49. Option 1 would once again pause the development industry for major development. This would have economic implications for developers, local planning authorities and the wider economy. The delay could impact upon the readiness of the planning system to assist in the recovery process post-Covid-19.

1.50. Option 2 would ensure the submission of planning applications for major development could continue, preventing delay to the development industry and planning system. It would also allow sufficient time for a long-term solution to be consulted upon and brought into force.

1.51. Option 3 would result in another 4 month extension to the temporary provisions. There would not however be sufficient time to complete the consultation and policy development process to bring forward the long-term solution. This would result in a break between the temporary provisions ending and the long-term solution coming into force. This creates a risk for developers, local planning authorities and the wider economy if COVID-19 restrictions remain in place, preventing the submission of planning applications for major development.

1.52. Option 2 is therefore the preferred option.

## **2. Community Council consultation**

### **Options**

2.1. Three options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.
- Option 2 - Introduce an Amending Order extending the emergency period to the 8 October 2021, maintaining the 21 day period for consultation responses.
- Option 3 - Introduce an Amending Order extending the emergency period to the 8 May 2021 (4 month extension as per the previous extension), maintaining the 21 day period for consultation responses.

### **Option 1 – Do nothing**

#### **Description**

2.2. In respect of the planning application process, upon notifying the local planning authority that they wish to be notified on a particular application, Article 16 of the DMPWO prescribes a statutory period of 14 days (30 days in the case of an EIA application) in which Community Councils must make those representations to the local planning authority. The local planning authority are prevented from determining the application during this period.

2.3. Amendments inserted into the DMPWO by the Planning Applications (Temporary Modifications and Disapplication) (Wales) (Coronavirus) Order 2020 extended this period to 21 days.

2.4. Doing nothing would mean the timescale would revert to 14 days.

#### **Costs**

##### The Welsh Government

2.5. There would be no financial cost to the Welsh Government.

##### Local Planning Authorities

2.6. Whilst there would be no financial cost to Local Planning Authorities, there could be a democratic impact with applications potentially being determined without receiving representations from Community Councils.

2.7. The representation of Community Councils could have impacted upon the determination of planning applications.

##### Community Councils

2.7 Whilst there would be no financial cost to Community Councils, there is a risk that they would be unable to participate in the planning process as a result of being unable to coordinate a remote meeting and provide representations to the Local Planning Authority within the current 14 day timescale.

2.8 This would result in democratic deficit in the decision-making process.

## **Benefits**

### The Welsh Government

2.9 There are no benefits to the Welsh Government.

### Local Planning Authorities

2.10 There are no benefits to Local Planning Authorities.

### Community and Town Councils

2.11 There are no benefits to Community and Town Councils.

## **Option 2 - Introduce an Amending Order extending the emergency period to 8 October, maintaining the 21 day period for consultation responses**

### **Description**

2.12 Option 2 would result in the extended 21 day period during which Community and Town Councils must make representations to Local Planning Authorities following a request be retained until 8 October 2021.

2.13 Maintaining this extended period would provide additional time for a response in light of difficulties experienced by Community Councils in undertaking regular scheduled meetings due to government control measures introduced in as part of the COVID-19.

2.14 This will also enable the Welsh Government to undertake a consultation on a long-term solution and to bring it into force prior to the end of the emergency period.

### **Costs**

#### The Welsh Government

2.15 There would be no additional financial cost to the Welsh Government.

2.16 All costs associated with the making of the legislation and dissemination of relevant guidance will be met from existing budgets.

### Local Planning Authorities

2.17 There would be no financial cost to Local Planning Authorities.

### Community and Town Councils

2.18 There would be no financial cost to Community and Town Councils.

## **Benefits**

### The Welsh Government

2.19 The Welsh Government will have a sufficient period to undertake public consultation and to develop legislation to bring forward a long-term solution. This would come into force upon the expiration of the emergency period.

### Local Planning Authorities

2.20 Maintaining the extended time period for responses by Community Councils at 21 days would bring the timeframe in line with that currently afforded to general members of the public as part of the statutory publicity period.

2.21 A single date on which all consultation responses are expected to be received will assist in the management of the application process.

### Community and Town Councils

2.22 COVID-19 has impacted upon the ability of Community Councils to undertake their regular meetings due to meeting places being closed and members observing social distancing.

2.23 The additional time provides Community Councils will flexibility to arrange remote meetings and provide timely responses to Local Planning Authorities.

## **Option 3 - Introduce an Amending Order extending the emergency period to 8 May, maintaining the 21 day period for consultation responses.**

### **Description**

2.24 Option 3 would result in the extended 21 day period during which Community and Town Councils must make representations to Local Planning Authorities following a request be retained until 8 May 2021, replicating the previous 4 month extension.

2.25 The period for Community Councils to make representations to the local planning authority would revert to 14 days from 9 May 2021.

## **Costs**

### The Welsh Government

2.26 There would be no additional financial cost to the Welsh Government.

2.27 However, there would be an insufficient time to undertake the consultation and policy development required to bring forward a long-term solution prior to the end of the 4 month extension.

### Local Planning Authorities

2.28 There would be no financial cost to Local Planning Authorities.

### Community and Town Councils

2.29 There would be no financial cost to Community and Town Councils. However, if COVID-19 restrictions are in place once the temporary period ends, they may have difficulty providing timely responses to the local planning authority.

## **Benefits**

### The Welsh Government

2.30 There are no benefits to the Welsh Government.

### Local Planning Authorities

2.31 There are no benefits to the local planning authorities.

### Community and Town Councils

2.32 Community Councils would retain the extended period for provided consultation responses for an additional 4 months.

2.33 There would however be a risk associated with reverting to 14 days following the end of the extended period, if COVID-19 restrictions remain in place.

## **Summary and Preferred Option**

2.34 Option 1 would revert the timescale for community and town councils to make representations on planning applications follow a request to be consulted to 14 days. Delays in the ability of Community Councils to host meetings is likely to result in their responses being delayed, potentially being submitted to the local planning authority after they have determined the planning application.

2.35 Option 2 would maintain the extended period during which Community Councils must make representations at 21 days, in line with general public consultation timeframes. The additional time would assist Community Councils to provide

timely responses to planning applications, ensuring maximum democratic involvement in the decision-making process whilst also allowing the Welsh Government sufficient time to bring forward a long-term solution.

2.36 Option 3 would maintain the extended period during which Community Councils must make representations at 21 days until May 2021. However, should COVID-19 restrictions remain in place, reverting to a 14 day consultation period may impact upon the ability of community councils to engage in the application process.

2.37 Option 2 is therefore the preferred option.



### **3. Changes to DNS**

#### **Options**

3.1. Three options have been considered:

- Option 1 - Do nothing i.e. no legislative changes.
- Option 2 – Extend the period during which the requirement to deposit a hard copy of the DNS planning application to both the Welsh Ministers and LPA is disapplied where an application is made electronically, until 8 October 2021.
- Option 3 – Extend the period during which the requirement to deposit a hard copy of the DNS planning application to both the Welsh Ministers and LPA is disapplied where an application is made electronically, until 8 May 2021.

#### **Option 1 – Do nothing**

##### **Description**

3.2. Prior to the provisions inserted into the DNSPWO by the first 2020 Order, where a DNS planning application is made electronically, the DNSPWO contains provision which requires the applicant to deposit a hard copy of the planning application to both the Welsh Ministers and the LPA. The purpose of this is for practical reasons, such as to enable the LPA and for the Welsh Ministers to have a hard copy at hand to analyse the application, which is the preferred format of many officers and appointed persons who will examine the application.

3.3. Doing nothing would mean this requirement would be reinstated, were an application submitted electronically.

##### **Costs**

###### The Welsh Government

3.4. There would be no financial cost to the Welsh Government.

###### Local Planning Authorities

3.5. There would be no financial cost to LPAs.

###### Development Industry

3.6. The cost of producing a printed copy of a DNS planning application varies on a case by case basis, and depends on the extent of the application and the supporting material required to describe the development. An estimate has been drawn of £120, based on the cost of printing 1,000 pages in colour, binding costs and the cost to plot 25 drawings at A1 size. The cost for two

applications, including delivery, is estimated to be £260 on a per application basis.

## **Benefits**

### The Welsh Government

3.7. There are no major benefits to the Welsh Ministers as a copy of the application will have been submitted electronically. The receipt of a hard copy would be a matter of convenience for officials in analysing the application.

### Local Planning Authorities

3.8. There are no major benefits for the LPA as a copy of the application will have been submitted electronically. The receipt of a hard copy would be a matter of convenience for officers in analysing the application. While the hard copy may be made available for inspection, the duty to hold a planning register is generally undertaken and discharged electronically.

### Development Industry

3.9. There are no known benefits to the Development Industry. As the Development Industry would be unable to comply with the requirements of the DNSPWO, there would be the inability to submit a valid application.

**Option 2 – Extend the period during which the requirement to deposit a hard copy of the DNS planning application to both the Welsh Ministers and LPA is disapplied, where an application is made electronically until 8 October 2021.**

## **Description**

3.10. Applications for DNS are typically submitted electronically. During the COVID-19 outbreak, practical issues may arise with the deposit of hard copies as the relevant offices are not currently staffed for the purpose of receiving it, and receipt of it cannot always be verified.

The first 2020 order amended the DNSPWO by temporarily removing the requirement for a hard copy to be submitted to be deposited with the Welsh Ministers and LPA, where the application made electronically, for reasons of practicality. The second 2020 Order extended the temporary period to 8 January 2020 to enable a consultation and policy development to take place to bring forward a long term solution.

## **Costs**

### The Welsh Government

3.11. There would be no additional financial cost to the Welsh Government.

3.12. All costs associated with the making of the legislation will be met from existing budgets.

#### Local Planning Authorities

3.13. There would be no additional financial cost to LPAs. As offices are not currently staffed, there would be no facility to print the application. Officers must analyse all applications electronically.

#### Development Industry

3.14. There would be a cost saving of approximately £260 per application.

### **Benefits**

#### The Welsh Government

3.15. The Welsh Government would have sufficient time to bring forward a long-term solution.

#### Local Planning Authorities

3.16. There are no direct benefits to LPAs.

#### Development Industry

3.17. COVID-19 has impacted upon the ability of the Development Industry to comply with the requirements of the DNSPWO. Maintaining the change at option 2 will enable the Development Industry to continue to submit applications and comply with the relevant requirements.

**Option 3 – Extend the period during which the requirement to deposit a hard copy of the DNS planning application to both the Welsh Ministers and LPA is disapplied, where an application is made electronically until 8 May 2021.**

### **Description**

3.18. This option is as per option 2, but with the temporary extension limited to 4 months.

### **Costs**

#### The Welsh Government

3.19. There would be no additional financial cost to the Welsh Government.

3.20. However, there would be insufficient time to undertake the required consultation and policy development to bring forward the long-term solution upon expiration of the temporary period. There is a risk that, if COVID-19

restrictions are in place, the submission of DNS applications could be disrupted.

#### Local Planning Authorities

3.21. There would be no additional financial cost to LPAs.

#### Development Industry

3.22. The cost savings of approximately £260 per application outlined in option 2 would apply during the temporary period.

3.23. If COVID-19 restrictions remain in place after the temporary period, it may impact upon the submission of applications.

### **Benefits**

#### The Welsh Government

3.24. There are no direct benefits to the Welsh Government.

#### Local Planning Authorities

3.25. There are no direct benefits to LPAs.

#### Development Industry

3.26. There are no direct benefits to the development industry. A short extension, with further COVID-19 restrictions likely in 2021, is likely to give rise to uncertainty if no long-term solution is in place.

### **Summary and Preferred Option**

3.27. Option 1 would revert to the status-quo, however, could result in applications not complying with the relevant requirements and subsequently not being made.

3.28. Option 2, allows for continuity of the amended process, while removing a requirement which prevents applications from effectively being submitted.

3.29. Option 3 would not allow sufficient time for a long-term solution to be brought forward prior to the end of the 4 month extension, causing uncertainty for all stakeholders.

3.30. Option 2 is therefore the preferred option.

#### **4. Competition Assessment**

- 4.1. A competition filter test has been completed. The proposals are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

#### **5. Post implementation review**

- 5.1. To date, the Welsh Government has not received feedback from stakeholders regarding the impact of the temporary measures. Pre-application consultation has however been taking place, and applications for major development are being submitted to the local planning authorities.
- 5.2. Stakeholders will be invited to submit feedback, including the costs associated with complying with the temporary measures, as part of the consultation to be published regarding the long-term solution. This feedback will be part of the evidence base to inform the policy development of the long-term solution.

# Agenda Item 4.4

## **SL(5)716 – The Meat Preparations (Amendment and Transitory Modifications) (Wales) (EU Exit) Regulations 2021**

### **Background and Purpose**

These Regulations are made in exercise of the powers conferred by paragraph 11A(1) of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379).

Because the UK and the EU have mutually become 'third countries' after the end of the transition period, importers and exporters in both directions will need to comply with additional health guarantees in Export Health Certificate (EHC) requirements and other prohibitions and restrictions, set out in EU and retained UK legislation.

The purpose of this instrument is to temporarily suspend the requirement for meat preparations imported into Wales from establishments situated in EEA member States, the Faroe Islands, Greenland or Switzerland to be deep frozen.

This condition if imposed will cause considerable issues to importers of meat from the EU. The Welsh Government view this condition as overly restrictive when Wales currently has harmonisation with the EU on all regulations and standards, have similar biosecurity levels and animal health status, and the same controls for the production and preparation of meat products. If this instrument is not applied, importers would legally be unable to import fresh meat preparations from the EU and other states, which would have negative implications for the food supply chain

This provision is only transitional as, in line with the UK Government's Border Operating Model, the UK will introduce a requirement for imports of animal products from the EU to be accompanied by Export Health Certificates and with the conditions therein. Decisions on those conditions, from April 2021, will be taken within the governance arrangements of the Animal Health and Welfare Common Framework.

### **Procedure**

Negative.

### **Technical Scrutiny**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



## Merits Scrutiny

The following point 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 Senedd**

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 5<sup>th</sup> January 2021.

In particular, we note what the letter says regarding why these regulations breach the 21 day rule:

*“The enabling power for the disapplication of prohibitions and restrictions (P&Rs) on meat preparations only became available after implementation period completion day with the coming into force of the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020. An ‘air gap’ will exist until the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021 are made and come into force.*

*If this instrument does not come into force as soon as possible, this ‘air gap’ would mean that during this interim period imports of chilled meat preparations would be technically illegal into Wales, which would have negative implications for the food supply chain.*

*England and Scotland are making equivalent instruments to remove this import condition. Were we not to have alignment with each other, importers would be faced with a confusing situation. To ensure continued enforceability with the rest of the UK and to minimise the length of the ‘air gap’ it has become necessary not to adhere to the 21 day convention.”*

## Welsh Government response

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**12 January 2021**



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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 1 (W. 1)**

**EXITING THE EUROPEAN  
UNION, WALES**

**FOOD, WALES**

**The Meat Preparations  
(Amendment and Transitory  
Modification) (Wales) (EU Exit)  
Regulations 2021**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by paragraph 11A(1) of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379) (W. 252).

Regulation 2 amends Article 1 of Commission Decision 2000/572/EC of 8 September 2000 laying down the animal and public health and veterinary certification conditions for imports of meat preparations into the Community from third countries in order to clarify that this Decision applies to imports into Wales from third countries as defined in Article 1(2) of that Decision.

Regulation 3 temporarily suspends the requirement for meat preparations imported into Wales from establishments situated in EEA member States, the Faroe Islands, Greenland or Switzerland to be deep frozen.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.



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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 1 (W. 1)**

**EXITING THE EUROPEAN  
UNION, WALES**

**FOOD, WALES**

**The Meat Preparations  
(Amendment and Transitory  
Modification) (Wales) (EU Exit)  
Regulations 2021**

*Made* 4 January 2021

*Laid before Senedd Cymru* 5 January 2021

*Coming into force* 6 January 2021

The Welsh Ministers, in exercise of the powers conferred by paragraph 11A(1) of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011<sup>(1)</sup>, make the following Regulations.

**Title, application and commencement**

**1.**—(1) The title of these Regulations is the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021.

(2) These Regulations apply in relation to Wales and come into force on 6 January 2021.

**Amendment to Commission Decision 2000/572/EC**

**2.** In Article 1(1) of Commission Decision 2000/572/EC of 8 September 2000 laying down the animal and public health and veterinary certification conditions for imports of meat preparations into the

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(1) S.I. 2011/2379 (W. 252). Paragraph 11A of Schedule 2 is inserted by regulation 2(2) of the Official Controls (Animals, Feed and Food, Plant Health etc.) (Wales) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1639) (W. 344).

Community from third countries<sup>(1)</sup> (‘the Commission Decision’), after “meat preparations” insert “from third countries”.

**Transitory modification of Commission Decision 2000/572/EC**

3.—(1) Paragraph (2) of this regulation has effect during the period beginning with the day on which these Regulations come into force and ending at midnight on 31 March 2021.

(2) Article 3 of the Commission Decision applies as if—

(a) in paragraph 3, before “they”, there were inserted “other than in relation to imports of meat preparations originating from, or produced in, an establishment situated in a territory subject to special transitional import arrangements,”;

(b) at the end, there were inserted—

“4. In this Article, “territory subject to special transitional import arrangements” has the same meaning as in point (a) of the definition of “territory subject to special transitional import arrangements” in paragraph 2 of Annex 6 to Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>(2)</sup>.”.

*Lesley Griffiths*

Minister for Environment, Energy and Rural Affairs,  
one of the Welsh Ministers  
4 January 2021

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(1) EUDN 2000/572/EC is amended by regulation 40 of the Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1462). Article 1(1) is renumbered as such, and the definition of ‘third country’ is inserted by regulation 40(2) of those Regulations.

(2) Annex 6 Regulation (EU) 2017/625 is inserted by regulation 29(4) of the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1481).

## **Explanatory Memorandum to The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021.**

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of the Welsh Government 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 Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021.

Lesley Griffiths MS

**Minister for Environment, Energy and Rural Affairs**

5 January 2021

# Part 1

## 1. Description

The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021 (the “instrument”) will make amendments to retained EU law, which apply in relation to Wales and the Welsh zone, in relation to the trade in animals and related products.

This instrument will come into force on 6 January 2021.

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

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 11A(1) of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379) (W. 252). Paragraph 11A of Schedule 2 is inserted by the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020. These Regulations, and therefore the amendment to the Trade in Animals and Related Products (Wales) Regulations 2011, came into force on implementation period completion day.

### Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations will come into force less than 21 days after the instrument has been laid.

Without this legislation, it would be illegal for traders to import chilled meat preparations from the EU. Businesses have indicated they are not comfortable trading in a legally non-compliant way, meaning supermarkets would not place orders containing illegal items such as sausages, meatballs and other meat preparations. This would have financial consequences for businesses and adversely affect food supply by limiting product availability.

This SI will support businesses ability to prepare for life outside of the single market and immediately mitigate against food supply issues by allowing those food products affected by these prohibitions and restrictions (P&Rs) to be imported for a limited time.

The enabling power for this disapplication of the P&Rs on meat preparations only became available after implementation period completion day, since that enabling power only came into force with the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020. In combination, these reasons meant that an ‘air gap’ in this legislation implementing the policy intent was inevitable.

An 'air gap' would mean that until this SI came into force, imports of chilled meat preparations from the EU into Wales after implementation period completion day would be technically illegal. England and Scotland are making equivalent instruments to remove this import condition. Whilst a temporary 'air gap' is a manageable situation operationally, it should be as short as possible. Were we not to have alignment with each other importers would be faced with a confusing situation. To ensure continued enforceability with the rest of the UK and to minimise the length of the 'air gap' it has become necessary not to adhere to the 21 day convention.

We currently trade in products affected by P&Rs and do not have public or animal health concerns over these products. However, the UK and EU SPS regime will no longer be automatically aligned. Therefore, potential future divergence means it may not be appropriate to have long-term disapplication of P&Rs from the EU without appropriate policy development and governance through the Animal Health and Welfare Common UK Framework.

### **3. Legislative background**

Because the UK and the EU will mutually become 'third countries' once we end the transition period, importers and exporters in both directions will need to comply with additional health guarantees in Export Health Certificate (EHC) requirements and other P&Rs, set out in EU and retained UK legislation.

There are existing P&Rs required for Intra-community trade between Member States (such as live animals, for example), but the new 'third country status' will bring on a myriad of new P&Rs for the UK's trade with the EU. For imports from the EU and EFTA states, these P&Rs have been largely removed, but our exports to the EU will surely face them. These new requirements will require changes in the supply chain, which the industry will need to accommodate

The majority of P&Rs are written and defined in the EHCs that are attached as annexes to EU legislation. In preparation for our departure from the EU, to disapply these P&Rs on imports to the UK, these EHCs were removed from our retained EU legislation: however, some P&Rs remain written in the main body of our retained EU legislation.

From 1 January 2021, imports of meat preparations must comply with the specific animal and public health guarantees as laid out in domestic legislation and retained EU legislation. Commission Decision 2000/572/EC specifically states that meat preparations imported from third countries must "*have been frozen at an internal temperature of not more than – 18 °C at the production plant or plants of origin*"

#### **4. Purpose and intended effect of the legislation**

This purpose of this instrument is to temporarily suspend the requirement for meat preparations imported into Wales from establishments situated in EEA member States, the Faroe Islands, Greenland or Switzerland to be deep frozen

This condition if imposed will cause considerable issues to importers of meat from the EU. The condition can be seen as overly restrictive when we consider that we currently have harmonisation with the EU on all regulations and standards, have similar biosecurity levels and animal health status, and the same controls for the production and preparation of meat products. If this instrument is not applied, importers would legally be unable to import fresh meat preparations from the EU and other states, which would have negative implications for the food supply chain

This provision is meant to be transitional as, in line with the UK Government's Border Operating Model, the UK will introduce a requirement for imports of animal products from the EU to be accompanied by Export Health Certificates and with the conditions therein. Decisions on those conditions, from April 2021, will be taken within the governance arrangements of the Animal Health and Welfare Common Framework.

#### **What the instrument does**

Part 2 of the instrument makes amendments to Commission Decision 2000/572/EC laying down the animal and public health and veterinary certification conditions for imports of meat preparations into the Community from third countries.

Part 3 of the instrument makes transitional modifications to Commission Decision 2000/572/EC.

#### **5. Consultation**

No public consultation was undertaken. The purpose of the 2021 Regulations is to enable the continued import of fresh meat preparations from the EU and other states.

#### **6. Regulatory Impact Assessment (RIA)**

No impact assessment has been produced in relation to this instrument. It retains the position prior to transition from the European Union and so no impact is foreseen on the private, voluntary or public sectors.



Ein cyf/Our ref: MA-LG-4511-20

Elin Jones, AS/MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
CARDIFF  
CF99 1SN

5 January 2021

Dear Llywydd,

### **The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021**

In accordance with section 11A(4) of the Statutory Instruments Act 1946 I am notifying you that this statutory instrument comes into force on 6 January, less than 21 days from the date of laying. The Explanatory Memorandum for these Regulations is attached for your information.

The purpose of this instrument is to temporarily suspend the requirement for meat preparations imported into Wales from establishments situated in EEA member States, the Faroe Islands, Greenland or Switzerland, to be deep frozen.

The enabling power for the disapplication of prohibitions and restrictions (P&Rs) on meat preparations only became available after implementation period completion day with the coming into force of the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020. An 'air gap' will exist until the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021 are made and come into force.

If this instrument does not come into force as soon as possible, this 'air gap' would mean that during this interim period imports of chilled meat preparations would be technically illegal into Wales, which would have negative implications for the food supply chain.

England and Scotland are making equivalent instruments to remove this import condition. Were we not to have alignment with each other, importers would be faced with a confusing

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CF99 1SN

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@lyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@lyw.cymru)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

situation. To ensure continued enforceability with the rest of the UK and to minimise the length of the 'air gap' it has become necessary not to adhere to the 21 day convention.

Given that the objective of the SI is to retain the current freedom of importing chilled meat preparations, it was considered there is no need to carry out a consultation or a Regulatory Impact Assessment. However, an Explanatory Memorandum has been prepared and is attached for your information. This has been laid, together with the Regulations, in Table Office.

A copy of this letter goes to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style.

**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd



# Agenda Item 4.5

## **SL(5)714 – The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020**

### **Background and Purpose**

These Regulations are made in exercise of the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make operability amendments relating to official controls to the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379) and the Official Controls (Animals, Feed and Food, Plant Health Fees etc) (Wales) Regulations 2020 (S.I. 2020/44).

In particular, the amendments made by these Regulations ensure that the bodies responsible for enforcing the requirements of the Official Control Regulations in Wales will continue to have the enforcement powers, such as power of inspection that they require, post the implementation period date.

### **Procedure**

Made affirmative.

### **Technical Scrutiny**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **Merits Scrutiny**

The following points are 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 Senedd.**

The Committee notes the explanation provided by the Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs in a letter to the Llywydd dated 23 December 2020 concerning the use of the made affirmative procedure for these Regulations (which would ordinarily be subject to the negative procedure) given time constraints and the need for the legislation to come into force on implementation period completion day.

In particular, we note the following paragraph of the letter:



*“This instrument will come into force under the urgent made affirmative procedure before it will be laid before the Senedd. This is necessary because the amendments made by the Regulations have been the result of delayed discussions with UK administrations and late alterations to equivalent English Regulations. The amendments in the Regulations include a new regulation making power which will need to be exercised early in the New Year in order to dis-apply certain conditions on imports from the EU into Wales. As a result of this delay, the Regulations, which would ordinarily be subject to the negative procedure, have to proceed under the ‘urgent made affirmative’ procedure on the basis that there is neither sufficient time to satisfy the sifting conditions set out the Withdrawal Act, nor lay the Regulations voluntarily in accordance with the ‘draft affirmative’ procedure.”*

*In accordance with the procedure set out in paragraph 7 of Schedule 7 to the European Union (Withdrawal) Act 2018, this instrument must be approved by the Senedd by 7 February in order for it to remain in effect.”*

**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 Senedd.**

We note that only the English language version Explanatory Memorandum was laid with these Regulations.

## Welsh Government response

A Welsh Government response is not required.

### Legal Advisers

Legislation, Justice and Constitution Committee

4 January 2021



*Regulations made by the Welsh Ministers, laid before Senedd Cymru under paragraph 7(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of Senedd Cymru within 28 days beginning on the day on which the Regulations were made, subject to extension for periods of dissolution, or recess for more than four days.*

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1639 (W. 344)**

**EXITING THE EUROPEAN  
UNION, WALES**

**AGRICULTURE, WALES**

**ANIMALS, WALES**

**PLANT HEALTH, WALES**

The Official Controls (Animals,  
Feed and Food, Plant Health Fees  
etc.) (Wales) (Amendment) (EU  
Exit) Regulations 2020

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make operability amendments relating to official controls to the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379 (W. 252)) and the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020 (S.I. 2020/44 (W. 5)).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was

considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

*Regulations made by the Welsh Ministers, laid before Senedd Cymru under paragraph 7(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of Senedd Cymru within 28 days beginning on the day on which the Regulations were made, subject to extension for periods of dissolution, or recess for more than four days.*

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2020 No. 1639 (W. 344)**

**EXITING THE EUROPEAN  
UNION, WALES**

**AGRICULTURE, WALES**

**ANIMALS, WALES**

**PLANT HEALTH, WALES**

The Official Controls (Animals,  
Feed and Food, Plant Health Fees  
etc.) (Wales) (Amendment) (EU  
Exit) Regulations 2020

*Made* 22 December 2020

*Laid before Senedd Cymru* 29 December 2020

*Coming into force in accordance with  
regulation 1(2)*

The Welsh Ministers, in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018<sup>(1)</sup>, make the following Regulations.

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<sup>(1)</sup> 2018 c. 16. Paragraph 21 of Schedule 7 was amended by paragraph 53 of Part 2 of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020 (c. 1).

The Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft of the instrument being laid before, and approved by resolution of, Senedd Cymru.

## PART 1

### Introductory

#### **Title and commencement**

**1.**—(1) The title of these Regulations is the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020.

(2) These Regulations come into force on implementation period completion day.

## PART 2

### Amendment of subordinate legislation

#### **The Trade in Animals and Related Products (Wales) Regulations 2011**

**2.**—(1) The Trade in Animals and Related Products (Wales) Regulations 2011<sup>(1)</sup> are amended as follows.

(2) In Schedule 2, after paragraph 11 insert—

#### **“Special Import Conditions**

**11A.**—(1) The Welsh Ministers may by regulations impose special import conditions in respect of imports from third countries of products of animal origin intended for human consumption, having regard to the animal health situation of the third country or countries concerned and may for that purpose amend, modify or revoke any retained direct minor EU legislation made under Article 8(4) of Council Directive 2002/99/EC<sup>(2)</sup>.

(2) The power to make regulations under this paragraph—

- (a) is exercisable by statutory instrument;
- (b) includes power to make different provision for different purposes; and
- (c) includes power to make such incidental, supplemental,

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(1) S.I. 2011/2379 (W. 252), to which there are amendments not relevant to these Regulations.

(2) OJ No. L 18, 23.1.2003, p. 11 as last amended by Council Directive 2013/20/EU (OJ No. L 158, 10.6.2013, p. 234).

consequential, transitory, transitional or saving provision as the Welsh Ministers consider appropriate.

(3) A statutory instrument containing regulations made under this paragraph is subject to annulment in pursuance of a resolution of Senedd Cymru.”

**The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020**

3.—(1) The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020(1) are amended as follows.

(2) In regulation 2(1)—

(a) for the definition of “the EU Official Controls Regulations” substitute—

““the Official Controls Regulations” (“*y Rheoliadau Rheolaethau Swyddogol*”) means the EU Regulation and the Implementing Regulations, Delegated Regulations and statutory instruments made under it;”;

(b) in the definition of “enforcement officer” omit “EU”;

(c) in the definition of “relevant legislation”, for “European” substitute “retained direct EU legislation”.

(3) In regulation 4, omit “in the United Kingdom and other member States”.

(4) In regulations 4, 5(1), 9(3), 11(1), 12(1) and 13, in each place where it occurs, for “EU Official Controls Regulations” substitute “Official Controls Regulations”.

(5) In regulation 9—

(a) in paragraph (1)—

(i) omit “of another member State”;

(ii) in sub-paragraph (a), for “a competent authority of another country” substitute “another competent authority”;

(b) omit paragraph (2).

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(1) S.I. 2020/44 (W. 5).

*Lesley Griffiths*  
Minister for Environment, Energy and Rural Affairs,  
one of the Welsh Ministers  
22 December 2020



**The Official Controls (Animals, Feed and Food, Plant Health Fees etc.)  
(Wales) (Amendment) (EU Exit) Regulations 2020**

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer and is laid before the Senedd 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 Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum

**Lesley Griffiths MS**  
**Minister for Environment, Energy, Planning and Rural Affairs**

**29 December 2020**

## **1. Description**

### **The Official Controls (Animals, Feed and Food, Plant Health Fees etc) (Wales) Regulations 2020**

These regulations make EU Exit operability corrections to The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020. They form part of a wider legislative programme to amend domestic legislation derived from European Union (EU) law under the European Union Withdrawal Action 2018. The purpose of this programme is to ensure the efficient and effective operability of the statute book following the UK's withdrawal from the EU.

### **Trade in Animals and Related Products (Wales) Regulations 2011**

An amendment is also being made to The Trade in Animals and Related Products (Wales) Regulations 2011. These Regulations establish a system for trade in live animals, genetic material and products of animal origin.

These regulations are being made at the same time as two UK Official Controls Regulations. These both make amendments to Regulation 625/2017, amend and revoke EU tertiary legislation and make amendments to UK subordinate legislation.

### **The Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020**

Part 2 of these Regulations make amendments to Regulation (EU) 2017/625 and Part 3 amends EU tertiary legislation. These EU tertiary instruments concern official controls to be carried out on entry of animals and goods into Great Britain, from countries outside the British Islands. They also cover requirements relating to transit of animals and good through Great Britain. They provide for various functions of the European Commission, including making instruments of a legislative character, to be exercisable instead by the "appropriate authority" and for other functions to be exercised by the "competent authority". Both of these terms are defined in Article 3 of Regulation (EU) 2017/625.

### **The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020**

These Regulations make amendments to and revocations of legislation in the field of official controls and other official activities performed by the authorities to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. Part 2 amends UK subordinate legislation, Part 3 amends retained direct EU legislation and Part 4 revokes retained direct EU legislation.

Part 5 makes a general transitional provision relating to the presentation or other use of model certificates on or after IP completion day in connection with the importation into, or movement through or from, Great Britain, of goods, or the inspection and placing on the market of goods in Great Britain, or the slaughter of animals in Great Britain. It also provides transitional arrangements for model certificates for animals and related products, including products of animal origin.

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

The SI is being laid under the “Made Affirmative” procedure due to the need for it to come into force on implementation period completion day and the Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

The amendments in the Regulations include a new regulation making power which will need to be exercised early in the New Year in order to dis-apply certain conditions on imports from the EU into Wales. The Regulations, which would ordinarily be subject to the negative procedure, have to proceed under the ‘urgent made affirmative’ procedure on the basis that there is neither sufficient time to satisfy the sifting conditions set out the Withdrawal Act, nor lay the Regulations voluntarily in accordance with the ‘draft affirmative’ procedure.

## **3. Legislative background**

This instrument is made in exercise of the powers conferred upon the Welsh Ministers by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

## **4. Purpose & intended effect of the legislation**

EU Regulation 2017/625 governs official controls and other official activities perform to ensure the application of food and feed law, rules on animal health and welfare, plant health. The controls are enforced in Wales by The

Official Controls (Animals, Feed and Food, Plant Health Fees, etc.) Regulations (Wales) Regulations 2020.

## **5. Why is it being changed?**

### The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020

OCR covers a complex legislative landscape, where reserved and devolved functions are closely interlinked in practice. The amendments propose to correct deficiencies in Welsh SIs, which arise as a result of the UK withdrawal from the EU. These amendments are necessary to ensure the legislation remains operable post withdrawal. The amendments are technical or minor in nature and make no policy changes. The amendments do not impact on the devolution settlement.

### The Trade in Animals and Related Products (Wales) Regulations 2011

It is necessary to temporarily dis-apply the prohibitions and restrictions (P&R) on certain meat preparations imported from the EU from 1 January 2021. As currently legislated and retained, the geographical proximity and the harmonisation of food safety and animal health legislation between the UK and EU Member States means the P&R requirement that imported meat preparations be frozen is disproportionate to the Sanitary and Phytosanitary (SPS) risk.

The power to change this requirement has been included as an amendment to Schedule 2 of the Trade in Animals and Related Products (Wales) Regulations 2011. The provision transfers the power of the European Commission to establish special import conditions in Article 8(4) of Council Directive 2002/99/EC to the Welsh Ministers. Following discussions with UK administrations we considered this the most appropriate place to insert the power and to ensure a joined up approach across the UK. The imports regime should be consistent across GB to avoid trade distortions.

In addition, various P&Rs for imports to GB have been already removed through corrections in The Import of and Trade in Animals and Animals Products (Miscellaneous amendments) (EU Exit) Regulations 2020. The intention is that this will be a temporary fix to disapply P&Rs in line with the UK Government's Border Operating Model. When certificates are required for those items in April, the P&R may be re-applied and retained in the new certificates once industry has had time to adapt. Such decision will follow the governance of the Animal Health and Welfare Framework.

## **6. What will it now do?**

The instrument will ensure that official controls and other official activities on food and feed law, rules on animal health and welfare, plant health and plant protection products will continue to operate effectively in the UK after we leave the EU.

Policy objectives of this subordinate legislation are to ensure that the bodies responsible for enforcing the requirements of the Official Control Regulation in Wales will continue to have the enforcement powers, such as power of inspection that they require, post the implementation period date.

## **7. Consultation**

As there is no policy change, no public consultation was undertaken. The purpose of this instrument is solely to enable the current domestic legislative and policy framework to remain unchanged by the withdrawal of the UK from the EU.

## **8. Regulatory Impact Assessment (RIA)**

No discrete RIA has been conducted for these EU Exit corrections to existing domestic legislation. This was covered when the original regulations were made in January 2020, and the changes proposed will have no additional impacts.

# Annex 1

## Statements under the European Union (Withdrawal) Act 2018

### Part 1

#### Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7  <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI  Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4)	Applies to Ministers of	A statement to explain what, if

	and (5) of paragraph 28, Schedule 7	the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.  A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.  Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	A statement to explain why it is appropriate to create such a sub-delegated power.

Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.
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## Part 2

### Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

#### 1. Sifting statement(s)

Not Applicable

#### 2. Appropriateness statement

The Minister for Environment, Energy, Planning and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

*“In my view the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations (Wales) (Amendment) (EU Exit) Regulations 2020, do no more than is appropriate”.* This is the case because they are limited to make previous Welsh legislation operable, post implementation date.

#### 3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

*“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.*

#### 4. Equalities

The Minister for Environment, Energy, Planning and Rural Affairs, Lesley Griffiths, has made the following statement(s): *“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.*

The Minister for Environment, Energy, Planning and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

*“In relation to the draft instrument, I, Minister for Environment, Energy, Planning and Rural Affairs, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.*

#### 5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

## **5. Criminal offences**

Not applicable/required

## **6. Legislative sub-delegation**

Not applicable/required.

## **7. Urgency**

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view by reason of urgency, it is necessary to make The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020, without a draft of this instrument containing the Regulations being laid before, and approved by a resolution of Senedd Cymru.

This is because the Welsh Ministers have concluded that the ‘made affirmative’ procedure provided for in the European Union (Withdrawal) Act 2018 is needed to ensure that this instrument is in place on implementation period completion day.”

It is important to have this instrument in place on implementation period completion day so as to provide confidence and certainty to the public and business and to ensure the effective functioning of the statute book after exit.

Using this procedure still allows for scrutiny and Senedd Cymru will need to approve its making for it to remain in force.



Ein cyf/Our ref MA/LG/3910/20

Elin Jones MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

[llywydd@senedd.cymru](mailto:llywydd@senedd.cymru)

23 December 2020

Dear Elin,

**The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020**

I have today made The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020 in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Regulations will come into force on implementation period completion day. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

This instrument will come into force under the urgent made affirmative procedure before it will be laid before the Senedd. This is necessary because the amendments made by the Regulations have been the result of delayed discussions with UK administrations and late alterations to equivalent English Regulations. The amendments in the Regulations include a new regulation making power which will need to be exercised early in the New Year in order to dis-apply certain conditions on imports from the EU into Wales. As a result of this delay, the Regulations, which would ordinarily be subject to the negative procedure, have to proceed under the 'urgent made affirmative' procedure on the basis that there is neither sufficient time to satisfy the sifting conditions set out the Withdrawal Act, nor lay the Regulations voluntarily in accordance with the 'draft affirmative' procedure.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

In accordance with the procedure set out in paragraph 7 of Schedule 7 to the European Union (Withdrawal) Act 2018, this instrument must be approved by the Senedd by 7 February in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 26 January 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end.

**Lesley Griffiths AS/MS**

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

# Agenda Item 4.6

## SL(5)718 – The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021

### Background and Purpose

These Regulations are made by the Welsh Ministers under sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984.

These Regulations re-enact the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 which expire on 11 January 2021.

These Regulations come into force on 11 January 2021 and expire at the end of the day on 31 March 2021. Regulation 3 provides that the Regulations must be reviewed regularly to ensure the restrictions and requirements imposed remain proportionate.

These Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction.

The specified circumstances are where the court is satisfied that: the claim is against trespassers who are persons unknown; or where it was made wholly or partly on the grounds of domestic violence, serious offences, anti-social behaviour, or nuisance; or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance and the possession order was made wholly or partly on the grounds of the death of the occupant.

In a statement on 8<sup>th</sup> January 2021, the Minister for Housing and Local Government said:

*“The purpose of the Regulations is to contribute to the public health response to coronavirus by preventing the enforcement of evictions except in the most serious circumstances. The impact of evictions and homelessness on the incidence and spread of Covid 19 remains of great concern. Homelessness places people in situations where they are at much greater risk of both contracting the virus and transmitting it to others. The current Alert Level 4 restrictions may make it more difficult for those facing eviction to access services, including advice and support services as organisations may be closed or running at a reduced capacity. Securing alternative accommodation which is already more limited during the winter period, may also present increased practical difficulties. In a situation where there is widespread and increasing community transmission of the virus, and with the pressures placed on public services generally, the likelihood that evictions will result in homelessness remains raised.*”

*The Regulations will be subject to a review cycle during the period that they are in force to ensure the restrictions and requirements remain proportionate. The first review must take place in the period between the Regulations coming into force and the 28 January*



*2021 in order to align with the review timings in the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020. They must then be reviewed at least once in each subsequent three weekly period."*

## Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 3 February 2021 in order for it to remain in effect.

## Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

The following points are 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 or public policy likely to be of interest to the Senedd.**

These Regulations engage a landlord's rights under Article 1 Protocol 1 of the European Convention on Human Rights ("A1P1"). The Committee note that exceptions are included in the Regulations that allow for evictions in certain circumstances, that the regulations are made only for a specified period, that they are to be reviewed on a regular 3-week cycle and are made in the context of the current health emergency.

The committee further note the reasons given for this legislation in the Explanatory Memorandum.

*"The purpose of the Regulations is to provide a public health response to the increasing incidence and transmission of the Covid-19 virus by preventing the enforcement of evictions in Wales except in the most serious circumstances. The Regulations come into force on 11 January 2021 and expire on 31 March. The continuing need for, and proportionality of, the regulations must be reviewed every 3 weeks. These 3 weekly reviews are aligned with the review periods for the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020, as the relevant Alert Level will be a key consideration in determining whether these measures remain proportionate. "*

### **2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.**



We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

*“Given the public health emergency, it has not been possible to conduct a consultation on these Regulations and there is no statutory requirement to do so. However, the Welsh Government has strong relationships with stakeholders from across the housing sector; bodies representing landlords have been informally engaged on these Regulations.”*

**3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.**

The Committee note that no regulatory impact assessment has been prepared for these Regulations and the Explanatory Memorandum states:

*“The COVID-19 emergency and the urgency of making these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment.”*

The Committee notes that paragraph 6 of the Explanatory Memorandum attempts to set out a summary of the potential impact of these Regulations which does provide some qualitative assessment of their impact.

**4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.**

These Regulations extend the period of time by approximately 10 weeks by which a landlord will be prevented from seeking possession of their property for unpaid rent. In combination with previous Regulations, landlords will have been prevented from recovering possession due to unpaid rent for a significant period of time. The arrears of rent for some landlords may have a significant economic impact. Have the Government given any consideration as to what financial support it may give landlords that find themselves in financial difficulty because of the extension of restrictions imposed by these regulations.

## Welsh Government response

A Welsh Government response is required for merits point 4.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**12 January 2021**



*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 12 (W. 5)**

**PUBLIC HEALTH, WALES**

**The Public Health (Protection from  
Eviction) (Wales) (Coronavirus)  
Regulations 2021**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 45C of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers as “the appropriate Minister”, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations re-enact the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 which expire on 11 January 2021.

These Regulations come into force on 11 January 2021 and expire at the end of the day on 31 March 2021. Regulation 3 provides that the Regulations must be reviewed regularly to ensure the restrictions and requirements imposed remain proportionate.

These Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction.



The specified circumstances are where the court is satisfied that: the claim is against trespassers who are persons unknown; or where it was made wholly or partly on the grounds of domestic violence, serious offences, anti-social behaviour, or nuisance; or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance and the possession order was made wholly or partly on the grounds of the death of the occupant.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 12 (W. 5)**

**PUBLIC HEALTH, WALES**

**The Public Health (Protection from  
Eviction) (Wales) (Coronavirus)  
Regulations 2021**

*Made* 6 January 2021

*Laid before Senedd Cymru* 8 January 2021

*Coming into force* 11 January 2021

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984(1).

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

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(1) 1984 c. 22. Sections 45C and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14) (“the 2008 Act”). The functions under these sections are conferred on “the appropriate Minister”. Under section 45T(6) of the Public Health (Control of Disease) Act 1984 “the appropriate Minister” as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act<sup>(1)</sup>, the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

**Title, commencement, application and interpretation**

**1.**—(1) The title of these Regulations is the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021.

(2) These Regulations come into force on 11 January 2021.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations, “dwelling-house” has the same meaning as in the Housing Act 1985<sup>(2)</sup>, the Housing Act 1988<sup>(3)</sup> or the Rent Act 1977<sup>(4)</sup>, as the case may be.

**Residential tenancies (protection from eviction)**

**2.**—(1) Subject to paragraphs (2) and (3), no person may attend at a dwelling-house for the purpose of—

- (a) executing a writ or warrant of possession,
- (b) executing a writ or warrant of restitution, or
- (c) delivering a notice of eviction.

(2) Paragraph (1) does not apply where the court is satisfied that the writ, warrant or notice relates to an order for possession made—

- (a) against trespassers pursuant to a claim to which rule 55.6 (service of claims against trespassers) of the Civil Procedure Rules 1998<sup>(5)</sup> applies,
- (b) wholly or partly under section 84A (absolute ground for possession for anti-social behaviour) of the Housing Act 1985<sup>(6)</sup>,

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(1) Section 45R was inserted by section 129 of the 2008 Act.

(2) 1985 c. 68.

(3) 1988 c. 50.

(4) 1977 c. 42.

(5) S.I. 1998/3132 (L. 17). Rule 55.6 was inserted by Schedule 1 to S.I. 2001/256 (L. 7).

(6) Section 84A was inserted by section 94(1) of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) (“the 2014 Act”) and was amended by paragraph 84 of Schedule 24 of the Sentencing Act 2020 (c. 17) (“the 2020 Act”).

- (c) wholly or partly on Ground 2 or Ground 2A in Schedule 2 (grounds for possession of dwelling-houses let under secure tenancies) to the Housing Act 1985(1),
- (d) wholly or partly on Ground 7A, Ground 14 or Ground 14A in Schedule 2 (grounds for possession of dwelling-houses let on assured tenancies) to the Housing Act 1988(2),
- (e) wholly or partly on Ground 7 (ground for possession where tenant dies and no right of succession) in Schedule 2 to the Housing Act 1988(3), or
- (f) wholly or partly under Case 2 of Schedule 15 (ground for possession of dwelling-houses let on or subject to protected or statutory tenancies) to the Rent Act 1977.

(3) Where paragraph (2)(e) applies, the person attending at the dwelling-house must take reasonable steps to satisfy themselves that the dwelling-house is unoccupied before carrying out those matters set out in paragraph (1)(a), (b) or (c).

### **Review and expiry**

3.—(1) The Welsh Ministers must review the need for the restrictions and requirements imposed by these Regulations, and whether those restrictions are proportionate to what the Welsh Ministers seek to achieve by them—

- (a) at least once in the period from 11 January 2021 to 28 January 2021;
- (b) at least once in each subsequent period of 21 days.

(2) These Regulations expire at the end of the day on 31 March 2021.

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(1) Ground 2 was substituted by section 144 of the Housing Act 1996 (c. 52) (“the 1996 Act”) and amended by paragraph 45 of Schedule 7 to the Serious Organised Crime and Police Act 2005 (c. 15) (“the 2005 Act”) and section 98(1) of the 2014 Act. Ground 2A was inserted by section 145 of the 1996 Act and amended by paragraph 33 of Schedule 8 to the Civil Partnership Act 2004 (c. 33) (“the 2004 Act”) and by S.I. 2019/1458.

(2) Ground 7A was inserted by section 97(1) of the 2014 Act and amended by paragraph 97 of Schedule 24 to the 2020 Act. Ground 14 was substituted by section 148 of the 1996 Act and amended by paragraph 46 of Schedule 7 to the 2005 Act and section 98(2) of the 2014 Act. Ground 14A was inserted by section 149 of the 1996 Act and amended by paragraph 43(3) of Schedule 8 to the 2004 Act, S.I. 2010/866, S.I. 2011/1396 and S.I. 2019/1458.

(3) There are amendments to Ground 7 which are not relevant to these Regulations.

*Julie James*

Minister for Housing and Local Government, one of  
the Welsh Ministers

6 January 2021

## **Explanatory Memorandum to the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021**

This Explanatory Memorandum has been prepared by the Education and Public Services Department of the Welsh Government and is laid before the 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 Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Julie James  
Minister for Housing and Local Government  
8 January 2021

## **1. Description**

- 1.1 These Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction. The specified circumstances are where the court is satisfied that the claim is against trespassers who are persons unknown or where it was made wholly or partly on the grounds of anti-social behaviour, serious offences, nuisance, domestic violence or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant. The regulations will expire on 31 March 2021 but the continuing need for, and proportionality of, the regulations must be reviewed every three weeks. They replicate in substance the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 (“the 2020 Regulations”) which expire on 11 January.

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

- 2.1 There is an urgent need to ensure that evictions are kept as low as possible given the widespread and increasing community transmission of the Covid-19 virus, and the pressures this places on public services generally. With access to services and alternative accommodation likely to remain limited, there is a heightened risk that evictions will lead to homelessness, which in turn increases the risk of Covid-19 being contracted by the individual and transmitted by them. In the light of this and the current high rate of infections in Wales, these Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) and have been made without a draft having been first laid and approved by a resolution of the Senedd, as would usually be required under section 45Q of the Act. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make these Regulations without a draft being so laid and approved so that public health measures can be taken in response to the serious and imminent threat to public health posed by the incidence and spread of Covid-19. The Regulations will come into force on 11 January 2021. Since they are made under the emergency procedure they will cease to have effect at the end of 28 days from the day on which they are made unless, during that period, they are approved by a resolution of Senedd Cymru.

## **3. Legislative background**

- 3.1 These Regulations are made under section 45C of the Public Health (Control of Disease) Act 1984 to enable public health measures to be taken for the purpose of reducing the public health risks posed by the incidence and spread of Covid-19. Section 45C of that Act enables the

Welsh Ministers (as “The appropriate Minister”), by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales. The Regulations will prevent the eviction of residential tenants during this critical stage of the pandemic. In accordance with section 45R of the 1984 Act, the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by the Senedd.

- 3.2 Legislative measures have previously been put in place for the purpose of protecting tenants from eviction during the coronavirus pandemic. Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”) provides protection from eviction in respect of most residential tenancies and notices<sup>1</sup> served during the ‘relevant period’ (which was initially defined as ending on 30 September 2020 but has subsequently been extended to 31 March 2021). It does this by increasing, in most cases, the period of the notice that must be served before possession proceedings can be commenced in the courts.
- 3.3 In addition, there was a temporary stay on court proceedings in Wales and England initiated in March that came to an end on 20 September. It subsequently became possible to commence possession proceedings through the courts where the required notice period had elapsed, and, if an order was made, for the landlord to seek to enforce that order by applying to the court for a writ or warrant of possession, which could lead to eviction by County Court bailiffs or High Court enforcement officers.
- 3.4 The UK Government has sought to prevent evictions taking place (on an England and Wales basis) where these have been deemed incompatible with public health measures, through guidance to county court bailiffs and the Lord Chancellor writing to High Court Enforcement Officers. This applied during the firebreak in Wales.
- 3.5 On 16 November, the UK Government laid regulations before Parliament - The Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020. Amongst other things, those regulations prevented in England, most evictions taking place during the period up to 11 January 2021.
- 3.6 To ensure the enforcement of evictions in Wales over the Christmas and New Year period received the same statutory underpinning as in England, the 2020 Regulations were brought into force on 11 December. They prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction. The specified circumstances are where the court is satisfied that the claim

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<sup>1</sup> The relevant notices are those served under the Protection from Eviction Act 1977, the Rent Act 1977, the Housing Act 1985, the Housing Act 1988 and the Housing Act 1996



is against trespassers who are persons unknown or where it was made wholly or partly on the grounds of anti-social behaviour, serious offences, nuisance, domestic violence or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant. The 2020 Regulations expire on 11 January 2021.

#### **4. Purpose & intended effect of the legislation**

- 4.1 The purpose of the Regulations is to provide a public health response to the increasing incidence and transmission of the Covid-19 virus by preventing the enforcement of evictions in Wales except in the most serious circumstances. The Regulations come into force on 11 January 2021 and expire on 31 March. The continuing need for, and proportionality of, the regulations must be reviewed every 3 weeks. These 3 weekly reviews are aligned with the review periods for the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020, as the relevant Alert Level will be a key consideration in determining whether these measures remain proportionate.
- 4.2 Up until 20 September, and thus throughout the first wave of the pandemic, evictions were prevented from going ahead through amendments to the Civil Procedure Rules which stayed possession proceedings. Given the stay, there was no need to consider taking action to prevent the enforcement of evictions during that period using the powers set out in the 1984 Act at that time. However, the lifting of the stay, combined with the onset of a second wave of the pandemic and the increased wintertime pressures on health and other services has changed that situation.
- 4.3 During the Christmas and mid-winter period, at a time when risk of transmission of the virus has been very high once again, and access to services and alternative accommodation has been limited, the 2020 Regulations have been in place to ensure people are not evicted.
- 4.4 Although the disruption to services and the supply of alternative accommodation caused by the Christmas holiday period is not a factor after 11 January, the impact on public health, specifically on the incidence and spread of Covid-19, of evictions and homelessness remains of great concern. Wales has moved into Alert Level 4 (the highest level available) which may make it more difficult for those facing eviction to access services, including advice and support services as businesses may be closed or running at a reduced capacity. Securing alternative accommodation which is already more limited during the winter period

may also present increased practical difficulties. In a situation where there is widespread and increasing community transmission of the virus, and with the pressures placed on public services generally, the likelihood that evictions will result in homelessness remains raised.

- 4.5 Homelessness also places people in situations where they are at much greater risk of both contracting the virus and transmitting it to others. A person made homeless is less likely to have access to basic hygiene facilities – especially handwashing facilities - that are a crucial means of protection against the disease. They are much less likely to be able to maintain social distancing, even where alternative, temporary accommodation is secured. And they are likely to come into contact with many more people, whether they be those providing support services to the homeless, or other homeless people. As a result if evictions were allowed to take place, additional burdens are likely to be placed on the NHS and local authorities hindered in their public health response, during a period when winter pressures on relevant public services are likely to be at their most acute. .
- 4.6 In the light of the above, continued legislative action to prevent evictions after 11 January remains imperative. Furthermore, given the Alert Level 4 restriction currently in place, and the general rule that people must stay at home, except for very limited purposes, allowing the recommencement of action by bailiffs and High Court Enforcement Officers to evict people from their homes would seem contrary to the purpose of those restrictions.
- 4.7 To ensure that the measures remain proportionate to the increased public health risk the Welsh Ministers consider that some exceptions are needed to the ban on enforcement of possession orders. These are the same as those included in the 2020 Regulations. These are first and foremost instances where it is considered that the interests of preventing harm to third parties and taking action against egregious behaviour are sufficient to outweigh the public health risks posed by evictions but also where there is no obvious risk to public health. Specifically, these are:
- cases where the court is satisfied that the order for possession was made wholly or partly on the grounds of anti-social behaviour; nuisance; and/or domestic violence in social tenancies; or
  - cases where the court is satisfied that the claim is against trespassers who are persons unknown; or
  - cases where the person attending the property is satisfied that the dwelling house is unoccupied at the time of attendance, where the court is satisfied that order for possession was made wholly or partly on the grounds of death of the occupant.

- 4.8 In applying these particular specified circumstances where enforcement is possible, the Welsh Ministers note that anti-social behaviour will often result in a significant negative impact on the mental-health and well-being of neighbours. If eviction is not possible on grounds of anti-social behaviour/nuisance and annoyance landlords may find themselves having to rehouse those neighbours whose well-being is worst affected or neighbouring residents may take steps of their own to find and move to new accommodation. In extreme circumstances, vulnerable individuals may even choose to become homeless rather than remain the victims of anti-social behaviour. Rehousing neighbours because of anti-social behaviour and the steps taken by neighbours themselves to find and move to a new home, will potentially expose those individuals to situations where they are at greater risk of transmitting the virus. In the case of those who choose to become homeless, those risks are likely to be even greater. In many instances, cases involving trespassers may also be associated with anti-social behaviour.
- 4.9 In these cases, permitting enforcement of possession orders may result in less risk of the virus being caught and spread than allowing the perpetrators of ASB to remain in their homes. Although this means that some people will be evicted during the winter period, preventing the enforcement of evictions except in the most egregious of cases will substantially decrease enforcement proceedings during the winter period when transmission of the virus is increasing.
- 4.10 The other specified circumstance where enforcement is possible is where the tenant has died and there is no right of succession. In this case the person attending at the dwelling-house must take reasonable steps to satisfy themselves that the dwelling-house is unoccupied before executing a writ or warrant of possession or restitution or delivering a notice of eviction. This reflects the fact that taking possession of an unoccupied property poses no risk to public health.

## **5. Consultation**

- 5.1 Given the public health emergency, it has not been possible to conduct a consultation on these Regulations and there is no statutory requirement to do so. However, the Welsh Government has strong relationships with stakeholders from across the housing sector; bodies representing landlords have been informally engaged on these Regulations.

## **6. Regulatory Impact Assessment**

- 6.1 The COVID-19 emergency and the urgency of making these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment. However, the following section provides a qualitative

description of the likely impacts.

## **Options**

6.2 Two options have been considered:

*Option A – Do nothing*

*Option B – legislate to prevent most evictions taking place between 11 January 2021 and 31 March 2021, subject to periodic review.*

## **Costs and Benefits**

*Option A – Do nothing*

6.4 Although there are no immediate additional costs associated with this option, it will not achieve the benefit to public health and the control of the virus that would arise from preventing evictions during this period. As a result of the latter, there will be a potentially significant medium to longer term cost, both in terms of potential harm to public health and the impact on services of having to deal with those facing eviction and homelessness.

*Option B – legislate to prevent most evictions taking place between 11 January 2021 and 31 March 2021, subject to periodic review*

6.4 Under this option, regulations would prevent enforcement of possession orders unless the ground for possession fell within one of the specified circumstances where an order may be enforced during the winter period. Consequently, the public health benefits of preventing an upsurge in homelessness and any associated upsurge in the incidence and transmission of the virus will be realised. There would also be a saving to local authorities and organisations providing support to individuals faced with eviction, with the temporary reduction in their caseload potentially allowing them to redirect resources elsewhere.

6.5 There are no obvious administrative and transitional costs of preventing evictions for this temporary period. Where a landlord is seeking possession of property for which rent is not being paid, there is a potential additional cost for landlords arising from the extra delay in the landlord gaining possession of the property and the arrears that may build up during that time. However this would necessarily have to be balanced against the cost to public health, and the knock-on effects for the health service and other organisations of permitting evictions to occur where there is significant risk that this contributes to the incidence and spread of the virus.

## **Competition Assessment**

- 6.6 It has not been possible to undertake a full competition assessment in relation to these Regulations. However, given their time limited application, it is unlikely that they will have any detrimental impact on competition.

### **Specific Impact Tests**

#### *Equal opportunities*

- 6.7 These Regulations do not discriminate against persons sharing any of the protected characteristics as set out in the Equality Act 2010. On the contrary, the provisions included in the regulations may be particularly beneficial to vulnerable individuals who might otherwise find themselves facing eviction and forced to find alternative accommodation during a period when finding such accommodation may be especially challenging. Those with certain protected characteristics under the Equality Act 2010 are likely to be disproportionately represented amongst those living in the rented sector and therefore more vulnerable to eviction.

#### *Children's rights*

- 6.8 No conflict with UNCRC has been identified and no negative impacts on children and young people are expected to arise as a result of these Regulations. For families with dependent children, a pause on evictions during the winter period may help reduce the disruption caused to children by a home move by providing more time for parents to find suitable alternative accommodation nearby, or sufficient time to make arrangements for a move further afield where that is necessary or desirable.

#### *Welsh language*

- 6.9 These Regulations should not give rise to any negative impacts in relation to the cultural wellbeing or the Welsh language.

#### *Local Government*

- 6.10 These Regulations may have a limited, positive, impact on local authorities, due to reduced demand on crisis homelessness services as a result of fewer evictions during the winter period.

#### *Economic effects*

- 6.11 As set out above, whilst landlords would still be able to recover possession if a tenant fails to pay rent, or otherwise breach the terms of their tenancy, and lenders may still be able to recover possession in the event of the landlord defaulting on the mortgage, there is a potential additional cost to them arising from the delay caused by the pause in evictions. However, the temporary nature of the regulations means that

any negative economic impact caused should be limited to the time that the pause remains in force.

*Impact on Privacy*

6.12 The Regulations do not produce any new requirements relating to privacy on the sharing of information.

*Rural proofing*

6.13 These Regulations will apply equally to people living in rural and urban areas. As such, the impacts – and benefits – should be no different between the two.

*Health and wellbeing*

6.14 In addition to the specific public health benefits that would result from a reduction in the number of people evicted into homelessness during the winter period, the Regulations should also support the health and wellbeing of individuals liable to be evicted by providing reassurance that they will not face eviction during each review period.

*Impact on the Justice System*

6.15 The Regulations will impact on the justice system in that they will prevent the carrying out of court orders during the winter period. Any long-lasting effect will be dependent on how long the pause remains in place and whether a backlog of possession orders builds up..

Julie James AS/MS  
Y Gweinidog Tai a Llywodraeth Leol  
Minister for Housing and Local Government



Llywodraeth Cymru  
Welsh Government

Elin Jones, MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

6 January 2021

Dear Elin

### **The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021**

I have today made the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021 under sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984 which come into force on 11 January 2021. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 8 February 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 19 January 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely

Julie James AS/MS  
Y Gweinidog Tai a Llywodraeth Leol  
Minister for Housing and Local Government

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **Section 45C of the Public Health (Control of Disease) Act 1984  
The Public Health (Protection from Eviction) (Wales)  
(Coronavirus) Regulations 2021**

**DATE**            **08 January 2021**

**BY**                **Julie James, Minister for Housing and Local Government**

Section 45C of the Public Health (Control of Disease) Act 1984 ('the 1984 Act') enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

As Minister for Housing and Local Government, and using the powers under section 45C of the 1984 Act, I have today laid before the Senedd regulations in response to the serious and imminent threat to public health which is posed by the incidence and spread of Covid 19.

The Regulations come into force on 11 January and will expire at the end of the day on 31 March 2021.

The Regulations replicate in substance the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 that expire on 11 January and prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction. The specified circumstances are where the court is satisfied that: the claim is against trespassers who are persons unknown; or where the order for possession was made wholly or partly on the grounds of anti-social behaviour, serious offences, nuisance, domestic violence; or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, and the possession order was made wholly or partly on the grounds of the death of the occupant.

The purpose of the Regulations is to contribute to the public health response to coronavirus by preventing the enforcement of evictions except in the most serious circumstances. The impact of evictions and homelessness on the incidence and spread of Covid 19 remains of



great concern. Homelessness places people in situations where they are at much greater risk of both contracting the virus and transmitting it to others. The current Alert Level 4 restrictions may make it more difficult for those facing eviction to access services, including advice and support services as organisations may be closed or running at a reduced capacity. Securing alternative accommodation which is already more limited during the winter period, may also present increased practical difficulties. In a situation where there is widespread and increasing community transmission of the virus, and with the pressures placed on public services generally, the likelihood that evictions will result in homelessness remains raised.

The Regulations will be subject to a review cycle during the period that they are in force to ensure the restrictions and requirements remain proportionate. The first review must take place in the period between the Regulations coming into force and the 28 January 2021 in order to align with the review timings in the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020. They must then be reviewed at least once in each subsequent three weekly period.

A copy of the Regulations and the accompanying Explanatory Memorandum can be viewed [here](#) and [here](#).

## **SL(5)719 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021**

### **Background and Purpose**

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the No. 5 Regulations”), retaining the additional restrictions already in place in relation to South Africa and extending them to travellers (and their households) arriving in Wales from other Southern African countries (listed in the new Schedule 3A to the International Travel Regulations) on or after 4.00 a.m. on 9 January 2021.

These Regulations also:

- Extend the existing prohibition on passenger aircraft and vessels arriving directly into Wales to the additional countries listed in the new Schedule 3A; and
- Permit show homes to stay open in Alert Level 4 areas (although viewing a property in connection with a sale or let is permitted only if it is reasonably necessary and there is no reasonably practicable alternative).

### **Procedure**

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

### **Technical Scrutiny**

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

#### **1. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts**

Regulation 8(7) in the English text substitutes “developer sales offices and show homes” in paragraph 48 of Schedule 4 to the No. 5 Regulations with “developer sales offices”. However, the same regulation in the Welsh text substitutes “developer sales offices and show homes” with “show homes”.



## Merits Scrutiny

The following points are 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 or public policy likely to be of interest to the Senedd**

We note the Welsh Government's justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

*"The amendments contained in these Regulations do not change the engagement under the International Travel Regulations or the No. 5 Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate."*

### **2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

*"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations."*

### **3. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.

### **4. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

Footnote (2) on page 8 of these Regulations refers to "S.I. 2020/163" and "S.I. 2020/165". We assume that they should read S.I. 2020/16<sup>23</sup> and S.I. 16<sup>45</sup> (*emphasis added*) as those are the SI numbers for the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020 and the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020, respectively.

It is accepted that the footnote does not form part of the law. However, if the purpose of its inclusion is to assist a reader, it would be helpful if the correct references were used.



## Welsh Government response

A Welsh Government response is required in relation to the technical reporting point.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**12 January 2021**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

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*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 20 (W. 7)**

**PUBLIC HEALTH, WALES**

**The Health Protection  
(Coronavirus, International Travel  
and Restrictions) (Amendment)  
(Wales) Regulations 2021**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Part 2A of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the “International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609) (W. 335) (the “Restrictions Regulations”).

The International Travel Regulations have been previously amended by:

- the Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 (S.I. 2020/595) (W. 136);

- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 (S.I. 2020/714) (W. 160);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2020 (S.I. 2020/726) (W. 163);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/804) (W. 177);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 3) Regulations 2020 (S.I. 2020/817) (W. 179);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 4) Regulations 2020 (S.I. 2020/840) (W. 185);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 5) Regulations 2020 (S.I. 2020/868) (W. 190);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 6) Regulations 2020 (S.I. 2020/886) (W. 196);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 7) Regulations 2020 (S.I. 2020/917) (W. 205);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 8) Regulations 2020 (S.I. 2020/944) (W. 210);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 9) Regulations 2020 (S.I. 2020/962) (W. 216);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 10) Regulations 2020 (S.I. 2020/981) (W. 220);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 11) Regulations 2020 (S.I. 2020/1015) (W. 226);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2020 (S.I. 2020/1042) (W. 231);

- the Transfer of Functions (Secretary of State for Foreign, Commonwealth and Development Affairs) Order 2020 (S.I. 2020/942);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 13) Regulations 2020 (S.I. 2020/1080) (W. 243);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 14) Regulations 2020 (S.I. 2020/1098) (W. 249);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 15) Regulations 2020 (S.I. 2020/1133) (W. 258);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 16) Regulations 2020 (S.I. 2020/1165) (W. 263);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 17) Regulations 2020 (S.I. 2020/1191) (W. 269);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 18) Regulations 2020 (S.I. 2020/1223) (W. 277);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 19) Regulations 2020 (S.I. 2020/1232) (W. 278);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020 (S.I. 2020/1237) (W. 279);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020 (S.I. 2020/1288) (W. 286);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 20) Regulations 2020 (S.I. 2020/1329) (W. 295);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 21) Regulations 2020 (S.I. 2020/1362) (W. 301);
- the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020 (S.I. 2020/1477) (W. 316);

- the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1521) (W. 325);
- the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 22) Regulations 2020 (S.I. 2020/1602) (W. 332); and
- the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 (S.I. 2020/1645) (W. 345).

The Restrictions Regulations have been previously amended by:

- the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020 (S.I. 2020/1610) (W. 336);
- the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/1623) (W. 340); and
- the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 (S.I. 2020/1645) (W. 345).

The International Travel Regulations impose requirements on persons entering Wales after having been abroad. They include a requirement for persons arriving in Wales to isolate for a period determined in accordance with those Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Persons entering Wales after being in one or more of the countries and territories listed in Schedule 3 to the International Travel Regulations are not required to isolate. The countries and territories listed in Schedule 3 are referred to as “exempt countries and territories”.

Part 2 of these Regulations amends the list of exempt countries and territories. Regulation 2 amends the International Travel Regulations to remove the entries for the City of Jerusalem, Israel, Mauritius, the Republic of Botswana and Seychelles.

Regulation 3 of these Regulations makes transitional provision in connection with these countries’ and territories’ change of status. The transitional provision addresses a potential area of doubt in terms of the effect on the operation of the International Travel Regulations, of the amendments made by regulation 2 of these Regulations.



Part 3 of these Regulations amends Parts 3 and 3B of the International Travel Regulations and inserts a new Part 3C and Schedule 3A into those Regulations. Regulation 4 of these Regulations removes regulation 12C of the International Travel Regulations which imposes special rules on any person travelling from South Africa and members of that person's household. Regulation 5 makes saving provision in connection with the removal of regulation 12C of the International Travel Regulations. Regulation 6 removes regulation 12D in Part 3B of the International Travel Regulations.

Part 4 of these Regulations inserts new regulations 12E and 12F and a Schedule 3A into the International Travel Regulations. Regulation 7(1) inserts a new provision relating to additional measures for specified countries and territories into the International Travel Regulations as new regulation 12E. New regulation 12E is similar to the previous regulation 12C, but is not specific to South Africa. Instead, it imposes additional measure on countries and territories listed in new Schedule 3A. Regulation 12E provides that when a person has been in a specified country or territory in the last 10 days and arrives in Wales on or after 9 January 2021, they and members of their household are required to isolate. Further, the categories of exempt persons as detailed at Schedule 2 to the International Travel Regulations do not apply, and there are more limited circumstances in which a person may leave isolation. Regulation 7(1) also inserts a new Regulation 12F, which imposes restrictions on the arrival of aircraft and vessels arriving directly from a country listed in the new Schedule 3A.

Regulation 7(2) inserts new Schedule 3A into the International Travel Regulations which lists those specified countries and territories subject to the additional measures in regulations 12E and 12F of those Regulations. Regulation 7(2) lists the following countries and territories in Schedule 3A: Kingdom of Eswatini, the Kingdom of Lesotho, the Republic of Angola, the Republic of Botswana, the Republic of Malawi, the Republic of Mauritius, the Republic of Mozambique, the Republic of Namibia, the Republic of Seychelles, the Republic of Zambia, the Republic of Zimbabwe and Republic of South Africa.

Part 5 of these Regulations amends the Restrictions Regulations to—

- (a) impose more stringent isolation requirements on people who have been in one of 11 listed African countries within the period of 10 days prior to 4.00 a.m. on 9 January 2021 and on anyone in the same household as such people. These are countries where there is evidence of community spread of a new variant of coronavirus;

- (b) make a minor amendment to permit show homes to stay open in Alert Level 4 areas, although viewing a property in connection with a sale or let is permitted in Alert Level 4 areas only if it is reasonably necessary and there is no reasonably practicable alternative;
- (c) revoke the provisions relating to Christmas day which are now spent and make other minor amendments to regulations 38 and 57.

Part 6 of these Regulations makes a technical amendment to the Welsh language text of regulation 14(1)(c) in Part 4 of the International Travel Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has not been prepared as to the likely cost and benefit of complying with these Regulations.

*Regulations made by the Welsh Ministers, laid before Senedd Cymru under section 45R of the Public Health (Control of Disease) Act 1984 (c. 22), for approval by resolution of Senedd Cymru within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution or recess for more than four days.*

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 20 (W. 7)**

**PUBLIC HEALTH, WALES**

**The Health Protection  
(Coronavirus, International Travel  
and Restrictions) (Amendment)  
(Wales) Regulations 2021**

*Made at 4.07 p.m. on 8 January 2021*

*Laid before Senedd  
Cymru at 6.00 p.m. on 8 January 2021*

*Coming into force at 4.00 a.m. on 9 January  
2021*

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B, 45C(1) and (3), 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(1), make the following Regulations.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

The Welsh Ministers consider that restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

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(1) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The function of making regulations under Part 2A is conferred on “the appropriate Minister”. Under section 45T(6) of the 1984 Act the appropriate Minister as respects Wales, is the Welsh Ministers.

In accordance with section 45R of that Act the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, Senedd Cymru.

## PART 1

### General

#### **Title, coming into force and interpretation**

**1.**—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 9 January 2021.

(3) In these Regulations—

- (a) the “International Travel Regulations” means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(1);
- (b) the “Restrictions Regulations” means the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020(2).

## PART 2

### Amendments to the list of exempt countries and territories in Schedule 3 to the International Travel Regulations

#### **Removal of countries and territories from the list of exempt countries and territories**

**2.** In Part 1 of Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area), omit the following entries—

“the City of Jerusalem”

“Israel”

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- (1) S.I. 2020/574 (W. 132), as amended by S.I. 2020/595 (W. 136), S.I. 2020/714 (W. 160), S.I. 2020/726 (W. 163), S.I. 2020/804 (W. 177), S.I. 2020/817 (W. 179), S.I. 2020/840 (W. 185), S.I. 2020/868 (W. 190), S.I. 2020/886 (W. 196), S.I. 2020/917 (W. 205), S.I. 2020/942, S.I. 2020/944 (W. 210), S.I. 2020/962 (W. 216), S.I. 2020/981 (W. 220), S.I. 2020/1015 (W. 226), S.I. 2020/1042 (W. 231), S.I. 2020/1080 (W. 243), S.I. 2020/1098 (W. 249), S.I. 2020/1133 (W. 258), S.I. 2020/1165 (W. 263), S.I. 2020/1191 (W. 269), S.I. 2020/1223 (W. 277), S.I. 2020/1232 (W. 278), S.I. 2020/1237 (W. 279), S.I. 2020/1288 (W. 286), S.I. 2020/1329 (W. 295), S.I. 2020/1362 (W. 301), S.I. 2020/1477 (W. 316), S.I. 2020/1521 (W. 325), S.I. 2020/1602 (W. 332) and S.I. 2020/1645 (W. 345).
- (2) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/163 (W. 340) and S.I. 2020/165 (W. 345).

“Mauritius”

“Republic of Botswana”

“Seychelles”.

**Transitional provision in connection with regulation 2**

**3.**—(1) Paragraph (2) applies where a person (“P”)—

- (a) arrives in Wales at or after 4.00 a.m. on 9 January 2021, and
- (b) was last in a country or territory listed in regulation 2—
  - (i) within the period of 10 days ending with the day of P’s arrival in Wales, and
  - (ii) before 4.00 a.m. on 9 January 2021.

(2) P is, by virtue of having been in a country or territory listed in regulation 2 to be treated for the purposes of regulations 7(1) and 8(1) of the International Travel Regulations as having arrived in Wales from, or having been in, a non-exempt country or territory.

**PART 3**

**Amendments to Part 3 and Part 3B of the International Travel Regulations**

**Amendment to Part 3 (requirement to isolate etc.) of the International Travel Regulations**

**4.** Omit regulation 12C (special rules applicable to persons travelling from South Africa) of the International Travel Regulations.

**Saving provision in connection with regulation 4**

**5.** Where immediately before 4.00 a.m. on 9 January 2021 regulation 12C of the International Travel Regulations applies to a person, it continues to apply to that person despite its revocation by regulation 4.

**Removal of Part 3B (travel from South Africa) of the International Travel Regulations**

**6.** Omit Part 3B (travel from South Africa) of the International Travel Regulations.

## PART 4

### Addition of Part 3C of and Schedule 3A to the International Travel Regulations

#### **Insertion of Part 3C (travel from a country or territory listed in Schedule 3A)**

7.—(1) The International Travel Regulations are amended as follows.

(2) After regulation 12 insert—

#### “PART 3C

#### Travel from a country or territory listed in Schedule 3A

#### **Additional measures applicable to persons travelling from a country or territory listed in Schedule 3A**

**12E.**—(1) This regulation applies where an isolation requirement (within the meaning given by regulation 10(2)) is imposed on a person (“P”) because P—

- (a) has arrived in Wales from a country or territory listed in Schedule 3A, or
- (b) has, within the period of 10 days ending with the day of P’s arrival in Wales, been in a country or territory listed in Schedule 3A.

(2) Regulations 7(1) and 8(1) are to be read in relation to P as if references to “a non-exempt country or territory” were references to “a country or territory listed in Schedule 3A”.

(3) The isolation requirement imposed on P by virtue of regulation 7(1) or 8(1) as modified by paragraph (2), is also imposed on all members of P’s household.

(4) Despite regulation 9(2), regulations 7 and 8 apply to P.

(5) A member of P’s household is not exempt from the isolation requirement by virtue of regulation 9(2).

(6) Accordingly neither P nor any member of P’s household is to be treated as a person described in any paragraph of Schedule 2.

(7) For the purposes of regulation 10, a member of P’s household is to be treated as if that person were P.

(8) Regulation 10 applies to P (and a member of P’s household by virtue of paragraph (7)) as

if, for paragraph (4) of that regulation, there were substituted—

“(4) P may leave and be outside of the premises—

(a) for as long as is necessary—

(i) to seek medical assistance, where this is required urgently or on the advice of a registered medical practitioner;

(ii) to avoid serious illness, serious injury or other risk of serious harm;

(iii) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;

(b) if required to do so by a constable;

(c) to travel for the purpose of leaving Wales.”

**Prohibition on the arrival of aircraft and vessels travelling directly from a country or territory listed in Schedule 3A**

**12F.**—(1) The person with management or control of an aircraft or vessel whose last point of departure was a country or territory listed in Schedule 3A must not cause or permit it to arrive in Wales, unless it is reasonably necessary for it to do so to secure—

(a) the safety of the aircraft or vessel, or

(b) the health and safety of any person aboard it.

(2) Paragraph (1) does not apply to—

(a) a commercially operated aircraft or vessel carrying no passengers;

(b) an aircraft or vessel operated by or in support of Her Majesty’s Government in the United Kingdom;

(c) an aircraft or vessel which was last in a country or territory listed in Schedule 3A 11 or more days prior to its arrival in Wales.

(3) In this regulation—

(a) “arrive” means—

(i) in relation to an aircraft, to land;

(ii) in relation to a vessel, to moor at any place;

(b) “passenger” means a person carried in or on an aircraft or vessel other than a member of its crew.”

(3) After Schedule 3, insert—

**“SCHEDULE 3A** Regulations 12E and  
12F

**Countries and territories subject to  
additional measures**

Kingdom of Eswatini  
Kingdom of Lesotho  
Republic of Angola  
Republic of Botswana  
Republic of Malawi  
Republic of Mauritius  
Republic of Mozambique  
Republic of Namibia  
Republic of Seychelles  
Republic of South Africa  
Republic of Zambia  
Republic of Zimbabwe”.

**PART 5**

**Amendment to the Restrictions Regulations**

**Amendment to the Restrictions Regulations**

**8.**—(1) The Restrictions Regulations are amended as follows.

(2) Omit regulation 4(7).

(3) In regulation 11A—

(a) in the heading, for “South Africa” substitute “certain countries”;

(b) in paragraph (1)—

(i) in sub-paragraph (a), for “9.00 a.m. on 24 December 2020” substitute “4.00 a.m. on 9 January 2021”;

(ii) in sub-paragraph (b), for “9.00 a.m. on 24 December 2020” substitute “4.00 a.m. on 9 January 2021”;

(iii) in sub-paragraph (c), for “South Africa” substitute “a listed country”;

(c) in paragraph (2), for “left South Africa” substitute “was last in a listed country”;

(d) after paragraph (3) insert—

“(4) For the purposes of this regulation, the following are listed countries—

(a) Kingdom of Eswatini;



- (b) Kingdom of Lesotho;
- (c) Republic of Angola;
- (d) Republic of Botswana;
- (e) Republic of Malawi;
- (f) Republic of Mauritius;
- (g) Republic of Mozambique;
- (h) Republic of Namibia;
- (i) Republic of Seychelles;
- (j) Republic of Zambia;
- (k) Republic of Zimbabwe.”

(4) In regulation 11B—

- (a) in the heading, for “South Africa” substitute “certain countries”;
- (b) in sub-paragraph (2)(c), for “or other risk of serious harm” substitute “, other risk of serious harm or to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings”.

(5) In regulation 38(c), in the English language text, after “(2)” insert “of”.

(6) In regulation 57(1)(t)(i), for “, any Tier 4 area or any other area in which restrictions are imposed that are stricter than those applicable in the Tier 3 area” substitute “or the Tier 4 area”.

(7) In paragraph 48 of Schedule 4, for “, developer sales offices and show homes” substitute “and developer sales offices”.

(8) Omit Schedule 6.

## PART 6

### Amendment to the Welsh language text of Part 4 of the International Travel Regulations

#### **Amendment to Part 4 (enforcement and offences) of the International Travel Regulations**

**9.** In regulation 14 (offences) of the International Travel Regulations, in the Welsh language text, in sub-paragraph (1)(c) omit “neu”.

*Vaughan Gething*  
Minister for Health and Social Services, one of the  
Welsh Ministers  
At 4.07 p.m. on 8 January 2021

## **Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021**

This Explanatory Memorandum has been prepared by the Welsh Government 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 Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021.

**Vaughan Gething**  
**Minister for Health and Social Services**

8 January 2021

## **1. Description**

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (“the International Travel Regulations”) and the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the No. 5 Regulations”).

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

### *Coming into force*

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. The Welsh Ministers are of the opinion that the restrictions and requirements as set out in these Regulations are necessary and proportionate as a public health response to the current threat posed by coronavirus.

The Regulations will come into force at 4am on 9 January 2021.

### *European Convention on Human Rights*

The amendments contained in these Regulations do not change the engagement under the International Travel Regulations or the No. 5 Regulations of individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights; the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate.

## **3. Legislative background**

The 1984 Act and regulations made under it, provide a legislative framework for health protection in England and Wales. The Regulations are made in reliance on the powers in sections 45B, 45C(1) and (3), 45F(2) and 45P(2) of the 1984 Act. The Explanatory Memoranda to the International Travel Regulations and the No. 5 Regulations provides further information on these powers.

## **4. Purpose and intended effect of the legislation**

The International Travel Regulations were made on 5 June 2020 and came into force on 8 June 2020 in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

The International Travel Regulations are kept under review, and changes have been made to the list of exempt countries and territories from which travellers would not be required to isolate upon arrival in Wales – most recently on 19 December 2020,

Advice which has now been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and spread of coronavirus in the Republic of Botswana, Israel, the City of Jerusalem, the Republic of Seychelles and the Republic of Mauritius has increased. On the basis of this advice the Welsh Government consider that isolation requirements should now be introduced for travellers coming into Wales from those countries and territories.

The revised requirements will come into effect for any travellers entering the Common Travel Area from those countries or territories on or after 4.00 am on Saturday 9 January 2021.

As of 24 December 2020, additional restrictions were imposed on travellers to Wales from South Africa in response to emerging health risks posed by a new strain of coronavirus (COVID202012/02) that was identified as having high levels of transmissibility.

These Regulations retain the additional restrictions in relation to South Africa but restructure the regulations so as to enable these restrictions to also be imposed on travellers from other specified destinations. The Regulations also make some minor changes to the restrictions themselves, for example, to enable a person to leave isolation to fulfil a legal obligation or for the purpose of leaving Wales.

The Regulations also extend the additional restrictions (as amended) currently imposed on travellers to Wales from South Africa (and their households) to travellers (and their households) from other Southern African countries. Travellers from the following countries are considered to pose a risk to public health because of reports that the South Africa variant (COVID202012/02) is circulating there and/or because of strong travel connections with South Africa: Namibia, Botswana, Malawi, Eswatini, Lesotho, Zambia, Zimbabwe, Mozambique and Angola, the Seychelles and Mauritius.

Persons that arrive in Wales from 4.00am on 9 January 2021 who have been in any of those countries in the previous 10 days and members of such persons' household will therefore be required to self-isolate. The Regulations also disapply all sectoral exemptions in Schedule 2 of the International Travel Regulations, so that no person arriving into Wales who has been in those countries in the previous 10 days can be exempted from the requirements to provide passenger information or isolate. A more limited list than is usual of reasons for temporarily leaving isolation will also apply, as part of the response to the threat to public health.

The prohibition on direct passenger aircraft and vessels arriving into Wales from South Africa will also continue to apply and be extended to these additional countries where relevant.

To effectively respond to the emerging situation, amendments have also been made to the No. 5 Regulations, which will require a person who entered Wales before

04.00 a.m. on 9 January 2021 having been one of the listed countries in the previous 10 days to isolate for 10 days from the date they were last in that country. This requirement will also extend to any members of that person's household.

These amendments coincide with the UK Government's implementation of immigration powers, which will refuse entry to all non-British national or resident travellers who arrive at the UK borders from these countries from 4:00 am Saturday 9 January 2021.

To effectively support the implementation of these new requirements, Public Health Wales is now urgently contacting all residents in Wales who have been in affected countries in the past 10 days to explain the new isolation requirements.

A minor amendment has also been made to the International Travel Regulations to address a technical issue in the Welsh language version of the regulations.

Minor amendments have also been made to the No. 5 Regulations, including omitting spent provisions relating to extended households on 25 December 2020, and permitting show homes to stay open in Alert Level 4 areas (although viewing a property in connection with a sale or let is permitted only if it is reasonably necessary and there is no reasonably practicable alternative). Activities related to purchasing, letting and moving homes are currently allowed under the No. 5 Regulations if they are reasonably necessary and there is no reasonable alternative, and this amendment enables people to view new homes in the same way they are currently permitted so view homes that are not new.

All of these changes will come into force at 4.00 am on Saturday 9 January 2021.

The Welsh Ministers consider that these amendments are proportionate to what they seek to achieve, which is to respond to a serious and imminent threat to public health.

## **5. Consultation**

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations.

## **6. Regulatory Impact Assessment (RIA)**

There has been no regulatory impact assessment in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health.



Ein cyf/Our ref MA/VG/0067/21

Elin Jones, MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

8 January 2021

Dear Elin,

**The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021**

I have today made the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021 under sections 45B, 45C(1) and (3), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force at 4.00am on 9 January 2021. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum once the statutory instrument has been registered.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 7 February 2021 in order for it to remain in effect. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. I intend to schedule these Regulations for debate in Plenary on 19 January 2021.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw MS as Chair of the Legislation, Justice and Constitution Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

**Vaughan Gething AS/MS**  
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



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**WRITTEN STATEMENT**  
**BY**  
**THE WELSH GOVERNMENT**

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**TITLE**            **The Health Protection (Coronavirus, International Travel) (Wales) Amendments**

**DATE**            **7 January 2021**

**BY**                **Vaughan Gething, Minister for Health and Social Services**

Members will be aware that the Welsh Government made provision in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 to ensure that travellers entering Wales from overseas countries and territories must isolate for 14 days and provide passenger information, to prevent the further spread of coronavirus. These restrictions came into force on 8 June 2020.

On 10 July, the Welsh Government amended these Regulations to introduce exemptions from the isolation requirement for a list of countries and territories, and a limited range of people in specialised sectors or employment who may be exempted from the isolation requirement or excepted from certain provisions of the passenger information requirements.

Since then these Regulations have been kept under review and a number of changes to the list of exempt countries and territories have been made.

Today I reviewed the latest JBC assessments and I have decided that Israel, Botswana, Mauritius and the Seychelles will be removed from the list of exempt countries and territories. Travellers from these countries will be required to isolate on arrival in Wales.

On 23 December, the Secretary of State for Transport reported that a new variant of Covid-19 has been detected in South Africa. A decision was taken by the UK Government to implement further travel restrictions on arrivals from South Africa. Most flights from South Africa route through airports in England.

Today the Secretary of State for Transport has decided to maintain the current measures on South Africa and extend equivalent measures to other countries which includes Namibia, Zimbabwe, Botswana, Eswatini, Zambia, Malawi, Lesotho, Mozambique, Angola, and also for the Seychelles and Mauritius.

I have therefore decided that action should be taken to remove the sectoral exemptions for travellers arriving from these countries. All travellers arriving into Wales who have been in these countries in the previous 10 days will be required to isolate for 10 days and will only be able to leave isolation in very limited circumstances. The same isolation requirements will also apply to all members of their household. These enhanced isolation requirements will also apply to persons already in Wales who have been in these countries in the last 10 days and members of their households.

A further amendment will be made such that direct flights from these countries will no longer be able to land in Wales.

Tomorrow I will lay the necessary regulations which will come into force at 04:00 on Saturday 9 January 2021.

This statement is being issued during recess in order to keep members informed. Should members wish me to make a further statement or to answer questions on this when the Senedd returns I would be happy to do so.



## SL(5)720 – The Non-Domestic Rating (Multiplier) (Wales) Order 2021

### Background and Purpose

In relation to Wales, the non-domestic rating multiplier is calculated in accordance with paragraph 3B of Schedule 7 to the Local Government Finance Act 1988 ("the Act") for each financial year when new rating lists are not being compiled. New rating lists are not being compiled for the financial year beginning on 1 April 2021.

The formula in paragraph 3B of Schedule 7 to the Act includes an item B which is the retail prices index for September of the financial year preceding the year concerned, unless the Welsh Ministers exercise their power under paragraph 5(3) of Schedule 7 to the Act to specify, by Order, a different amount for item B. If the Welsh Ministers exercise that power in relation to a financial year, the different amount so specified must be less than the retail prices index for September of the preceding financial year. The retail prices index for September of the preceding financial year is 294.3.

This Order specifies that for the financial year beginning on 1 April 2021, the amount for item B is 291.0.

### Procedure

Made Affirmative

The Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd must approve the Order before the Senedd approves the local government finance report for the financial year beginning on 1 April 2021, or before 1 March 2021, whichever is earlier.

(The Explanatory Memorandum to these Regulations states that the Senedd debate on the local government settlement is expected to take place in early March 2021.)

### Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### Merits Scrutiny

One point is identified for reporting under Standing Orders 21.3(i) and 21.3(ii) in respect of this instrument.

**1. Standing order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent**



**or of any services to be rendered, or prescribes the amount of any such charge or payment**

**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 Senedd**

We note the importance of this Order, and its effect on the annual local government revenue settlements. We note, in particular, the following helpful paragraphs in the Explanatory Memorandum:

*“The 2021 Order will have the effect of freezing the NDR multiplier rather than increasing by RPI for the financial year 2021-22. By freezing the NDR multiplier, the multiplier will be set at 0.535.*

*This will mean that non-domestic property owners and occupiers in Wales will receive lower rates bills for 2021-22 than they would have if RPI were used.*

*Primary legislation does not currently provide the Welsh Ministers with powers to permanently change the figure used to calculate the multiplier from RPI to a lower measure. Therefore, the 2021 Order will apply to 2021-22 only.*

*Similar orders were made to effect a change to increase by CPI rather than RPI for 2018-19 to 2020-21.*

*All owners or occupiers of non-domestic properties who pay rates will benefit from the change. Even properties which receive significant amounts of rates relief will benefit as the residual amounts will be calculated using a lower multiplier.*

*All the non-domestic rates collected in Wales are pooled centrally and distributed to unitary authorities and to police and crime commissioners as part of the annual local government settlements. The total amount to be distributed in this way is known as the Distributable Amount. It is calculated by applying the multiplier to the estimated national total of rateable value, taking account of any surplus or deficit carried forward from previous years.*

*The Distributable Amount is a key component of the annual local government revenue settlements and the 1988 Act requires that it is approved by the Senedd as part of the annual Local Government Finance Reports. The multiplier therefore needs to be determined before the annual settlements can be finalised.*

*There is a clear purpose to the policy behind the legislation. It is aimed at supporting economic growth and reducing the tax liability for businesses and other non-domestic ratepayers in Wales, ensuring they are not at a disadvantage compared to other parts of the United Kingdom.*

*Freezing the multiplier rather than increasing the multiplier by RPI in Wales will reduce the income into the non-domestic rates pool in 2021-22. The reduction will be fully funded by the Welsh Government and will be reflected in the calculations for the local*



*government settlements so that there is no financial impact on local authorities or police budgets.”*

## **Welsh Government response**

A Welsh Government response is not required.

### **Legal Advisers**

**Legislation, Justice and Constitution Committee**

**11 January 2021**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

—

Welsh Parliament

**Legislation, Justice and Constitution Committee**

**Pack Page 183**

*Order made by the Welsh Ministers, laid before Senedd Cymru under paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988, for approval by resolution of Senedd Cymru before the approval by Senedd Cymru of the local government finance report for the financial year beginning on 1 April 2021, or before 1 March 2021 (whichever is earlier).*

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 16 (W. 6)**

**RATING AND VALUATION,  
WALES**

**The Non-Domestic Rating  
(Multiplier) (Wales) Order 2021**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

In relation to Wales, the non-domestic rating multiplier is calculated in accordance with paragraph 3B of Schedule 7 to the Local Government Finance Act 1988 (“the Act”) for each financial year when new rating lists are not being compiled. New rating lists are not being compiled for the financial year beginning on 1 April 2021.

The formula in paragraph 3B of Schedule 7 to the Act includes an item B which is the retail prices index for September of the financial year preceding the year concerned, unless the Welsh Ministers exercise their power under paragraph 5(3) of Schedule 7 to the Act to specify, by Order, a different amount for item B. If the Welsh Ministers exercise that power in relation to a financial year, the different amount so specified must be less than the retail prices index for September of the preceding financial year. The retail prices index for September of the preceding financial year is 294.3.

Article 2 of this Order specifies that for the financial year beginning on 1 April 2021, the amount for item B is 291.0.

Article 3 revokes the Non-Domestic Rating (Multiplier) (Wales) Order 2020 which had specified the amount for item B for the financial year beginning on 1 April 2021 as 292.6.

In accordance with paragraph 5(15) of Schedule 7 to the Act, this Order will only come into force if it is approved by a resolution of Senedd Cymru before Senedd Cymru approves the local government finance report for the financial year beginning on 1 April 2021, or before 1 March 2021 (whichever is earlier).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Local Government Strategic Finance Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

*Order made by the Welsh Ministers, laid before Senedd Cymru under paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988, for approval by resolution of Senedd Cymru before the approval by Senedd Cymru of the local government finance report for the financial year beginning on 1 April 2021, or before 1 March 2021 (whichever is earlier).*

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W E L S H   S T A T U T O R Y  
I N S T R U M E N T S

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**2021 No. 16 (W. 6)**

**RATING AND VALUATION,  
WALES**

**The Non-Domestic Rating  
(Multiplier) (Wales) Order 2021**

*Made* 7 January 2021

*Laid before Senedd Cymru* 11 January 2021

*Coming into force in accordance with article  
1(2)*

The Welsh Ministers make the following Order in exercise of the powers conferred on the Treasury by paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988(1), and now vested in them(2).

**Title, commencement and application**

**1.**—(1) The title of this Order is the Non-Domestic Rating (Multiplier) (Wales) Order 2021.

(2) This Order comes into force on the day after the day on which it is approved by a resolution of Senedd Cymru, provided that the approval of the Order is

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(1) 1988 c. 41.

(2) The power under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988, so far as exercisable in relation to Wales, was transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), the power is now vested in the Welsh Ministers.

given before the approval by Senedd Cymru of the local government finance report for the financial year beginning on 1 April 2021, or before 1 March 2021 (whichever is earlier)(1).

(3) This Order applies in relation to Wales.

### **Non-domestic rating multiplier**

2. For the purpose of paragraph 3B of Schedule 7 to the Local Government Finance Act 1988, for the financial year beginning on 1 April 2021, B is specified as 291.0.

### **Revocation**

3. The Non-Domestic Rating (Multiplier) (Wales) Order 2020(2) is revoked.

*Rebecca Evans*

Minister for Finance and Trefnydd, one of the Welsh Ministers

7 January 2021

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(1) By virtue of section 150A(2) of the Government of Wales Act 2006, references in the Local Government Finance Act 1988 to the National Assembly for Wales now have effect as references to Senedd Cymru.

(2) S.I. 2020/1254 (W. 285).

## **Explanatory Memorandum to the Non-Domestic Rating (Multiplier) (Wales) Order 2021**

This Explanatory Memorandum has been prepared by Local Government Strategic Finance 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 Non-Domestic Rating (Multiplier) (Wales) Order 2021. I am satisfied that the benefits justify the likely costs.

**Rebecca Evans MS**  
**Minister for Finance and Trefnydd**  
**11 January 2021**



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## **PART 1: EXPLANATORY MEMORANDUM**

### **1. Description**

#### *The Non-Domestic Rating (Multiplier) (Wales) Order 2021 Order (the 2021 Order)*

The 2021 Order sets the non-domestic rating (NDR) multiplier for Wales for the financial year 2021-22. It reflects the decision announced on 15 December 2020 to freeze the multiplier rather than using the Retail Prices Index (RPI) to calculate an increase in the multiplier.

Between 2018-19 and 2020-21, the multiplier was increased in line with the Consumer Prices Index (CPI). This position was initially proposed for 2021-22, resulting in the making and laying of The Non-Domestic Rating (Wales) Order 2020 (the 2020 Order). The debate on the 2020 Order was scheduled for 8 December but was postponed, with the motion subsequently withdrawn on 15 December following the change in policy position to freeze the multiplier.

#### *Calculation of the Multiplier*

Under the Local Government Finance Act 1988 (the 1988 Act), the annual increase in the multiplier should be calculated using the RPI figure for the September preceding the financial year to which the multiplier applies. For 2021-22, the RPI figure would have been 294.3.

The multiplier is applied to the rateable value (RV) of each non-domestic property to calculate its non-domestic rates bill. The 2021 Order applies the figure required to ensure there is no increase in the multiplier in place of the RPI figure. This results in no increase in the 2021-22 rates bills to be paid by businesses and other non-domestic property owners, as opposed to a rise in rates bills which would be the case if the RPI figure were used.

The formula used for calculating the NDR multiplier in a non-revaluation year is:

$$(A \times B) / C.$$

A is the multiplier for the preceding financial year

B is the RPI for September of the preceding financial year

C is the RPI for September of the financial year two years before.

Welsh Ministers may substitute a figure for B which is less than the RPI figure. As no increase in the multiplier is used as the measure for setting the multiplier, B is calculated on this basis.

To calculate the appropriate figure for freezing the multiplier, the value for B divided by the value for C is required to be equal to 1. As C is set in primary legislation as RPI for September of the financial year two years before, the figure for B must also be this figure. For 2021-22, B has been calculated as 291.

This results in the multiplier for 2021-22 remaining at 0.535 instead of increasing to 0.541.

## **2. Matters of Special Interest to the Legislation, Justice and Constitution Committee**

Given the change in the policy position after the laying and making of the 2020 Order, the 2021 Order revokes that Order, in addition to setting the value for B at 291.

## **3. Legislative background**

Under the 1988 Act, for financial years in which new rating lists do not apply (ie. all years which are not revaluation years), the default position for determining the non-domestic rating multiplier for Wales is to apply the formula set out in paragraph 3B to Schedule 7 to the 1988 Act. An element in that formula is the RPI for September of the financial year preceding the year concerned. The financial year beginning 1 April 2021 is not a revaluation year and therefore there will not be a new rating list.

Under paragraph 5(3) of Schedule 7 to the 1988 Act, the Welsh Ministers have the power to increase a multiplier at below the level of inflation as measured by RPI. It is this power which the Welsh Ministers propose to exercise in making the 2021 Order.

The Welsh Ministers have adopted the approach of increasing the multiplier using CPI rather than RPI for each financial year since 2018-19. However, it has been decided that for 2021-22, the multiplier will be frozen.

As the Welsh Government is diverging from the prescribed practice of increasing the multiplier by RPI, Ministers are required, under paragraph 5(15) of Schedule 7 to the 1988 Act, after making the 2021 Order to limit the increase at below RPI, to lay it before the Senedd for approval.

The 2021 Order is subject to a made affirmative procedure and must be approved by the Senedd for it to be effective. It is also a requirement of the 1988 Act that any such Order is approved before the *Local Government Finance Reports* (for unitary authorities and police and crime commissioners) are approved by the Senedd, or before 1 March in the preceding financial year, whichever is earlier. This requirement for prior agreement of the multiplier arises because it plays a vital part in calculating the total funding available in the annual settlements.

The debate on the Local Government Finance Report for unitary authorities for 2021-22 is expected to be scheduled for debate in early March 2021. The debate to approve the 2021 Order is scheduled to take place on 9 February 2021.

#### **4. Purpose and Intended Effect of the Legislation**

The 2021 Order will have the effect of freezing the NDR multiplier rather than increasing by RPI for the financial year 2021-22. By freezing the NDR multiplier, the multiplier will be set at 0.535.

This will mean that non-domestic property owners and occupiers in Wales will receive lower rates bills for 2021-22 than they would have if RPI were used.

Primary legislation does not currently provide the Welsh Ministers with powers to permanently change the figure used to calculate the multiplier from RPI to a lower measure. Therefore, the 2021 Order will apply to 2021-22 only.

Similar orders were made to effect a change to increase by CPI rather than RPI for 2018-19 to 2020-21.

All owners or occupiers of non-domestic properties who pay rates will benefit from the change. Even properties which receive significant amounts of rates relief will benefit as the residual amounts will be calculated using a lower multiplier.

All the non-domestic rates collected in Wales are pooled centrally and distributed to unitary authorities and to police and crime commissioners as part of the annual local government settlements. The total amount to be distributed in this way is known as the Distributable Amount. It is calculated by applying the multiplier to the estimated national total of rateable value, taking account of any surplus or deficit carried forward from previous years.

The Distributable Amount is a key component of the annual local government revenue settlements and the 1988 Act requires that it is approved by the Senedd as part of the annual *Local Government Finance Reports*. The multiplier therefore needs to be determined before the annual settlements can be finalised.

There is a clear purpose to the policy behind the legislation. It is aimed at supporting economic growth and reducing the local tax liability for businesses and other non-domestic ratepayers in Wales, ensuring they are not at a disadvantage compared to other parts of the United Kingdom.

Freezing the multiplier rather than increasing the multiplier by RPI in Wales will reduce the income into the non-domestic rates pool in 2021-22. The reduction will be fully funded by the Welsh Government and will be reflected in the calculations for the local government settlements so that there is no financial impact on local authorities or police budgets.

#### **5. Consultation**

No consultation has been undertaken on the policy behind the 2021 Order. The proposals benefit all ratepayers in Wales and there is no impact on the resources available to local authorities. The policy position replicates changes made in England and ensures ratepayers in Wales are not placed at a disadvantage compared to those in England.



## **PART 2: REGULATORY IMPACT ASSESSMENT**

### **Options**

#### ***Option 1 – Use RPI to increase the multiplier***

This option would increase the multiplier for 2021-22 by RPI at September 2020 (1.1%), resulting in a multiplier of 0.541.

#### ***Option 2 – Increase the multiplier by the equivalent of CPI***

This option would increase the multiplier for 2021-22 by CPI at September 2020 (0.5%), resulting in a multiplier of 0.538.

#### ***Option 3 – Freeze the multiplier***

This option would result in no increase in the multiplier, resulting in a multiplier of 0.535.

### **Costs and benefits**

#### ***Option 1 – Use RPI to increase the multiplier***

The following illustrates the effect of using RPI to increase the multiplier on the non-domestic rates bill of a property.

For example, if a property has a rateable value (RV) as assessed by the Valuation Office Agency of £15,000, the rates bill for 2020-21 (before any reliefs) would have been:

$$\text{RV } \pounds 15,000 \times 0.535 = \pounds 8,025$$

Applying RPI would result in an annual rates bill for 2021-22 of:

$$\text{RV } \pounds 15,000 \times 0.541 = \pounds 8,115$$

The increase in the annual charge would therefore be £90.

#### ***Option 2 – Increase the multiplier by the equivalent of CPI***

This option would result in a lower increase in rates bills for all non-domestic properties than under RPI. Using the example from Option 1.

The rates bill for 2020-21 was:

$$\text{RV } \pounds 15,000 \times 0.535 = \pounds 8,025$$

An increase using CPI for 2021-22 would give a bill of:

$$RV \quad £15,000 \times 0.538 = £8,070$$

The increase in rates for the property would therefore be £45, £45 less than if RPI were used.

The total saving to non-domestic ratepayers across Wales is estimated at around £6m in 2021-22. This would be a recurrent saving as the multiplier cannot be increased at a level above RPI in future years. This saving is additional to the savings made from applying the same approach in each year since 2018-19.

### ***Option 3 – Freeze the multiplier***

This option would result in no increase in rates bills for all non-domestic properties. Using the example from Options 1 and 2.

The rates bill for 2020-21 was:

$$RV \quad £15,000 \times 0.535 = £8,025$$

A freeze in the multiplier for 2021-22 would give a bill of:

$$RV \quad £15,000 \times 0.535 = £8,025$$

There would therefore be no increase in rates for the property, rates would therefore be £90 less than if RPI were used and £45 less than if CPI were used.

The total saving to non-domestic ratepayers across Wales is estimated at around £12m in 2021-22. This would be a recurrent saving as the multiplier cannot be increased at a level above RPI in future years. This saving is additional to the savings made from increasing by CPI in each year since 2018-19.

### **Option selection**

The cost of freezing the multiplier (Option 3) would be borne by the Welsh Government. There would be no financial impact on local authorities. The approach also means that ratepayers in Wales would not be at a disadvantage compared to other parts of the UK.

Option 3 is therefore the preferred option.

### **Analysis of other effects and impacts**

#### **Promoting Economic Opportunity for All (Tackling Poverty)**

Freezing the multiplier provides support for all ratepayers which could help to prevent hardship. It also ensures ratepayers in Wales are not at a disadvantage to ratepayers in England benefitting from a freeze in the multiplier.

**UNCRC**

No particular impact on the rights of children has been identified.

**Welsh language**

No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified.

**Equalities**

No specific impacts, positive or negative, on persons who share a protected characteristic (as determined by the Equality Act 2010) have been identified.

**Well-being of Future Generations (Wales) Act 2015**

Freezing the multiplier will assist all ratepayers and, as such, will help to contribute to the achievement of the wellbeing goals of a prosperous and a more equal Wales.

**Impact on voluntary sector**

Freezing the multiplier will benefit all ratepayers including those operating in the voluntary, charitable and not-for-profit sectors.

**Competition Assessment**

A competition filter test has been applied to the Order. As the change benefits all ratepayers, no effect on competition within Wales is indicated. Freezing the multiplier means that ratepayers in Wales are not placed at a disadvantage compared to other parts of the UK.

**Post implementation review**

The Welsh Government will monitor the impact of the change on the non-domestic rates pool.





Ein cyf/Our ref: MA-RE-4424-20

Elin Jones, MS  
Llywydd  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

07 January 2021

Dear Llywydd,

### **THE NON-DOMESTIC RATING (MULTIPLIER) (WALES) ORDER 2021**

I have today made the Non-Domestic Rating (Multiplier) (Wales) Order 2021, under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988. It will come into force on the day after the day on which it is approved by a resolution of Senedd Cymru and will take effect from 1 April 2021. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with the procedure set out in paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988, this instrument must be approved by the Senedd Cymru before the Senedd approves the *Local Government Finance Reports* for the financial year beginning 1 April 2021, or before 1 March in the preceding financial year, whichever is earlier, in order for it to be effective. In these circumstances, I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the Plenary debate for this item of subordinate legislation on 9 February.

I am copying this letter to Mick Antoniw MS, Chair of the Legislation, Justice and Constitution Committee, Llyr Gruffydd MS, Chair of the Finance Committee, Siwan Davies, Director of Senedd Business, Sian Wilkins, Head of Chamber and Committee Services and Julian Luke, Head of Policy and Legislation Committee Service.

Yours sincerely,

**Rebecca Evans AS/MS**  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

**Pack Page 197**

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

# Agenda Item 5.1

## SL(5)691 – The Digital Health and Care Wales (Establishment and Membership) Order 2020

### Background and Purpose

This Order is made under section 22 of the National Health Service (Wales) Act 2006, which permits the Welsh Ministers to create Special Health Authorities.

The Order provides for the establishment of Digital Health and Care Wales ('DHCW') and makes provision about its constitution and overarching functions. Further detail regarding how DHCW will operate is contained in regulations which will come into force at the same time as the Order on 30 December 2020. A separate report has been prepared in relation to those regulations.

The Order makes provision for the establishment of DHCW and provides for the membership of the new body. It also confirms that DHCW is to exercise functions as directed by the Welsh Ministers in connection with the matters set out within the Order, including in relation to the design, development and delivery of digital platforms, services and systems for the Health and Care Sector in Wales. The Welsh Ministers also have the power to direct DHCW as to the exercise of any functions.

DHCW will be a new organisation within NHS Wales, sitting alongside the current seven Health Boards, three NHS Trusts and a single Special Health Authority (Health Education Improvement Wales); with the overarching responsibility for providing a source for digital platforms, services and systems for the health and care sector in Wales.

### Procedure

Negative.

### Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### Merits Scrutiny

One point 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 Senedd.**

Can the Welsh Government confirm why the Explanatory Memorandum and Regulatory Impact Assessment have only been laid in English?



## Implications arising from exiting the European Union

None.

## Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable.

## Committee Consideration

The Committee considered the instrument at its meeting on 11 January 2021 and reports to the Senedd in line with the reporting point above.



## **Government Response: The Digital Health and Care Wales (Establishment and Membership) Order 2020**

Merit Scrutiny point: *Response*

The Welsh Government is committed to increasing the number of Explanatory Memoranda and Regulatory Impact Assessments for Statutory Instruments that are laid bilingually in the Senedd, however, these documents are not automatically laid bilingually at the moment. While we are laying an increasing proportion of these documents bilingually, we are also having to prioritise our limited translation resource very strictly at the moment, with Covid and Brexit related legislation and guidance for the public our top priority. The pandemic and Brexit have significantly contributed to the unprecedented pressures on our translation resources.

Standing Order 15.4 of the Senedd requires all documents to be laid bilingually where reasonably practicable, and Standard 47 of the Welsh Language Standards require the Welsh Government to consider the subject matter and the anticipated audience of certain documents to prioritise their translation. Following guidance provided by the Commissioner's office, we considered issues such as whether the Order related to issues affecting the Welsh language directly, whether the Order were of great interest to Welsh speaking groups in particular, and whether a high proportion of the documents' audience would be Welsh speaking. As this Order is procedural in nature, establishing DHCW and making provisions about its membership and functions, and does not have a direct impact on the public, it has not been deemed a priority for our stretched Translation Service at this time.

## SL(5)692 – The Digital Health and Care Wales (Membership and Procedure) Regulations 2020

### Background and Purpose

The Digital Health and Care Wales (Establishment and Membership) Order 2020 (“the Order”) establishes Digital Health and Care Wales (“DHCW”) and makes provision about its constitution and overarching functions.

These Regulations supplement the Order and make detailed provision about the membership and procedures of DHCW. They set out procedural matters and detail in relation to the various members, including their appointment, eligibility, tenure, disqualification, suspension and removal from office. In addition, these Regulations require DHCW to make standing orders regarding its meetings and proceedings.

Together, the Order and these Regulations provide the legal framework for the establishment of DHCW.

### Procedure

Negative.

### Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

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

Regulation 14(2) provides that, in certain circumstances, the non-officer members may remove an associate member (appointed in accordance with regulation 3(6)(b)) from office.

Unlike regulations 11(2) and 13(2) - which expressly provide that written notice must be given *to the member* - it is not immediately apparent from the wording of regulation 14(2) what the non-officer members must do with the written notice in order to comply with the provision.

When considered alongside the wording of regulation 14(3), it could be inferred that written notice under regulation 14(2) must be given to the member (as that is what is required in order to suspend a member under 14(3)). However, this is not expressed clearly in the wording of regulation 14(2) and we believe that the ambiguity would be avoided if the wording “to the member” was included in the relevant place.



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

The beginning of regulation 14(5) reads “A person whose appointment is suspended under paragraph (1)”. It appears that the reference to paragraph (1) is incorrect, as the relevant power to suspend is contained in paragraph (3) of regulation 14, not paragraph (1).

## **Merits Scrutiny**

The following points are 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 Senedd.**

Regulation 2 in the English language version of these Regulations defines “the 1992 Act”, “the Act” and “the Order” first and then continues to list definitions in alphabetical order. Can the Welsh Government confirm why the same approach has not been adopted in the Welsh language version of these Regulations, where the entire list of definitions is in alphabetical order?

### **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 Senedd.**

Can the Welsh Government confirm why the Explanatory Memorandum and Regulatory Impact Assessment have only been laid in English?

### **3. 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 Senedd.**

Footnote (5) on page 4 of these Regulations refers to the National Health Service Reform (Scotland) Act 2004 *[emphasis added]*, but “2004” has been omitted from the reference.

It is accepted that the footnote does not form part of the law. However, if the purpose of its inclusion is to assist a reader, it would be helpful if the complete reference were used.

## **Implications arising from exiting the European Union**

None.

## **Welsh Government response**

A Welsh Government response is required.

## **Committee Consideration**

The Committee considered the instrument at its meeting on 11 January 2021 and reports to the Senedd in line with the reporting points above.



## **Government Response: The Digital Health and Care Wales (Membership and Procedure) Regulations 2020**

Technical Scrutiny points 1 and 2:

Whilst express provision is not made that a notice under regulation 14(2) must be given *to the member*, we consider that considered alongside the wording of regulation 14(3), it is inferred that written notice under regulation 14(2) must be given to the member (as that is what is required in order to suspend a member under regulation 14(3)).

We acknowledge the incorrect reference in regulation 14(5) to paragraph (1) and will rectify this through a correction slip.

Merit Scrutiny points 1, 2 and 3: *Response*

This listing of the definitions in alphabetical order in the Welsh text of these Regulations is consistent with the Welsh Government's past practice. However, discussions are ongoing to consider this for the future.

The Welsh Government is committed to increasing the number of Explanatory Memoranda and Regulatory Impact Assessments for Statutory Instruments that are laid bilingually in the Senedd, however, these documents are not automatically laid bilingually at the moment. While we are laying an increasing proportion of these documents bilingually, we are also having to prioritise our limited translation resource very strictly at the moment, with Covid and Brexit related legislation and guidance for the public our top priority. The pandemic and Brexit have significantly contributed to the unprecedented pressures on our translation resources.

Standing Order 15.4 of the Senedd requires all documents to be laid bilingually where reasonably practicable, and Standard 47 of the Welsh Language Standards require the Welsh Government to consider the subject matter and the anticipated audience of certain documents to prioritise their translation. Following guidance provided by the Commissioner's office, we considered issues such as whether the Regulations related to issues affecting the Welsh language directly, whether the Regulations were of great interest to Welsh speaking groups in particular, and whether a high proportion of the documents' audience would be Welsh speaking. As these Regulations are procedural in nature, making provisions about the membership and procedures of DHCW, and do not have a direct impact on the public, they have not been deemed a priority for our stretched Translation Service at this time.

We acknowledge that it would be helpful if the complete reference to the National Health Service Reform (Scotland) Act 2004 were used in the footnote and it will be corrected via correction slip.

# Agenda Item 5.3

## **SL(5)708 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020**

### **Background and Purpose**

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 (“the principal Regulations”), to commence those Regulations at the beginning of 20 December 2020 (with the exception of Part 6) and to move Wales into Tier 4 from the same date.

These Regulations also make changes to Schedule 6 to the principal Regulations in respect of arrangements for forming extended households over the Christmas period.

### **Procedure**

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve the Regulations within 28 days (excluding any days when the Senedd is dissolved or in recess for more than four days) of the date they were made for them to continue to have effect.

### **Technical Scrutiny**

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

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

Regulation 2(5)(d) makes amendments to paragraph 4 of Schedule 6 to the principal Regulations (which in turn makes modifications to paragraph 3 of Schedule 4 to those regulations) so that restrictions that were initially applicable over the “Christmas period” now only apply on 25 December.

Regulation 2(5)(d)(ii) of these Regulations removes paragraph 3A of Schedule 4 to the principal Regulations. However, a reference to paragraph 3A remains in paragraph 3(5)(a) of Schedule 4.

We consider that the amendments made by regulation 2(5)(d) of these regulations should include a deletion of the reference to paragraph 3A contained in paragraph 3(5)(a) of Schedule 4 of the principal Regulations, as the reference is redundant.





## **2. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In the Welsh text, in the paragraph inserted by regulation 2(5)(g)(ii) of these Regulations, the word “cyn” is missing from the part of the sentence “yn union 25 Rhagfyr 2020”. We consider that it should read “yn union cyn 25 Rhagfyr 2020” [*emphasis added*].

## **Merits Scrutiny**

The following points are 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 or public policy likely to be of interest to the Senedd**

We note the Regulations came into force before being laid before the Senedd. The First Minister notified the Llywydd of this in a letter dated 19 December 2020. In particular, we note the following in the letter:

*“In accordance with section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force before they are laid before the Senedd. It is necessary for them to come into force immediately in light of new information regarding the incidence rates of coronavirus in Wales and the rate of spread of the disease.”*

### **2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraphs in the Explanatory Memorandum:

*“Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.*

*Article 5 (right to liberty), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 11 (freedom of assembly and association) and Article 1 of the First Protocol (protection of property) are engaged by these Regulations. The changes to the extended household provisions, in particular engage, Article 8.*

*Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public*



*health and are proportionate. Any interference with these rights also needs to be balanced with the State's positive obligations under Article 2 (right to life). The implementation of new restrictions and requirements under these Regulations is a proportionate response to the increasing spread of the coronavirus. It balances the need to maintain an appropriate response to the threat posed by the coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to reduce the rate of transmission of the coronavirus, taking into account the scientific evidence."*

### **3. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

We note that there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

*"Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, there has been no public consultation in relation to these Regulations."*

### **4. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

The Explanatory Memorandum provides that a regulatory impact assessment has not been carried out in relation to these Regulations due to the need to put them in place urgently to deal with a serious and imminent threat to public health. The Explanatory Memorandum does provide that a summary integrated impact assessment has been prepared for the principal Regulations and will be published on the gov.wales website:

<https://gov.wales/impact-assessments-coronavirus>.

### **5. Standing Order 21.3 (ii) - that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd**

We note the following extract of the Explanatory Memorandum which refers to scientific evidence drawn on to assess public health risk. The Explanatory Memorandum provides that:

*"The principal Regulations made on 18 December set out restrictions and requirements which will apply to four different Alert Levels with the determination of applicable Alert Levels as set out in the updated Coronavirus Control Plan, placed Wales into Alert Level Four on Christmas Day and provided for a temporary amendment to the Regulations for the Christmas period (between 23 and 27 December).*

*Since making those Regulations, the Chief Medical Officer recommended that an appropriate response to the public health situation was that Wales moved to Alert Level 4 from the beginning of 20 December. This was in light of new information regarding the incidence rates of coronavirus in Wales and the rate of spread of the disease, in particular as a result of a new variant of the virus.*



*For the same reasons, the Welsh Ministers have also decided that the exceptions to the restrictions provided for in Schedule 6 relating to Christmas should now only apply to 25 December 2020."*

## **Welsh Government response**

A Welsh Government response is required in relation to the technical reporting points raised.

## **Committee Consideration**

The Committee considered the instrument at its meeting on 11 January 2021 and reports to the Senedd in line with the reporting points above.



**GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS RESTRICTIONS) (NO. 5) (WALES) (AMENDMENT) REGULATIONS 2020**

1. This is a Government response to the draft report of the Legislation, Justice and Constitution Committee dated 6 January 2021.

**Technical scrutiny points:**

*Points 1 and 2: Errors in regulation 2(5)*

2. The Government is grateful for the notice of the issues. As the Committee is aware, the relevant provisions of the principal Regulations are now spent. These provisions have been revoked by the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021 made today.

## SL(5)704 – The Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020

### Background and Purpose

This Code of Practice gives guidance as to what does or does not fall within paragraphs 1 and 2 of Schedule 8 of the Political Parties, Elections and Referendums Act 2000 (PPERA). Those paragraphs are relevant to the definition of 'campaign expenditure' and therefore, in particular, to what expenses a political party is required to report.

The Electoral Commission has power under paragraph 3 of Schedule 8 to PERA to prepare a Code of Practice giving guidance as to the kinds of expenses which do or do not fall within paragraphs 1 and 2 of Schedule 8 to PERA.

The Code was prepared by the Electoral Commission and submitted to the Welsh Ministers for approval. The Code will be issued by the Minister for Housing and Local Government under paragraph 3 of Schedule 8 to PERA.

### Procedure

Draft Negative.

The Welsh Ministers have laid a draft of the Code before the Senedd. If, within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the draft being laid, the Senedd resolves not to approve the draft Code then the Welsh Ministers must not issue the Code.

If no such resolution is made, the Welsh Ministers must issue the Code (in the form of the draft) and the Code comes into force on a day specified in an order made by the Welsh Ministers.

### Scrutiny under Standing Order 21.7

**Three points are identified for reporting under Standing Order 21.7 in respect of the Code.**

1. The Code will come into force after the regulated period has commenced. It is noted that the Explanatory Note states:

*"The regulated period for political parties commences on 6 January 2021.*

*"Although the Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020 will not be in force by 6 January the Electoral Commission will issue guidance prior to the Code of Practice being in force to ensure information is available."*



2. Paragraphs 1.24 and 1.25 of the Code summarise the provisions of PPERA concerning notional expenditure, as set out in section 73 of PPERA. The first bullet point of paragraph 1.24 seeks to summarise one of the conditions which determines when notional campaign expenditure is treated as campaign expenditure incurred by the party. Specifically paragraph 1.24 refers to *"when property, services or facilities ... are transferred or provided free of charge or at a discount of more than 10 per cent for the use or benefit of the party"*. Similarly, paragraph 1.25 refers to *"its market value (where it is transferred free of charge), or the value of the discount"*.

However, section 73 of PPERA distinguishes between the treatment of a transfer of property and the provision of property, services and facilities. The summaries may, therefore, be considered an oversimplification.

Although the Code would not override the obligations of PPERA, it may lead to a misunderstanding of the position if a person reads only the Code.

3. It is noted that the consultation draft of the Code differs from the Code laid before the Senedd. Although some of the modifications are minor in nature, for example reflecting the name change from the National Assembly for Wales to the Senedd, others are points of substance.

The origin of the modifications is not clear. Specifically it is not clear whether the modifications were made by the Electoral Commission following conclusion of their consultation or whether they were made by the Welsh Ministers. It is noted that if the draft now laid before the Senedd incorporates modifications determined by the Welsh Ministers, that the Code must be accompanied by a statement of the reasons for making the modifications in accordance with paragraph 3(5) of Schedule 8 to PPERA. As a statement has not been laid, it is assumed that the modifications were made by the Electoral Commission. The Welsh Government is asked to confirm the source of the modifications.

## Government response

Given the current circumstances regarding coronavirus, a Welsh Government response to the second and third points is required as soon as is reasonably practicable.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**12 January 2021**



**Political Parties Campaign Expenditure  
(Senedd Elections)  
Code of Practice  
2020**

**This Code:**

- **is to be known as the Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020**
- **comes into force on [                      ]**

# Introduction

## Background

1.1 This Code of Practice on qualifying expenses for political parties was prepared by the Electoral Commission following consultation with interested persons and bodies, including the Welsh Government and the Senedd Commission.

## The power to issue this Code

1.2 This Code of Practice has been approved by the Senedd and is issued by the Minister for Housing and Local Government under Schedule 8, paragraph 3 Political Parties, Elections and Referendums Act 2000 (PPERA) as provided for by the Welsh Ministers (Transfer of Functions) Order 2018.

## Purpose of this Code

1.3 This Code gives guidance as to what does or does not fall within paragraphs 1 and 2 of Schedule 8 PERA.

1.4 Those paragraphs are relevant to the definition of ‘campaign expenditure’ and therefore, in particular, to what expenses a political party is required to report.

1.5 Paragraph 1 of Schedule 8 lists the expenses which qualify when incurred for election purposes. Paragraph 2 lists the exclusions.

## What elections does this Code cover?

1.6 This Code applies to elections to the Senedd.

1.7 If there is a combined regulated period in operation under Part III, Schedule 9 PERA, the UK election rules apply to certain elections taking place during that period. Where that applies to an election to the Senedd, this Code does not apply.

## This Code and other guidance published by the Commission

1.8 This Code is statutory guidance. This Code differs from other types of guidance that the Commission publishes because it has been approved by the Senedd.

1.9 The Commission also publishes non-statutory guidance on the rules for elections.

1.10 The law on spending by political parties is set out in PERA. An overview of the legal framework in PERA is set out below by way of context for this Code.

1.11 You should refer to our guidance for specific information on the rules for each election. Updated guidance about what elections are being held and which rules apply is always available on our website in the lead-up to an election.



## What are the consequences of breaching this Code?

1.12 Where a party officer does not follow this Code, the party treasurer, or other relevant officer, are likely to be in breach of the statutory requirements relating to campaign expenditure, for example the statutory requirement to deliver a complete and correct return. Breaches of this Code may also lead to a conclusion that a party treasurer knowingly or recklessly made a false declaration about the return. The commission of these offences may result in prosecution.

1.13 Section 79(3) PPERA provides that it is a defence for any person or registered party charged with the offence of exceeding the limit on campaign expenditure (under section 79(2) PPERA) to show that they complied with this Code in determining the items and amounts of campaign expenditure to be entered in the relevant campaign expenditure return under section 80 PPERA, and that the limit would not have been exceeded on the basis of the items and amounts entered in that return.

## The legal framework in PPERA for political party spending

### Registration of political parties

1.14 Political parties must be registered with the Electoral Commission to stand candidates using party identity marks in relevant elections. Political party spending at elections is governed by PPERA.

### Spending limits and campaign periods

1.15 The rules on political party spending apply during the period set out in Schedule 9 PPERA. Schedule 9 PPERA also sets out the spending limits.

### What counts as political party spending?

1.16 Political party spending at elections is governed by Part V of PPERA. The Electoral Commission has power under Part II of Schedule 8 PPERA to prepare a Code of Practice giving guidance as to the kinds of expenses which do or do not fall within Part I.

1.17 Section 72(2) PPERA defines ‘campaign expenditure’ in relation to a registered party as *‘expenses incurred by or on behalf of the party which are expenses falling within Part I of Schedule 8 and so incurred for election purposes.’*

1.18 Excluded from this is anything which falls to be included in a candidate’s election expenses. Accordingly, anything that promotes the election of candidates standing in the name of the party outside of the period where the spending rules for candidates apply counts as campaign expenditure for the party and so must be reported in the party’s return. There may be instances when campaign spending must be split between the political party and a candidate standing in a constituency.

1.19 Part I of Schedule 8 PPERA outlines the expenses which qualify where incurred 'for election purposes'. Paragraph 1 of Schedule 8 lists matters that qualify. Paragraph 2 lists the exclusions.

#### *Disability and translation related expenses*

1.20 Schedule 8, paragraph 2 PPERA sets out a list of matters which are 'excluded' from being 'election expenses' within the meaning of section 72.

1.21 Schedule 8, paragraph 2(1)(f)(i) excludes any expenses incurred relating to any matter that is reasonably attributable to the candidate's disability.

1.22 Schedule 8, paragraph 2(1)(f)(ii) excludes any expenses incurred in respect of, or in consequence of, translating anything from Welsh into English or from English into Welsh.

### **Election purposes**

1.23 'For election purposes' is defined in section 72(4) PPERA. It means:

*for the purpose of or in connection with—*

*(a) promoting or procuring electoral success for the party at any relevant election, that is to say, the return at any such election of candidates—*

*(i) standing in the name of the party, or*

*(ii) included in a list of candidates submitted by the party in connection with the election; or*

*(b) otherwise enhancing the standing—*

*(i) of the party, or*

*(ii) of any such candidates,*

*with the electorate in connection with future relevant elections (whether imminent or otherwise).*

### **Notional spending**

1.24 'Notional campaign expenditure' counts towards the party's spending limits. Under section 73 PPERA, notional campaign expenditure arises when property, services or facilities:

- are transferred or provided free of charge or at a discount of more than 10 per cent for the use or benefit of the party
- are made use of by or on behalf of the party, and

- if expenses had been incurred by or on behalf of the party in respect of that use, they would have been campaign expenditure – i.e. within the categories listed in paragraph 1 and not excluded by paragraph 2 of Schedule 8

1.25 Where all three of the above points are satisfied, an ‘appropriate amount’ is treated as campaign expenditure incurred by the party. The appropriate amount is the proportion that is reasonably attributable to the use of the item, of either:

- its market value (where it is transferred free of charge), or
- the value of the discount

1.26 Where this spending is made use of by or on behalf of the party it must be declared as campaign expenditure in the party’s return, even if the items provided have not been authorised by the party. The rules on donations also apply to the associated gift.

## Reporting

1.27 Under section 80 PPERA, political parties are required to deliver a return after an election. One of the requirements is that the return must include:

*a statement of all payments made in respect of campaign expenditure incurred by or on behalf of the party during the relevant campaign period in the relevant part or parts of the United Kingdom.*

1.28 The party treasurer is responsible for incurring expenditure and completing the return. Where the party has a Campaigns Officer appointed under section 25 PPERA, they are responsible for this. Returns must be delivered to the Electoral Commission and the deadline for delivery will depend on the amount that the party has spent.

1.29 The party treasurer must sign a declaration that the return is, to the best of their knowledge and belief, complete and correct. It is an offence to knowingly or recklessly make a false declaration.

# Definitions

2.1 In this Code the following definitions apply:

**‘Appropriate amount’** means an amount of election expenses determined in accordance with s.73(2) PPERA.

**‘Campaign expenditure’** means expenditure determined in accordance with s.72(2) PPERA.

**‘Cost’** has its ordinary meaning of the expense of, or associated with, an item. It includes the ‘appropriate amount’ to be treated as incurred by the party under the rules on notional spending.

**‘Constituency candidate’** means a candidate at a Senedd constituency election.

**‘Dual candidate’** means a candidate standing for election in both a Senedd constituency election and on a party list at a Senedd regional election.

**‘Electoral region’** means an area specified in accordance with s.2(3) of the Government of Wales Act 2006. There are five electoral regions in Wales.

**‘Expenditure return’** or **‘Return’** means the expenditure return for a political party required by section 80 PPERA.

**‘Item’** means something that could be the subject of spending. It includes services and activities as well as physical things.

**‘Notional spending’** means campaign expenditure treated as incurred where property, services or facilities are provided free of charge or at a discount and made use of by or on behalf of the party under section 73 PPERA.

**‘Party list’** means a list of not more than twelve party candidates (but it may be a list of only one candidate) to be Senedd members for a Senedd electoral region.

**‘Party list candidate’** means a candidate at a Senedd regional election included on a party list.

**‘Political party’** means a party registered under Part II PPERA.

**‘PPERA’** means the Political Parties, Elections and Referendums Act 2000.

**‘Regulated period’** means the ‘relevant period’ for an election as set out in Schedule 9 PPERA.

**‘Spending limit’** refers to the maximum amount of money that a political party can spend at an election calculated using the amounts set out in Schedule 9 PPERA.

# General guidance on the kinds of expenses which qualify as campaign expenditure when incurred for election purposes

## Re-using items paid for and used at a previous election

3.1 Items paid for and used at an election by a political party must not be apportioned or discounted because they may or will be re-used at a subsequent election or elections. The full cost of an item which meets the usual criteria must be reported in the return at the election at which the item is first used.

3.2 The full cost of items that may or will be re-used counts towards the spending limit at the first election at which they are used. Where an item is used for purposes other than use at an election, the full cost of the proportion that is used for the election must be reported.

3.3 The purchase cost of items that were:

- paid for in full (owned not hired)
- used at a previous election
- reported in full in the party's expenditure return at a previous election, and
- have not been altered in any way

do not need to be reported in the expenditure return for the same political party at a subsequent election, nor do they count towards the spending limit at such subsequent elections.

3.4 However, all costs incurred in facilitating the re-use of an item at a subsequent election, including:

- cleaning
- alteration and/or addition
- maintenance
- redevelopment

must be reported in the return for the subsequent election where the items are used again.

3.5 The costs incurred in facilitating the re-use count towards the spending limit at the subsequent election at which the item is re-used.

- A party purchases a series of Correx Boards. The party uses them at a Senedd election and reports them in its return for that election. Five years later the party uses the Correx boards again. Prior to use, it has them cleaned and, where necessary, replaced. In its return, the party includes the cost of the cleaning and the replacement Correx boards.
- A party purchases software that it uses to target voters. The party uses the software at a Senedd election. The party reports it in its return for that election. In the time period between elections, the party updates and maintains the system. At the next election where the system is used, the party reports the cost of updating and maintaining the system.
- A party purchases software to hold and process information about voters. The information is acquired from the electoral register which the party is entitled to a copy of. No cost is required to be reported for accessing that data.

The party also used the software for other purposes, such as maintaining the data of members. The information is updated via house to house canvassing. There are no costs involved with the canvassing as it is conducted by volunteers.

A Senedd election is held. The party apportions the cost of the software according to its usage. The entirety of the cost is not for the party's election. The party reports in that election return the proportion of the cost of the software that is relevant to the election. At subsequent elections, the party only reports the upkeep and maintenance of the software and database.

## Items not used at all

3.6 Items paid for but not used at an election are not regarded as incurred for election purposes and do not need to be reported in the return.

## Expenses incurred prior to the commencement of the regulated period

3.7 Expenses incurred before the start of the regulated period, on items used during the regulated period, must be reported in the return. Therefore, the cost of items used during the regulated period but purchased prior to the start of the regulated period count towards the party's spending limit.

## VAT

3.8 Expenses must be reported inclusive of VAT where applicable, even where VAT can be recovered.

3.9 Where VAT is charged on an item, the VAT amount counts towards the spending limit.

## Overheads and associated costs

3.10 Where overhead and associated costs are relevantly incurred, the amount that counts as campaign expenditure is the portion that reasonably reflects usage during the campaign. It is that portion which must be included in the return and counts towards the spending limit.

3.11 This applies to items such as:

- office space
- business rates
- electricity bills
- provision of phone lines and internet access
- mobile phones
- provision of office equipment of any kind

3.12 The proportion that reasonably reflects usage is generally the amount that is incurred over and above the usual costs in a given period.

A party pays a standard amount per month for electricity. In the period in the lead up to the election it incurs an extra amount above what it would ordinarily pay. The extra amount is the amount that must be reported in the return.

3.13 Any other associated costs also count as campaign expenditure, so must be reported and count towards the spending limit.

## Excluded items

3.14 The cost of water, gas, council tax and childcare are not expenses falling within Part I of Schedule 8 PPERA. They are not considered sufficiently closely connected to the matters listed there. They do not need to be reported.

# Schedule 8, paragraph 1 PPERA

## General notes

### This Code is not exhaustive

4.1 This part of the Code sets out a non-exhaustive lists of matters which are relevant for the purposes of each category in Schedule 8, paragraph 1. They should therefore be reported in an expenditure return if associated expenses are incurred by or on behalf of a party for election purposes.

### Notional spending

4.2 This Code applies to notional spending on behalf of a political party in the same way as it applies to spending that is incurred by a political party, unless otherwise specified.

### Costs that are excluded

4.3 This section of the Code clarifies paragraph 1 of Schedule 8 PPERA. Nothing in it should be taken as qualifying the list of exclusions set out in paragraph 2 of Schedule 8 PPERA, which is reproduced below.

- (1) Nothing in paragraph 1 shall be taken as extending to—*
- (a) any expenses in respect of newsletters or similar publications issued by or on behalf of the party with a view to giving electors in a particular electoral area information about the opinions or activities of, or other personal information relating to, their elected representatives or existing or prospective candidates;*
  - (b) any expenses incurred in respect of unsolicited material addressed to party members;*
  - (c) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds;*
  - (d) any expenses incurred in respect of the remuneration or allowances payable to any member of the staff (whether permanent or otherwise) of the party;*
  - (e) any expenses incurred in respect of an individual by way of travelling expenses (by any means of transport) or in providing for his accommodation or other personal needs to the extent that the expenses are paid by the individual from his own resources and are not reimbursed to him; or*
  - (f) any expenses incurred in respect of a Senedd Cymru election or a local government election in Wales:*



*(i) relating to any matter that is reasonably attributable to the candidate's disability, to the extent that the expenses in respect of the matter are reasonably incurred; and*

*(ii) in respect of, or in consequence of, the translation of anything from Welsh into English or from English into Welsh.*

...

*(3) In relation to sub-paragraph 2(1)(f)(i) "disability", has the same meaning as in section 6 of the Equality Act 2010.*

## Schedule 8, paragraph 1(1)

*Party political broadcasts.*

*Expenses in respect of such broadcasts include agency fees, design costs and other costs in connection with preparing or producing such broadcasts.*

### This paragraph includes:

#### **Services, premises, facilities or equipment provided by others**

5.1 This includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

to prepare, produce or facilitate the production of the content or to broadcast the content.

#### **Overheads and associated costs**

5.2 It includes the cost of any software of any kind for use on any device for the design and production of material in-house.

5.3 For example, a licensing fee for a software application for use in designing broadcast content.

5.4 It includes the cost of purchase and use of any equipment for the preparation, production, facilitation of production or broadcast of the content.

5.5 It includes a relevant proportion of the cost of:

- office accommodation
- business rates
- electricity
- phone rental and internet access

associated with the preparation, production, facilitation of production and/or broadcast of the content.

5.6 It includes the cost of food and/or accommodation for any individual who provides services in connection with the broadcast for the party where that is paid for by the party or reimbursed by the party.

## Schedule 8, paragraph 1(2)

*Advertising of any nature (whatever the medium used).*

*Expenses in respect of such advertising include agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.*

### This paragraph includes:

#### **Services, premises, facilities or equipment, provided by others**

6.1 This includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

that is used to:

- prepare, produce or facilitate the production of advertising material
- disseminate advertising material by distribution or otherwise

6.2 For example, the hire of a photographer and premises to produce images for use in advertising material.

#### **Specific costs in connection with producing or disseminating digital or electronic advertising material**

6.3 It includes the cost of any software, of any kind, for use on any device to:

- design and produce advertising material in-house
- disseminate or facilitate dissemination of advertising material

whether that material is distributed digitally, electronically or via other means.

6.4 For example, a licensing fee for a software application for use on a device.

6.5 It includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

used to:

- prepare, produce or facilitate the production of digital or electronic advertising material
- distribute or facilitate the dissemination of that advertising material via any means

including any cost attributable to increasing the visibility of content by any means.

6.6 For example, the purchase of a more prominent position on a page within a search engine.

6.7 It includes the cost of preparing, producing or facilitating the production of advertising material for:

- downloading and use by others
- posting on and promoting the party via any kind of social media channel or platform

6.8 For example, the costs of producing advertising material promoting the party that is posted to a page on a social media channel encouraging followers to share it.

6.9 It includes the cost of accessing, purchasing, developing and maintaining any digital or other network which:

- facilitates distribution or dissemination of advertising material by any means
- promotes or increases the visibility of advertising material by any means

6.10 For example, the purchase of digital identities used to make material appear as if it has been seen and approved by a high number of users on a social media platform.

6.11 It includes the costs of:

- hosting and maintaining a website or other electronic/digital material that promotes the party
- designing and building the website
- a portion of any website or material that is set up to obtain funds for the party but also promotes the party during the regulated period

### **Other costs included in Schedule 8, paragraph 1(2)**

6.12 It includes the cost of any rights or licensing fee for any image used in producing advertising material.

6.13 It includes the cost of purchase and use of any equipment in connection with:

- preparation, production or facilitating the production of the advertising material
- dissemination of the advertising material by distribution or otherwise

6.14 It includes the cost of:

- paper or any other medium on which advertising material is printed

- physically displaying advertising in any location, for example cable ties or glue for putting up posters

6.15 It includes the cost of purchase, hire or use of:

- photocopying equipment
- printing equipment

for use in printing advertising material.

6.16 It includes a relevant proportion of the cost of:

- office accommodation
- business rates
- electricity
- phone rental and internet access

in connection with:

- preparation, production or facilitating the production of the advertising material
- dissemination of the advertising material by distribution or otherwise

6.17 It includes the cost of food and/or accommodation for any individual who provides services in connection with advertising material for the party where that is paid for or reimbursed by the party.

## Schedule 8, paragraph 1(3)

*Unsolicited material addressed to electors (whether addressed to them by name or intended for delivery to households within any particular area or areas).*

*Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing such material (including the cost of postage).*

### This paragraph includes:

#### **Costs associated with obtaining information and targeting or identifying voters, including database costs**

7.1 This includes the cost of accessing, obtaining, purchasing, developing or maintaining:

- IT software or contact databases
- any information, by whatever means,

that is used to facilitate the sending of unsolicited material to voters.

7.2 For example, the purchase of email addresses.

7.3 It includes the cost of accessing, obtaining or developing data sets, including data analytics to target voters by whatever means, including the cost of agencies, organisations or others that identify groups of voters, by whatever means.

7.4 For example, the cost of any agency paid to analyse social media content to facilitate targeting of voters across electoral areas and the cost of modelling by any agency based on that analysis.

7.5 It includes the cost of any services to identify voters that are purchased, developed or provided before the regulated period, but are used to target voters during the regulated period.

7.6 Where information or access to information is obtained from a third party, the commercial cost of obtaining that information from the third party is included.

#### **Costs associated with preparing, producing or distributing unsolicited material to voters, including via digital means**

7.7 This includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

that is used to:

- prepare, produce or facilitate the production of the unsolicited material
- disseminate by distribution or otherwise the unsolicited material, including any cost attributable to increasing the visibility of material via any means

7.8 It includes the cost of delivering material by any means including electronic means or the physical distribution of the material, for example the cost of envelopes and stamps or the purchase of a system for sending emails.

7.9 It includes the cost of accessing, developing and maintaining any digital or other network which promotes or increases the visibility of unsolicited material on any platform.

7.10 For example, if a party pays a developer to create an app that facilitates targeting of their material on a social media channel.

7.11 It includes the cost of oversight and maintenance of all social media, digital or other forms of distribution of unsolicited material. This includes the maintenance of all social media accounts, including if they are maintained by another entity/individual.

### **Other costs included in Schedule 8, paragraph 1(3)**

7.12 It includes the cost of any rights or licensing fee for any image used in producing unsolicited material.

7.13 It includes the cost of paper or any other medium on which unsolicited material is printed.

7.14 It includes the cost of purchase and use of any equipment in connection with:

- preparation, production or facilitating the production of the unsolicited material
- dissemination by distribution or otherwise of the unsolicited material

7.15 It includes the cost of purchase, hire or use of:

- photocopying equipment
- printing equipment

for use in printing unsolicited material.

7.16 It includes a relevant proportion of the cost of:

- office accommodation
- business rates
- electricity
- phone rental and internet access

associated with the preparation, production, dissemination and distribution of unsolicited material.

7.17 It includes the cost of food and/or accommodation for any individual who provides services in connection with unsolicited material for the party where that is paid for by the party or reimbursed by the party.

### Costs that are excluded from Schedule 8, paragraph 1(3)

7.18 It does not include the cost of postage of the free electoral address as outlined in article 65 of the 2007 Order.

7.19 It does not include any cost associated with the obtaining of data as permitted under any statute or regulation.

7.20 For example, political parties are entitled to a copy of the electoral register via regulation 102 of the Representation of the People (England and Wales) Regulations 2001.



## Schedule 8, paragraph 1(4)

*Any manifesto or other document setting out the party's policies.*

*Expenses in respect of such a document include design costs and other costs in connection with preparing or producing or distributing or otherwise disseminating any such document.*

### This paragraph includes:

#### **Services, premises, facilities or equipment provided by others**

8.1 This includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

used to:

- prepare, produce or facilitate the production of any manifesto or other document
- disseminate or distribute the manifesto or other document, via any means

including any cost attributable to increasing the visibility of content via any means.

8.2 For example, the purchase of a more prominent position on a page within a search engine.

8.3 It includes the cost of making the manifesto or other document available in electronic or physical form and all means of disseminating it.

#### **Other costs included in Schedule 8, paragraph 1(4)**

8.4 It includes the cost of any rights or licensing fee for any image used in producing a manifesto or other document.

8.5 It includes the cost of paper or any other medium on which the manifesto or other document is printed.

8.6 It includes the cost of purchase and use of any equipment in connection with:

- preparation, production or facilitating the production of the manifesto or other document
- dissemination by distribution or otherwise of the manifesto or other document

8.7 It includes the cost of purchase, or hire, of:

- photocopying equipment
- printing equipment

for use in printing the manifesto or other document.

8.8 It includes a relevant proportion of the cost of:

- office accommodation
- business rates
- electricity
- phone rental and internet access

associated with any in-house costs for design of the manifesto or other document and for its production and dissemination.

8.9 It includes the cost of food and/or accommodation for any individual who provides services in connection with the manifesto or other document for the party where that is paid for or reimbursed by the party.

## Schedule 8, paragraph 1(5)

*Market research or canvassing conducted for the purpose of ascertaining polling intentions.*

### This paragraph includes:

#### **Services, premises, facilities or equipment provided by others**

9.1 This includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

used to:

- prepare, produce or facilitate canvassing or market research
- conduct or co-ordinate canvassing or market research
- record or analyse or otherwise utilise the results of any market research or canvassing activity

9.2 For example, the cost of using phone banks to contact voters, including the development of scripts for use by phone bank employees that are designed to influence voters.

#### **Costs of obtaining or maintaining data**

9.3 This includes the cost of accessing, purchasing, developing and maintaining:

- IT software or contact databases
- data sets, including the use of data analytics

to facilitate or undertake market research or canvassing.

9.4 For example, it includes the cost of undertaking social media listening and analysing the result to analyse the intention of voters. It includes costs that are incurred prior to the regulated period where the data is then used during the regulated period.

#### **Other costs included in Schedule 8, paragraph 1(5)**

9.5 It includes the cost of any purchase and use of any equipment required to:

- prepare, produce or facilitate canvassing or market research
- conduct or co-ordinate canvassing or market research

- record or analyse or otherwise utilise the results of any market research or canvassing activity

9.6 For example:

- laptops or tablets if used for canvassing
- mobile phones if used by the leader/co-ordinator of the canvassing

where that equipment and/or associated costs are paid for or reimbursed by the party or a third party.

9.7 It includes the cost of a relevant proportion of:

- office accommodation
- business rates
- electricity
- phone rental and internet access

associated with market research or canvassing.

9.8 It includes the cost of food and/or accommodation for any individual who provides services in connection with market research or canvassing for the party, where that is paid for or reimbursed by the party.

## Schedule 8, paragraph 1(6)

*The provision of any services or facilities in connection with press conferences or other dealings with the media.*

### This paragraph includes:

#### **Costs of press conferences or other dealings with the media**

10.1 This includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

used to prepare, produce, facilitate or conduct press conferences or other dealings with the media.

10.2 It includes the cost of specialist press or media software or subscriptions.

#### **Other costs included in Schedule 8, paragraph 1(6)**

10.3 It includes the cost of any rights or licensing fee for any image used in preparation, production, facilitating or conducting press conferences or other dealings with the media.

10.4 It includes the cost of purchase and use of any equipment in connection with preparation, production, facilitating or conducting press conferences or other dealings with the media.

10.5 It includes a relevant proportion of the cost of:

- office accommodation
- business rates
- electricity
- phone rental and internet access

associated with dealing with the media, such as co-ordinating press conferences or media activity, or drafting press releases, or other media related activities, including where a party has existing press conference facilities on its premises.

10.6 It includes the cost of food and/or accommodation for any individual who provides services in connection with press conferences or other dealings with the media, for the party where that is paid for or reimbursed by the party.

## Schedule 8, paragraph 1(7)

*Transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with an election campaign.*

*Expenses in respect of the transport of such persons include the costs of hiring a particular means of transport for the whole or part of the period during which the election campaign is being conducted.*

### This paragraph includes:

#### **Transport of volunteers and campaigners**

11.1 It includes the cost of transporting:

- volunteers
- party members, including staff members
- other campaigners

around the electoral area, or to and from the electoral area, including the cost of:

- tickets for any transport, including any booking fee
- hiring of any transport
- fuel purchased for any transport
- parking for any transport

where they are undertaking campaigning on behalf of the party.

11.2 It includes the cost of transport paid for by any individual, political party or other third party that is paid for or reimbursed either by the political party or a third party, where the individuals being transported were campaigning or undertaking activities associated with the campaign for the party.

#### **Other costs included in Schedule 8, paragraph 1(7)**

11.3 This includes the cost of use, or hire, of any vehicle or form of transport that displays material promoting the party, including any cost associated with:

- design and application of the design to the vehicle or form of transport
- travelling between electoral areas
- travelling around an electoral area
- parking fees where a vehicle is used to display material

11.4 It includes a portion of the cost of:

- office accommodation
- business rates
- electricity
- phone rental and internet access

when these are associated with planning, booking or using transport of any kind, or where a vehicle or form of transport is being prepared for use in electoral areas. For example, the cost of design and applying the design promoting the party to the side of a bus.

11.5 It includes all transport costs associated with other spending matters. For example, transporting someone to a rally.

## Schedule 8, paragraph 1(8)

*Rallies and other events, including public meetings (but not annual or other party conferences) organised so as to obtain publicity in connection with an election campaign or for other purposes connected with an election campaign.*

*Expenses in respect of such events include costs incurred in connection with the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.*

### This paragraph includes:

#### **Services, premises, facilities or equipment provided by others**

12.1 This includes the cost of use, or hire, of any:

- agency, individual or organisation
- services provided by any agency, individual or organisation
- premises or facilities
- equipment

used in:

- promoting a rally or other event
- holding or conducting a rally or other event to promote the party
- live streaming or broadcasting a rally or other event by any means

#### **Other costs included in Schedule 8, paragraph 1(8)**

12.2 It includes the cost of promoting or advertising the event, via any means.

12.3 It includes the cost of an event that is being held via a link of any kind or is being live streamed or broadcast, where that event is open to be viewed by users of a channel or platform or by other means.

12.4 It includes the cost of the provision of any goods, services or facilities at the event, for example the cost of hiring seating.

12.5 It includes the cost of purchase of any equipment in connection with:

- holding or conducting a public meeting to promote the party
- live streaming or broadcasting a public meeting by any means

12.6 It includes a relevant proportion of the cost of:

- office accommodation
- business rates
- electricity
- phone rental and internet access



associated with:

- promoting a rally or other event
- holding or conducting a rally or other event to promote the party
- live streaming or broadcasting a rally or other event by any means

12.7 It includes the cost of food and/or accommodation for any individual who provides services in connection with:

- promoting a rally or other event
- holding or conducting a rally or event to promote the party
- live streaming or broadcasting a rally or other event by any means

**Explanatory Memorandum to the Political Parties Campaign Expenditure  
(Senedd Elections) Code of Practice 2020**

This Explanatory Memorandum has been prepared by the Office of the First Minister and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.14

**Minister/Deputy Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020

Julie James MS,  
Minister for Housing and Local Government  
18 December 2020

## **PART 1**

### **Description**

1. The Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020 gives guidance as to what does or does not fall within paragraphs 1 and 2 of Schedule 8 of the Political Parties, Elections and Referendums Act 2000 (PPERA)<sup>1</sup>.
2. Those paragraphs are relevant to the definition of 'campaign expenditure' and therefore, in particular, to what expenses a political party is required to report.
3. Paragraph 1 of Schedule 8 lists the expenses which qualify when incurred for election purposes. Paragraph 2 lists the exclusions.

### **Matters of special interest to the Legislation, Justice and Constitution Committee**

4. The regulated period for political parties commences on 6 January 2021.
5. Although the Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020 will not be in force by 6 January the Electoral Commission will issue guidance prior to the Code of Practice being in force to ensure information is available.

### **Legislative background**

6. The Electoral Commission has power under paragraph 3 of Schedule 8 PPERA to prepare a Code of Practice giving guidance as to the kinds of expenses which do or do not fall within Part I.
7. The Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020 was prepared by the Electoral Commission and submitted to the Welsh Ministers for approval.
8. The Code of Practice will be issued by the Minister for Housing and Local Government under Schedule 8, paragraph 3 PPERA.
9. The relevant functions of the Secretary of State in Schedule 8, paragraph 3 PPERA were transferred to the Welsh Ministers by virtue of Article 45 of the Welsh Ministers (Transfer of Functions) Order 2018<sup>2</sup>.
10. Unless the Senedd resolves not to approve the draft within 40 days of its being laid, this Code of Practice will be brought into force by the Welsh Ministers and published by the Electoral Commission.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/41/schedule/8>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2018/644/article/45>

## **Purpose and intended effect of the legislation**

11. The Political Parties Campaign Expenditure (Senedd Elections) Code of Practice 2020 gives guidance as to what does or does not fall within paragraphs 1 and 2 of Schedule 8 PPERA.
12. Those paragraphs are relevant to the definition of 'campaign expenditure' and therefore, in particular, to what expenses a political party is required to report.
13. Paragraph 1 of Schedule 8 lists the expenses which qualify when incurred for election purposes. Paragraph 2 lists the exclusions.
14. Under section 80 PPERA, political parties are required to deliver a return after an election in respect of campaign expenditure.
15. The party treasurer is responsible for incurring expenditure and completing the return. Where the party has a Campaigns Officer appointed under section 25 PPERA, they are responsible for this. Returns must be delivered to the Electoral Commission and the deadline for delivery will depend on the amount that the party has spent.
16. The party treasurer must sign a declaration that the return is, to the best of their knowledge and belief, complete and correct. It is an offence to knowingly or recklessly make a false declaration.
17. Where a party officer does not follow this Code, the party treasurer, or other relevant officer, are likely to be in breach of the statutory requirements relating to campaign expenditure, for example the statutory requirement to deliver a complete and correct return. Breaches of this Code may also lead to a conclusion that a party treasurer knowingly or recklessly made a false declaration about the return. The commission of these offences may result in prosecution.
18. Section 79(3) PPERA provides that it is a defence for any person or registered party charged with the offence of exceeding the limit on campaign expenditure (under section 79(2) PPERA) to show that they complied with this Code in determining the items and amounts of campaign expenditure to be entered in the relevant campaign expenditure return under section 80 PPERA, and that the limit would not have been exceeded on the basis of the items and amounts entered in that return.
19. This Code applies to elections to the Senedd.
20. If there is a combined regulated period in operation under Part III, Schedule 9 PPERA, the UK election rules apply to certain elections taking place during that period. Where that applies to an election to the Senedd, this Code does not apply.

## **Consultation**

21. This Code of Practice on qualifying expenses for political parties was prepared by the Electoral Commission following consultation with interested persons and bodies, including representatives of political parties, the Welsh Government and the Senedd Commission.

## **Regulatory Impact Assessment (RIA)**

22. Relevant Welsh Subordinate Legislation for which a Regulatory Impact Assessment must be carried out is defined in Section 76(2)(b) of the Government of Wales Act 2006 as subordinate legislation that is made by the Welsh Ministers, the First Minister or the Counsel General and is required to be laid before the Senedd. This Code has been prepared by the Electoral Commission under paragraph 3 of Schedule 8 PPERA. As such, the Code does not satisfy the section 76 criteria and a Regulatory Impact Assessment is therefore not required.



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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<b>TITLE</b>	<b>The Framework for the Free Flow of Non-Personal Data (Revocation) (EU Exit) Regulations 2021</b>
<b>DATE</b>	<b>17 December 2020</b>
<b>BY</b>	<b>Rebecca Evans MS, Minister for Finance and Trefnydd</b>

### **Policy Overview of the SI**

Regulation (EU) 2018/1807 – Free Flow of Non-Personal Data came into force in 2019 prevent EU Member States from introducing any legislation, guidance or other measure that would restrict where non-personal data is stored in the EU (a ‘data localisation requirement’) that is not justified or proportionate on the grounds of public security. Member States are now obliged to review all their domestic legislation and amend or revoke any unjustified data localisation requirement. Member States must notify the European Commission if they believe an existing data localisation requirement is justified, as well as notifying the Commission if they intend to introduce any new requirements.

The UK’s exit from the EU will make the EU Regulation obsolete in the UK but any lingering effects are currently unclear. To avoid any unintended impacts on UK law, the Department for Digital, Culture, Media and Sport intend to revoke the EU Regulation on or shortly after the end of the transition period.

### **The retained EU Law which is being amended**

Regulation (EU) 2018/1807 of the European Parliament and of the Council on a framework for the free flow of non-personal data in the European Union

### **The purpose of the amendments**

The purpose of the amendments is to correct deficiencies in legislation arising from the UK leaving the European Union relating to the framework for the free flow of non-personal data in the European Union. The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment are available here:

<https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-framework-for-the-free-flow-of-non-personal-data-revocation-eu-exit-regulations-2021>

## **Any impact the SI may have on the Welsh Ministers' executive competence**

UK Government maintains that this SI is covered by Section C9 of Schedule 7A to the Government of Wales Act 2006, which covers telecommunications, wireless telegraphy, internet services and electronic encryption. They have taken this view because the purpose of the EU Regulation is designed to remove unnecessary barriers to the free-flow of non-personal data within the EU through prohibiting unjustified restrictions on where data can be stored or processed. This assessment is also in part informed by the explanatory notes to the Scotland Act 1998, which define the equivalent reservation as covering all forms of electronic communication completed at a distance.

Welsh Government does not agree with this assessment. Although the intention of the EU Regulation is to facilitate the movement of data across borders, it specifically affects only the location where data may be stored or processed by preventing Member States from introducing any statutory or administrative measure to limit where data is stored. As it does not directly concern the transmission, movement or communication of data, the C9 reservation cannot be engaged. Additionally, the definitions which appear in the explanatory notes to the Scotland Act 1998 do not appear in the explanatory notes to GOWA 2006. As no other reservations within GOWA 2006 apply to the EU Regulation or to the revoking SI, this matter falls within the legislative competence of the Senedd.

However, it is expected that provisions to ensure the free-flow of non-personal data will be included in the terms of any future trade agreement with the European Union. International trade agreements are a fully reserved matter; should a trade agreement include such provisions, these will effectively supercede any devolved competence.

## **Any impact the SI may have on the legislative competence of the Senedd**

The SI has no impact on the Senedd's legislative competence.

The Senedd has always had powers to legislate on the location of data storage for devolved purposes. This SI removes the requirement to report any necessary measures to the EC for approval after the end of transition.

## **Why consent was given**

There is no divergence between the Welsh Government and the UK Government on the policy for the correction, only on whether this matter currently falls within the legislative competence of the Senedd. Consenting to this SI ensures that there is a single legislative framework across the UK 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.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 211 - The Framework for the Free Flow of Non-Personal Data (Revocation) (EU Exit) Regulations 2021

*Laid in the UK Parliament: 14 December 2020*

#### **Sifting**

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed negative
Date of consideration by the House of Commons European Statutory Instruments Committee	22 December 2020
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	5 January 2021
Date sifting period ends in UK Parliament	15 January 2021
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

#### **Background**

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

#### **Summary**

These Regulations repeal Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union (“the EU Regulation”). This Regulation is concerned with reducing public sector data localisation mandates for *non-personal* data.

The effect of the EU Regulation is that Member States must: notify the European Commission if they wish to introduce a mandate for non-personal data localisation (or make a change to any existing policies); assist other EU States in terms of data localisation queries and potential infringements; provide business information and promote codes of conduct; and engage with the European Commission to report justified exemptions. In effect, this prevents EU Member States from introducing



any legislation, guidance or other measure that would restrict where non-personal data is stored in the EU that is not justified or proportionate. By 30 May 2021, EU Member States must also revoke any existing, unjustified data localisation requirement and notify the European Commission if they believe an existing data localisation requirement is justified.

The UK's exit from the EU will make the EU Regulation obsolete in the UK but any lingering effects are currently unclear. To avoid any unintended impacts on UK law, the EU Regulation is to be revoked.

### **Statement by Welsh Government**

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 17 December 2020 regarding the effect of these Regulations:

- Both the Welsh Government's statement and the Explanatory Memorandum to the Regulations acknowledge disagreement between the UK Government and the Welsh Government as to whether the Regulations fall within the legislative competence of the Senedd. The Welsh Government's statement explains that the UK Government has taken the view that the instrument is covered by the reservation in Section C9 of Schedule 7A to the Government of Wales Act 2006, which covers telecommunications, wireless telegraphy, internet services and electronic encryption. The Welsh Government does not agree with this assessment and explains its reasoning in further detail in its written statement.

The Welsh Government's statement makes clear that there is no divergence between the Welsh Government and the UK Government on the policy for the correction, only on whether this matter currently falls within the legislative competence of the Senedd.

The Welsh Government's statement, which was laid before the Senedd before the end of the Transition Period, also goes on to explain that *"it is expected that provisions to ensure the free-flow of non-personal data will be included in the terms of any future trade agreement with the European Union. International trade agreements are a fully reserved matter; should a trade agreement include such provisions, these will effectively supercede any devolved competence."* The Prime Minister announced on 24 December 2020 that a Trade and Cooperation Agreement had been reached between the UK and the EU;

- Regulation 1 of the Regulations states that the Regulations come into force on the 22<sup>nd</sup> day after the day on which they are laid before the UK Parliament. This means that, for a period between the end of

the Transition Period and the Regulations coming into force, inappropriate obligations will continue to be in place. The Explanatory Memorandum to the Regulations acknowledges this but describes the impact of the inappropriate obligations as minimal;

- Stylistically, the Welsh Government's statement refers in certain places to the EU Regulation being *amended* by these Regulations. For clarity, it should be noted that these Regulations do not amend the EU Regulation but revoke it in its entirety.

**Intergovernmental Agreement on the European Union (Withdrawal) Bill**

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that 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.



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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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**TITLE**            **The International Waste Shipments (Amendment) (EU Exit) Regulations 2021**

**DATE**            **30 December 2020**

**BY**                **Rebecca Evans MS, Minister for Finance and Trefnydd**

**SI laid in Parliament, which amends secondary legislation in a devolved area**

**The International Waste Shipments (Amendment) (EU Exit) Regulations 2021**

The 2021 Regulations amend the following legislation:

EU Legislation

- Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (the “Waste Shipments Regulation”); and
- Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to the Waste Regulations to certain countries to which the Organisation for Economic Cooperation and Development (“OECD”) decision on the control of transboundary movements of wastes does not apply.

Domestic secondary legislation

- The Transfrontier Shipment of Waste Regulations 2007.

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

The 2021 Regulations do not impact on the Senedd’s legislative competence or the Welsh Ministers’ executive competence.

The 2021 Regulations amend both European Union (EU) law and domestic legislation to implement the Protocol on Ireland / Northern Ireland (“the Protocol”), and to enable the continued operability of retained EU law, in the field of environmental protection in relation to the transboundary movement of waste, under the European Union (Withdrawal) Act 2018 (the “Withdrawal Act”), following the United Kingdom’s (UK’s) withdrawal from the EU.

### **The purpose of the amendments**

The purpose of the 2021 Regulations is to make the necessary corrections to the retained legislation to implement controls on movements of waste from GB to NI.

The EU Waste Shipments Regulation makes provisions for the supervision and control of shipments of waste within its borders and with the countries of the European Free Trade Association, the Organisation for Economic Cooperation and Development (“OECD”) and non-EU countries that have signed the Basel Convention.

Under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, shipments of waste are controlled to make sure they are managed in an environmentally sound manner. The provisions include preventing shipments to countries where environmentally sound management is not guaranteed and a notification procedure for the transboundary movements of waste.

Under the terms of the Protocol, Northern Ireland (NI) will continue to apply the EU Waste Shipments Regulation for the duration of the Protocol. This means Great Britain (GB) will treat NI as an EU Member State in the context of the movement of waste from GB to NI.

The operability changes and other consequential amendments made by the 2021 Regulations will establish regulatory and administrative controls on the movement of waste from GB to NI which are necessary to give effect to the Protocol.

The EU control regime for waste shipments will be retained in UK law after the Transition Period. The UK will remain a party to the Basel Convention and a member of the OECD and will continue to implement the international rules contained in these agreements.

The 2021 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here: <https://www.legislation.gov.uk/ukdsi/2021/9780348217650>

### **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, expediency and due to the technical nature of the amendments. There is no divergence in policy after full and careful consideration of the proposed amendments, assessment of the policy instructions and legal analysis of the drafting. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.



## UK MINISTERS ACTING IN DEVOLVED AREAS

### 212 - The International Waste Shipments (Amendment) (EU Exit) Regulations 2021

*Laid in the UK Parliament: 17 December 2020*

#### **Sifting**

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

#### **Scrutiny procedure**

Outcome of sifting	N/A
Procedure	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

#### **Background**

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

#### **Summary**

The purpose of the International Waste Shipments (Amendment) (EU Exit) Regulations (“the 2021 Regulations”) is to make the necessary corrections to the retained legislation to implement controls on movements of waste from Great Britain to Northern Ireland. The amendments are required to enable the continued operability of retained EU law under the European Union (Withdrawal) Act 2018, in the field of environmental protection in relation to the transboundary movement of waste, following the UK’s exit from the EU.

The 2021 Regulations amend the following legislation:

#### Domestic Secondary Legislation

- The Transfrontier Shipment of Waste Regulations 2007.

### EU Legislation

- Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (the “Waste Shipments Regulation”); and
- Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to the Waste Regulations to certain countries to which the Organisation for Economic Cooperation and Development decision on the control of transboundary movements of wastes does not apply.

The operability changes and other consequential amendments made by the 2021 Regulations will establish regulatory and administrative controls on the movement of waste from Great Britain to Northern Ireland which are necessary to give effect to the Ireland/ Northern Ireland Protocol.

### **Statement by Welsh Government**

Legal Advisers agree with the statement laid by the Welsh Government dated 30 December 2020 regarding the effect of these Regulations.

### **Intergovernmental Agreement on the European Union (Withdrawal) Bill**

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Legal Advisers do not consider that 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.

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**            **The Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) (No.2) Regulations 2020**

**DATE**            **05 January 2021**

**BY**                **Rebecca Evans MS, Minister for Finance and Trefnydd**

**SO30C –SI laid in Parliament which amends legislation in a devolved area**

**The Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) (No.2) Regulations 2020 (the “2020 Regulations”)**

The 2020 Regulations amend the following legislation:

Retained direct EU legislation

- Commission Implementing Regulation (EU) 2019/66 on rules on uniform practical arrangements for the performance of official controls on plants, plant products and other objects in order to verify compliance with Union rules on protective measures against pests of plants applicable to those goods
- Commission Delegated Regulation (EU) 2019/624 concerning specific rules for the performance of official controls on the production of meat and for production and relaying areas of live bivalve molluscs in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council
- Commission Delegated Regulation (EU) 2019/625 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption
- Commission Implementing Regulation (EU) 2019/626 concerning lists of third countries or regions thereof authorised for the entry into the European Union of certain animals and goods intended for human consumption, amending Implementing Regulation (EU) 2016/759 as regards these lists



- Commission Implementing Regulation (EU) 2019/627 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No. 2074/2005 as regards official controls
- Commission Implementing Regulation (EU) 2019/628 concerning model official certificates for certain animals and goods and amending Regulation (EC) No 2074/2005 and Implementing Regulation (EU) 2016/759 as regards these model certificates
- Commission Delegated Regulation (EU) 2019/1012 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts
- Commission Implementing Regulation (EU) 2019/1014 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points
- Commission Delegated Regulation (EU) 2019/1081 establishing rules on specific training requirements for staff for performing certain physical checks at border controls posts
- Commission Implementing Regulation (EU) 2019/1715 laying down rules for the functioning of the information management system for official controls and its system components (“the IMSOC Regulation”)
- Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No 178/2002 of the European Parliament and of the Council and repealing Commission Regulations (EC) No 669/2009, (EU) No 884/2014, (EU) 2015/175, (EU) 2017/186 and (EU) 2018/1660
- Commission Delegated Regulation (EU) 2019/2074 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules on specific official controls on consignments of certain animals and goods originating from, and returning to the Union following a refusal of entry by a third country
- Commission Implementing Decision (EU) 2019/2098 on temporary animal health requirements for consignments of products of animal origin for human consumption originating in and returning to the Union following a refusal of entry by a third country

- Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts
- Commission Delegated Regulation (EU) 2019/2124 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union, and amending Commission Regulations (EC) No 798/2008, (EC) No 1251/2008, (EC) No 119/2009, (EU) No 206/2010, (EU) No 605/2010, (EU) No 142/2011, (EU) No 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/EC
- Commission Delegated Regulation (EU) 2019/2125 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules concerning the performance of specific official controls of wood packaging material, notification of certain consignments and measures to be taken in cases of non-compliance
- Commission Delegated Regulation (EU) 2019/2126 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for specific official controls for certain categories of animals and goods, measures to be taken following the performance of such controls and certain categories of animals and goods exempted from official controls at border control posts
- Commission Implementing Regulation (EU) 2019/2128 establishing the model official certificate and rules for issuing official certificates for goods which are delivered to vessels leaving the Union and intended for ship supply or consumption by the crew and passengers, or to NATO or a United States military base
- Commission Implementing Regulation (EU) 2020/1540 amending Implementing Regulation (EU) 2019/1793 as regards sesamum seeds originating in India
- Commission Implementing Regulation (EU) 2020/1641 regarding imports of live, chilled, frozen or processed bivalve molluscs, echinoderms, tunicates and marine gastropods for human consumption from the United States of America

The 2020 Regulations revocation of retained direct EU legislation:

- Commission Regulation (EC) No 1756/2004 specifying the detailed conditions for the evidence required and the criteria for the type and level of the reduction of the plant health checks of certain plants, plant products or other objects listed in Part B of Annex V to Council Directive 2000/29/EC;

- Commission Implementing Regulation (EU) 2019/723 laying down rules for the application of Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the standard model form to be used in the annual reports submitted by Member States, and
- Commission Implementing Decision (EU) 2020/1550 establishing the multiannual programme of controls for the period 2021-2025 to be carried out by Commission experts in the Member States to verify the application of Union agri-food chain legislation.

### Domestic legislation

- The Trade in Animals and Related Products Regulations 2011
- The Veterinary Medicines Regulations 2013
- The Animal Feed (Amendment) (EU Exit) Regulations 2019
- The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019
- The Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019
- The Food and Feed Hygiene and Safety (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020
- The Plant Health (Amendment etc.) (EU Exit) Regulations 2020
- The Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020
- The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020
- The Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020

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

The 2020 Regulations transfer non-legislative functions to the ‘competent authorities’ as have been designated in that capacity for Wales, without encumbrance. They also transfer non-legislative and legislative functions to the Welsh Ministers as the “appropriate authority” in relation to Wales. A number of such functions are transferred without encumbrance (see the respective amendments to Regulations (EU) 2019/624, 625 and 626 made by regulations 13 to 15). Other functions conferred on the Welsh Ministers as “appropriate authority” in relation to Wales are also exercisable by the Secretary of State with the consent of the Welsh Ministers. Only functions exercisable in devolved areas (as

determined by reference to the legislative competence of the Senedd) are conferred on the Welsh Ministers.

The concurrent functions contained in the Regulations have the potential to engage the consent requirements in Schedule 7B to the Government of Wales Act 2006 and, as such, represent a potential restriction on the future competence of the Senedd. Assurances have been provided by the Secretary of State for Wales in relation to a section 109 Order under the Act to amend Schedule 7B to negate the potential restriction on the future competence of the Senedd.

### **The purpose of the amendments**

The purpose of this instrument is to make further amendments to existing retained direct EU legislation governing official controls, including imports to Great Britain of animals and animal products, plants and plant products, including food and other imports relevant to the agri-food chain – collectively known as sanitary and phyto-sanitary (“SPS”) checks.

Official controls are performed at appropriately designated border control points and other points of entry, and may also be carried out at other locations, such as slaughterhouses, to verify the compliance of imported SPS goods with Official Controls Regulations (“OCR”). These controls are integral to the protection of human health and biosecurity in the UK, as they deliver a risk-based and closely defined regime for checking the provenance, health and lack of contamination of SPS goods before they are allowed to pass beyond the control points at the UK border.

Official controls are also performed at relevant establishments within the UK, at all stages of production, processing and distribution of products, articles and substances etc. covered by the OCR. These controls are necessary to ensure the integrity of the UK agri-food chain and to maintain a high level of human, animal and plant health as well as animal welfare along the agri-food chain.

This instrument completes the body of official controls amendments and supplements the provision set out in the Official Controls (Animals, Feed and Food, Plant Health Etc.) (Amendment) (EU Exit) Regulations 2020, due to come into force at 11:00 p.m. on 31 December 2020.

This further instrument also rectifies legal deficiencies arising from the withdrawal of the United Kingdom from the European Union which, if not amended, would prevent our existing, established and harmonised system of official controls from being able to operate effectively (or at all) after the end of the implementation period. These are termed ‘operability amendments’.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the detail of the provenance, purpose and effect of the amendments is available here: <https://www.legislation.gov.uk/uksi/2020/1631/made>

### **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 and to ensure consistency and coherence of the statute book. The amendments have been considered fully and there is no divergence in policy. These amendments are to ensure that the statute book remains functional at the end of the implementation period.

## UK MINISTERS ACTING IN DEVOLVED AREAS

### 213 - The Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) (No.2) Regulations 2020

*Laid in the UK Parliament: 21 December 2020*

#### **Sifting**

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
SICM under SO 30A (because amends primary legislation)	Not required

#### **Scrutiny procedure**

Outcome of sifting	N/A
Procedure	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

#### **Background**

These Regulations are proposed to be made by the UK Government pursuant to sections 8(1), (2)(f) and (6) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

#### **Summary**

The purpose of these Regulations is to make further amendments to existing retained direct EU legislation governing official controls, including imports to Great Britain of animals and animal products, plants and plant products, including food and other imports relevant to the agri-food chain – collectively known as sanitary and phyto-sanitary (“SPS”) checks.

These Regulations complete the body of official controls amendments and supplement the provision set out in the Official Controls (Animals, Feed and Food, Plant Health Etc.) (Amendment) (EU Exit) Regulations 2020, which came into force at 11:00 p.m. on 31 December 2020.

These Regulations also rectify legal deficiencies arising from the withdrawal of the United Kingdom from the European Union which, if not amended, would prevent the existing, established and harmonised system of official controls from being able to operate effectively (or at all) after the end of the implementation period.

### **Statement by Welsh Government**

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 5 January 2021 regarding the effect of these Regulations:

These Regulations transfer non-legislative and legislative functions to the Welsh Ministers as the "appropriate authority" in relation to Wales, a number of which are transferred without encumbrance.

Other functions conferred on the Welsh Ministers as "appropriate authority" in relation to Wales are also exercisable by the Secretary of State concurrently, with the consent of the Welsh Ministers. Only functions exercisable in devolved areas (as determined by reference to the legislative competence of the Senedd) are conferred on the Welsh Ministers.

Functions transferred so that they are exercisable by the Secretary of State with the consent of the Welsh Ministers have the potential to engage the requirement to consult the UK Government under Schedule 7B to the Government of Wales Act 2006 should a future Bill of the Senedd seek to remove or modify those functions.

On this point, Legal Advisers wish to draw attention to the Welsh Government's commentary in the Written Statement:

*"The concurrent functions contained in the Regulations have the potential to engage the consent requirements in Schedule 7B to the Government of Wales Act 2006 and, as such, represent a potential restriction on the future competence of the Senedd. Assurances have been provided by the Secretary of State for Wales in relation to a section 109 Order under the Act to amend Schedule 7B to negate the potential restriction on the future competence of the Senedd."*

### **Intergovernmental Agreement on the European Union (Withdrawal) Bill**

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

# Agenda Item 8

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

### (MEMORANDUM NO 3)

#### TRADE BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29(iii)(a) prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the Senedd if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Trade Bill (“the Bill”) was introduced in the House of Commons on 19 March 2020. The current version of the Bill was introduced in the House of Lords on 21 July 2020. The Bill completed Report stage in the House of Lords on 6 January 2021. The Bill can be found at: [Bill documents - Trade Bill 2019-21 - UK Parliament](#)

#### Policy Objectives

3. The UK Government’s stated policy objectives are to provide continuity for businesses, workers and consumers across the UK and establish the UK as an independent global trading nation. To support this the Bill makes provision about the implementation of international trade agreements with third countries that have pre-existing trade agreements with the EU; implementing the Agreement on Government Procurement (GPA); establishing a Trade Remedies Authority (TRA) and conferring functions on it; and makes provision about the collection and disclosure of information relating to trade.

#### Summary of the Bill

4. The Bill is sponsored by the Department for International Trade.
5. The version of the Bill that was introduced into the House of Commons contains four main components:
  - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement the Agreement on Government Procurement in the event of the UK being an independent member of that Agreement after the end of the transition period;



- It confers regulation making powers on a Minister of the Crown and devolved authorities to implement international trade agreements with third countries who had pre-existing trade agreements with the EU;
  - It establishes a TRA to deliver the new UK trade remedies framework;
  - It establishes a data sharing gateway between Her Majesty's Revenue and Customs and other public and private bodies.
6. The provisions in the Bill which have previously been identified as being of particular relevance to Wales are:
- Part 1, Clause 1 – (implementation of the Agreement on Government Procurement).
  - Part 1, Clause 2 – (implementation of international trade agreements with third countries who have pre-existing trade agreements with the EU).
  - Part 2 – (establishing the TRA) – The Welsh Government does not believe that the provisions in Part 2 of the Bill relating to the TRA are making provision for any purpose within, or which modifies the legislative competence of the Senedd. However, the establishment of a TRA could have an impact on devolved areas such as agriculture and fisheries.
  - Part 3 – (Collection and sharing of trade information).

### **Provisions in the Bill for which consent is required**

7. The Welsh Government laid a legislative consent memorandum on 2 April 2020, based on the Bill as introduced into Parliament on 19 March 2020. That legislative consent memorandum covered Part 1, Clauses 1 to 4 and Schedules 1, 2 and 3 of the Bill. The Welsh Government did not consider that the provisions in Parts 2 or 3 of the Bill as introduced engaged SO29.
8. The Welsh Government laid a supplementary legislative consent memorandum (No. 2) on 4 November 2020 which covered Part 3, Clauses 9 and 10 of the Bill. The memorandum was necessary as amendments were made to Part 3 of the Bill at House of Commons Report Stage which make provision in relation to Wales and contained provision within the Senedd's legislative competence.

### **Supplementary provisions in the Bill for which consent is required**

9. Since the publication of the first memorandum and the supplementary memorandum, the Bill has been amended during House of Lord Report Stage.

10. This supplementary memorandum (memorandum no. 3) sets out the new clauses to the Bill which require the consent of the Senedd. The first and supplementary memoranda laid on 2 April 2020 and 4 November 2020 respectively must be considered together with this memorandum when deciding on consent.
11. Consent is being sought for the relevant amendments to the Bill on the basis that they make provision with regard to devolved matters. The Welsh Government has applied a lower test than that set out in SO 29.1(i) which provides that consent should be sought in circumstances where provision would be within the Senedd's legislative competence (excluding incidental, consequential etc. provision).
12. Clause numbers below relate to the version of the Bill ordered to be printed on 6 January 2021 following amendments made at House of Lords Report stage.

### Part 3 – The Trade and Agriculture Commission (clauses 15 to 18 and Schedule 6)

13. These amendments provide for the establishment of the Trade and Agriculture Commission (the "TAC") as a statutory body whose role is to provide independent advice to the Secretary of State on relevant provisions in new free trade agreements. Subject to two minor non-government amendments, the provisions that are now contained in Part 3 were tabled by the government and approved at House of Lords Report stage on 6 January 2021.
14. Clause 15 provides that the Secretary of State may appoint members to the TAC as a statutory committee. The TAC's purpose is to provide advice under section 42 of the Agriculture Act 2020 (the 2020 Act) which contains separate provision on reports relating to free trade agreements (FTAs)). When appointing members to the TAC, clause 15(3)(e) provides that the Secretary of State must have regard to the desirability of appointing members who, between them, have expertise in (a) UK animal and plant health standards, (b) UK animal welfare standards, (c) UK environmental standards as they relate to agricultural products, (d) international trade law and policy, and (e) public health and health inequalities.
15. Clause 15(3)(e) was a non-government amendment. It is possible that this amendment may be overturned when the Bill returns to the Commons for consideration of amendments.
16. Clause 16 makes provision for the TAC's functions. The amendments insert a new subsection (4A) in section 42 of the 2020 Act which requires the Secretary of State to request advice from the TAC on the matters referred to in section 42 of that Act. That is, the extent to which the relevant measures contained in new free trade agreements which are applicable to trade in agricultural products are consistent with the maintenance of UK levels of statutory

protection in relation to human, animal or plant life or health, animal welfare and the environment.

17. The original amendment that was tabled by the government excluded the consideration of UK levels of statutory protection in relation to human health from TAC's remit. However, that provision was included in a non-government amendment that was passed on 6 January 2021. It is possible that the amendment will be overturned when the Bill returns to the Commons for consideration of amendments.
18. Clause 17 makes further provision about the status of the TAC Members which are designed to reflect their independent status. Such Members are not to be regarded as servants or agents of the Crown or enjoying any status, immunity or privilege of the Crown. Clause 17 also introduces Schedule 6 which contains provision applying legislation relating to public bodies to the TAC.
19. Clause 18 enables the Secretary of State to repeal clauses 15 to 17 by regulations which are subject to the affirmative procedure in both Houses of Parliament.
20. As the TAC is being established with the function of providing advice to the Secretary of State on the ratification of the relevant chapters in future free trade agreements, it would not fall within the Senedd's competence to make equivalent provision to that contained in clauses 15 to 18 and Schedule 6 of the Bill for the purposes of the test set out in SO 29.1(i). The UK Government's position is that the central purpose of the TAC relates to the ratification of an international treaty under the processes set out in the Constitutional Reform and Governance Act 2010. The regulation of international trade is a reserved matter under paragraph 10(1) of Schedule 7A to the Government of Wales Act 2006. This view in terms of the UK Government amendments to the Bill is shared by the Scottish Government who have decided not to lay a supplementary Memorandum for these amendments. Although the test in SO 29.1(i) is not satisfied, the Welsh Government has chosen to lay a supplementary memorandum seeking consent for all of the provisions in Part 3 on the basis that it is at least arguable that they make provision with regard to devolved matters in so far that TAC's remit is to provide advice to the Secretary of State on standards that relate to such matters as health, plant and animal health, animal welfare and the environment as those standards apply to Wales.

### **Reasons for making these provisions for Wales in the UK Trade Bill**

21. Although the test in SO 29.1(i) is not satisfied it is arguable that the amendments make provision with regard to devolved matters because TAC's remit is to advise the Secretary of State on standards that relate to such

matters as health, plant and animal health, animal welfare and the environment in so far as those standards apply to Wales.

22. However, as the role of the TAC is limited to advising the Secretary of State on free trade agreements at the treaty ratification stage, this is of itself highly unlikely to have a negative impact on the Senedd's competence. Any potential impact on the Senedd's competence would flow from the outcome of the negotiations themselves and not the advice.
23. There is no intention for TAC to advise the Welsh Government and it does not impede Welsh Ministers from taking separate advice on the potential of future trade negotiations to impact on the Senedd's competence.
24. On this basis, we would recommend that the Senedd grants legislative consent.

### **Non-Government Amendments**

25. In addition to the insertion of a new Part 3 to the Bill, a number of non-government amendments have been passed at House of Lords Report stage which may be overturned when the Bill returns to the House of Commons for consideration of amendments. The following amendments have been included in this supplementary memorandum on the basis that they are making provision with regard to devolved matters. The Welsh Government is content with each of these amendments on the basis that they place safeguards on the ability of the UK Government to enter into future free trade agreements and place further constraints on the exercise of the regulation making power in clause 2.
26. The Welsh Government would prefer the Bill to include these Clauses in its final form but recommends consent to the Bill whether or not they are retained.

### **Clause 3 (parliamentary approval of trade agreements)**

27. This amendment requires the Secretary of State to lay draft negotiating objectives before commencing negotiations towards a free trade agreement. The amendments include provision in clause 3(4)(b) which requires the Secretary of State to produce a sustainability impact assessment including an assessment of the impact of the proposed negotiating objectives on human, animal or plant life or health, animal welfare, environmental protection, human rights and equalities, and environment and labour. Clause 3(5)(b) also prescribes that the sustainability impact assessment must include a plan to maintain the UK levels of statutory protection on the matters set out in clause 3(4)(b).
28. Although these amendments do not satisfy the test in SO 29.1(i), it is the Welsh Government's view that these amendments require consent because it

makes provision with regard to devolved matters in so far as it applies to Wales, including agriculture, the environment and health and animal health.

Clause 6 (International trade agreements: health, care or publicly funded data processing services)

29. Clause 6 contains provision which relates to the regulation making power in clause 2(1) (implementation of international trade agreements) which is exercisable by the Welsh Ministers in devolved areas. The amendments provide that regulations under clause 2(1) may only be made if certain conditions are met. These include the requirements that no provision of the international trade agreement undermines or restricts the ability of an appropriate authority to provide a comprehensive publicly funded public health service free at the point of delivery or to regulate and maintain the quality and safety of health care services.
30. Although it would not fall within the Senedd's competence to make equivalent provision to clause 6 for the purposes of the test in SO 29.1(i), it is the Welsh Government's view that these amendments require consent because they make provision with regard to devolved matters in so far that they apply to Wales. The specified conditions must be taken into account by the Welsh Ministers when exercising the regulation making power in clause 2(1) which may limit the scope of the provision which could be made under that provision. The conditions which are to be taken into account by the Welsh Ministers also relate to health and social care which are devolved matters in so far that they apply to Wales.

Clause 8 – Standards affected by international trade agreements

31. Clause 8(1) requires the Secretary of State to establish a code of practice which sets out how a Minister of the Crown should take steps to maintain standards established by any enactment which contains provision relating to a number of specified matters, including food, animal welfare and the environment. Clause 8(3) also provides that the code may provide that a Minister of the Crown ensures as far as possible that a future trade agreement is consistent with UK levels of statutory protection with regard to a number of specified matters to include human, animal or plant life or health; animal welfare; the environment and food safety.
32. Although these amendments do not satisfy the test in SO 29.1, it is the Welsh Government's view that this amendment requires consent because it makes provision with regard to devolved matters in so far as it applies to Wales, including agriculture, the environment and health and animal health.

**Financial implications**

32. While there are no direct financial implications for the Welsh Government or the Senedd arising from the powers under the Bill, there will be significant

financial implications for Wales from our future trade relationships in its overall economic effect.

## **Conclusion**

33. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as the Bill covers both devolved and non-devolved matters. In terms of coherence, the Welsh Government considers that legislating via a UK-wide Bill is the most effective and proportionate legislative vehicle for creating an independent trade policy for the UK following the transition period. Devolved areas may be heavily impacted by future trade agreements therefore it is important Welsh interests are adequately reflected in the Trade Bill.

**Jeremy Miles MS**

**Counsel General and Minister for European Transition**

**January 2021**

**Jeremy Miles AS/MS**

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition**



**Llywodraeth Cymru  
Welsh Government**

David Rees MS

Chair of External Affairs and Additional Legislation Committee

Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

Senedd Cymru

Cardiff Bay

CF99 1SN

11 January 2021

Dear David and Mick,

I am writing to inform you that I have laid a supplementary legislative consent memorandum today in respect of the Trade Bill.

The UK Government tabled an amendment to the Trade Bill prior to Lords' Report Stage on 30 November. Although neither the UK Government nor the Scottish Government considered that this required legislative consent, I have decided to err on the side of caution and lay this SLCM. I apologise for the delay in doing so.

The SLCM (Memorandum No. 3) needs of course to be read alongside the original legislative consent memorandum and SLCM (Memorandum No. 2) which relates to the data collection and sharing trade information provisions in the Trade Bill. Somewhat confusingly, these clauses were then largely replicated within the Trade (Disclosure of Information) Bill to which the Senedd gave consent on 16 December.

I am copying this letter to all Members of the Senedd for information.

Yours sincerely,

**Jeremy Miles AS/MS**

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition**

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**Jeremy Miles AS/MS**

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition



Llywodraeth Cymru  
Welsh Government

Mick Antoniw MS  
Chair of Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

13 January 2021

Dear Mick,

Thank you for the work of the Legislation, Justice and Constitution Committee in scrutinising the Trade Bill supplementary LCM which I laid on 4 November.

Please find the Welsh Government's response to the report's recommendations at Annex A.

I would be happy to expand on any of my responses at the LCM debate which is scheduled to take place on 12 January.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Miles'.

**Jeremy Miles AS/MS**

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd  
Counsel General and Minister for European Transition

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



## Annex A

### Welsh Government Responses to Recommendations from the External Affairs and Additional Legislation Committee on the Legislative Consent Memorandum for the UK Trade Bill

<b>Recommendation</b>	<b>Welsh Government Response</b>
<p><b>Recommendation 1</b></p> <p>The Counsel General should explain, in advance of any vote on a legislative consent motion for the Bill, why the Welsh Government did not pursue the amendment of clause 2(6)(a) with UK Ministers to the effect that it cannot be used by UK Ministers to make regulations that amend the <i>Government of Wales Act 2006</i>.</p>	<p><b>Decision – Accept</b></p> <p>As we have previously said, the Welsh Government recognises that there is a small risk that the UK Government could use clause 2(6)(a) to make regulations that amend the Government of Wales Act 2006 (GoWA). However, in practice, it is extremely unlikely that this would happen, as the clause 2 powers are very limited in scope.</p> <p>We agree entirely with the Senedd that it would be unacceptable for UK Ministers to use secondary powers to amend the core primary legislation underpinning the devolution settlement. However, the question which the Welsh Government faced was what was the most effective way of taking this matter forward. The starting point was the reality that pursuing an amendment to clause 2(6)(a) with UK Ministers was extremely unlikely to result in the legislative change requested. The UK Government has little reason to compromise on this matter as it can point to the fact that clause 2 was accepted by the Senedd when it provided legislative consent to the Trade Bill 2017-19 on 12 March 2019, and subsequently on 21 May 2019 in light of two supplementary LCMs.</p> <p>The Welsh Government therefore decided to pursue this legislative change by writing to the Lord Speaker in the House of Lords. A request was made that an amendment be tabled to clause 2 which would have the effect of preventing the regulation making powers from being exercised by UK Ministers to make amendments to GoWA. The Government felt that pursuing this avenue was more likely to result in securing a legislative change. This amendment was however not taken forward in the Lords.</p> <p><b>Financial Implications – None.</b></p>
<p><b>Recommendation 2</b></p> <p>The Counsel General should, in advance of any vote on a legislative consent motion for the Bill, confirm whether clause 2(6)(a) of the Bill has been amended to the effect that it cannot be used by UK Ministers to make regulations that</p>	<p><b>Decision – Accept</b></p> <p>Clause 2(6)(a) has not been amended to the effect that it cannot be used by UK Ministers to make regulations that amend the <i>Government of Wales Act 2006</i>.</p> <p>The Lords chose not to table this amendment, as set out above.</p> <p><b>Financial Implications – None.</b></p>

<p>amend the <i>Government of Wales Act 2006</i>.</p>	
<p><b>Recommendation 3</b></p> <p>The Counsel General should, in advance of any vote on a legislative consent motion for the Bill, confirm whether the UK Government has made the despatch box commitment, that it will engage the Welsh Government in the decision-making process in advance of any decision to use the power in clause 2(7) of the Bill to extend the sunset period.</p>	<p><b>Decision – Accept</b></p> <p>On 8 October 2020, Viscount Younger of Leckie, Lord in Waiting (Government Whip) explicitly restated despatch box commitments relating to clause 2 as requested by the then Minister for International Relations and Trade in a letter dated 11 September. The specific commitment relating to clause 2(7) is in bold type. He said:</p> <p><i>“We understand that those powers should be used appropriately, which is why the Government have committed that we will not normally use the concurrent powers to legislate within devolved areas without the consent of the relevant devolved Administration, and never without consulting them first, as the noble and learned Lord, Lord Hope, said. <b>We have also put in place a five-year sunset provision on the concurrent powers in Clause 2, which can be extended for further periods only with the agreement of both Houses of Parliament. We recognise that this would also extend the devolved Administrations’ and the UK Government’s ability to use the powers in devolved areas, and have therefore committed to the devolved Administrations that we will consult them before extending the sunset.</b>”</i></p> <p><b>Financial Implications – None.</b></p>



Mick Antoniw, MS  
Chair  
Legislation, Justice and Constitution Committee  
Welsh Parliament  
Ty Hywel  
Cardiff Bay  
CF99 1SN

11 January 2021

Dear Mick,

### **Curriculum and Assessment (Wales) Bill**

I would like to thank the Legislation, Justice and Constitution Committee for their scrutiny of the Curriculum and Assessment (Wales) Bill during Stage 1 and for the report which was published on 4 December 2020.

I have set out responses to the Committee's recommendations at Annex A. In summary I have accepted (or accepted in part) six of the recommendations.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Children, Young People and Education Committee and the Finance Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process. I can provide further information if that would be helpful.

Yours sincerely,

**Kirsty Williams AS/MS**  
Y Gweinidog Addysg Minister for Education

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**Annex A: Response to the Legislation, Justice and Constitution Committee Stage 1 Report Conclusions and Recommendations**

**Recommendation 1. Section 72 of the Bill should be amended so that the Codes to be made under sections 6, 7 and 8 of the Bill may not be made unless a draft of the proposed Code (or, in the case of the revisions, of the proposed revised Code) has been laid before, and approved by a resolution of, the Senedd. The requirement in section 72(2)(a) of the Bill should be retained.**

**I recognise the intention behind the Committee's recommendation, and accept this recommendation in part.** I have put forward Government amendments that will require the RSE Code and any subsequent revisions to be subject to the affirmative procedure. This is because this is an area of wider public interest, and sharing the ownership with the Committee may be a positive way of providing some collective support for the Code and practitioners across the executive and legislature.

However, the What Matters and Progression Codes are technical professional documents developed in close collaboration with practitioners. Both now and in the future, these codes will be the product of co-construction. Opening that to the affirmative procedure calls into question that process. It also raises significant concerns about the validity and trust of that process if practitioners' considered views are then overridden.

The What Matters Code and the Progression Code are likely to have to be updated in order to respond to changing circumstances in schools in the longer term and we consider that the negative procedure provides the appropriate level of flexibility to allow this to happen in a reasonable timeframe. The key principles are still set out on the face of the Bill – such as the AOLEs themselves and what a curriculum must provide in relation to them.

The codes do not allow us to do certain things which would be considered of special importance such as impose or increase taxation; provision involving substantial Government expenditure; powers to create unusual criminal provisions or unusual civil penalties; or powers to confer unusual powers of entry, examination or inspection, or provide for collection of information under powers of compulsion. None of those matters apply in this instance.

**Recommendation 2. The Minister should use the Stage 1 debate to provide further clarity regarding the powers in section 17 of the Bill and how they may be used by the Welsh Ministers.**

**I accept the Committee's recommendation, however, time did not allow for clarification during the Stage 1 debate.** At present I do not anticipate the need to make use of the regulation making powers under section 17 other than to specify a date by which a curriculum must be adopted.

If necessary we may make provision that would, for example, impose a consultation requirement.

The key duties such as who must adopt and what must be adopted are on the face of the Bill.

However, should circumstances change or issues come to light these regulation making powers will enable the Welsh Government to make provision as appropriate, for example, we may need to use these powers in relation to the revision of curricula to reflect any significant changes to curriculum requirements in the future.

**Recommendation 3. Section 25 of the Bill should be amended to include a non-exhaustive (but comprehensive) list of the circumstances in which the regulation-making power in section 25(1) may be used by Welsh Ministers.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** The section confers power on the Welsh Ministers to specify further requirements for a curriculum for 14-16 years olds.

We do not intend to use this power at the outset as we expect that the requirement in the Bill for a curriculum to be broad and balanced will be sufficient. However, should there be evidence that schools are offering a narrow curriculum to this age group, or are not providing courses of study that lead to certain qualifications then this power can be used to address the position.

The very nature of this provision is to capture unforeseen eventualities, therefore it is not practical to include a list of circumstances in which the power to make regulations would be used.

The regulations will be the subject to consultation at the appropriate time. Whilst we have set out in our statement of policy intent the sort of provision that we anticipate may be made under these regulation making power we do not see adding a list of non-exhaustive circumstances is necessary.

**Recommendation 4. The Bill should be amended so that regulations made under section 25(1) are subject to the affirmative procedure.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** We do not believe the draft affirmative procedure is the appropriate procedure. As we set out in the Statement of Policy Intent (SOPI), it is likely that we would use this power if there was evidence that schools were narrowing their curricula. We would want to act swiftly in such cases and as such the negative procedure is appropriate for this.

There is an equivalent provision for the local curriculum in section 116A of the Education Act 2002. The application of the negative procedure is therefore consistent with past practice. Regulations under section 116A of the 2002 Act have been made and the application of the negative procedure in that case has not given rise to any policy issues or stakeholder concerns.

**Recommendation 5. The Minister should use the Stage 1 debate to provide further clarity regarding the power in section 34(5) of the Bill and how it may be used by the Welsh Ministers.**

**I accept the Committee's recommendation, however, time did not allow for clarification during the Stage 1 debate.** I anticipate this power may be used to make provision about procedural matters such as time limits by which the head teacher must

make a determination, or as to the procedure to be followed in making such a determination.

The key principles are set out on the face of the Bill and it is only some of the technical detail that will be included in the regulations. For example, the grounds on which a head teacher could determine to disapply a pupil choice are on the face of the Bill.

It is not intended to make regulations in this regard at the outset. The procedures outlined on the face of the Bill are clear about the responsibility of schools here.

However, if it becomes clear over time that pupils and parents or carers are waiting too long in respect of the head teachers' decision or that the procedures adopted by schools are causing difficulties then this power would be used to clarify the process and ensure a consistent approach.

**Recommendation 6. The Minister should use the Stage 1 debate to provide clarity as to why the power in section 40 of the Bill is needed in addition to the power in section 50 of the Bill. In doing so, the Minister should provide a further explanation on how the power of direction in section 40 may be used by the Welsh Ministers.**

**I accept the Committee's recommendation, however, time did not allow for clarification during the Stage 1 debate.** The two sections are distinct from each other in their purpose.

Section 40 allows the Welsh Ministers to give a direction to a school or schools to enable development work or experiments to be carried out. The direction can disapply any or all of the implementation requirements, or provide for those implementation requirements to be modified in their application to the schools. It is a direction making power with regard to experiments, but must be agreed to by the LA and governing body.

This direction can be given only for experimental or developmental purposes.

We consider section 40 and section 41 are needed. If section 40 were to be removed, the restrictions in section 41 that apply to the giving of a direction of that kind would no longer apply. My view is that these restrictions are appropriate in the circumstances and I believe that they should be retained – which means retaining section 40.

**Recommendation 7. The Welsh Ministers should notify Senedd Members via written statement on each occasion that the power of direction under section 40 of the Bill is used.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** Section 42(3) already provides that where a direction under section 40 is given it must be published. Section 42(4) also requires the setting to publish a summary of the curriculum that will be implemented as a result.

We do not consider there is a need for a further written statement. This would be unnecessary given the transparent nature of the conditions applied to the giving of direction set out under sections 41 and 42.

**Recommendation 8. Section 47 of the Bill should be amended so that:**  
▪ **the time-limits in respect of appeals about temporary exceptions for individual pupils are included on the face of the Bill;**

▪ **such time-limit provision may be amended by regulations made by the Welsh Ministers which are subject to the affirmative procedure.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** We do not consider it appropriate that sort of detail should be set out on the face of the Bill. It is the sort of detail that may need to be amended over time. Placing that detail on the face of the Bill would not provide the flexibility needed to do that. This type of detail of that is best suited to regulations as it sets out technical details which may change over time.

We had not anticipated using these powers at the outset: schools already have clear procedures. Therefore, any changes to what is on the face of the Bill in this regard would not have been discussed in depth with key stakeholders, including schools and governing bodies. If we decide to add time limits it should only be after appropriate consultation.

This power is intended to be used if issues present themselves over time and as practice develops.

**Recommendation 9. Should the Minister reject recommendation 8, section 47(8) of the Bill should be amended so that Welsh Ministers are placed under a duty to make regulations that make further provision regarding the time-limits for appeals under the section.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** As with recommendation 8, we believe it would be appropriate to consult on whether time limits would be appropriate at a national level, and the level of flexibility they should have to fit in with schools' existing procedures. Agreeing to make regulation mandatory would have the effect of making a policy decision on time limits without having the evidence to support it. We do not wish to predetermine the matter and to allow stakeholders the fullest opportunity to inform the policy.

**Recommendation 10. The Bill should be amended so that regulations made under section 50 are subject to the affirmative procedure.**

**I accept this recommendation.** As this power has a relatively general role I am content to agree to making regulations subject to the draft affirmative procedure.

**Recommendation 11. The Minister should use the Stage 1 debate to clarify the power in section 67 of the Bill and how it may be used by Welsh Ministers.**

**I accept the Committee's recommendation, however, time did not allow for clarification during the Stage 1 debate.** This section enables the Welsh Ministers to make regulations about teaching and learning for learners who, for example may be a registered pupil at a maintained school, maintained nursery school or a pupil referral unit, but also receive education at another such setting.

In these situations it is expected that providers would work together to decide how provision in multiple settings will interact so that the learner receives a full curriculum. Regulations may impose duties and will describe the mechanism of this process in more detail. However, more work is needed due to the potential number of different cases here. It is intended to work with various settings to develop these regulations to ensure that these learners receive a full curriculum where possible.

The purposes of the regulations is to provide a way of different institutions to work together to discharge the functions that are already set out in the Bill or in regulations made under it.



Kirsty Williams AS/MS  
Y Gweinidog Addysg  
Minister for Education



Llywodraeth Cymru  
Welsh Government

Lynne Neagle, MS  
Chair  
Children, Young People and Education Committee  
Welsh Parliament  
Ty Hywel  
Cardiff Bay  
CF99 1SN

11 January 2021

Dear Lynne,

### **Curriculum and Assessment (Wales) Bill**

I would like to thank the Children, Young People and Education Committee for their scrutiny of the Curriculum and Assessment (Wales) Bill during Stage 1 and for the report which was published on 4 December 2020.

I have set out responses to the Committee's recommendations at Annex A. In summary I have accepted (or accepted in part) 54 of the recommendations.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Finance Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,

**Kirsty Williams AS/MS**  
Y Gweinidog Addysg  
Minister for Education

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **Annex A: Response to Children, Young People and Education Committee Stage 1 Report Conclusions and Recommendations**

**Recommendation 1: That the Senedd, taking into account the evidence provided to us as part of our Stage 1 scrutiny and the recommendations we make in this report, agree the general principles of the Curriculum and Assessment (Wales) Bill**

**I accept this recommendation.** We welcome the Committee's agreement to the General Principles of the Curriculum and Assessment (Wales) Bill

**Recommendation 2: That the Welsh Government outline, in light of the evidence received as part of our Stage 1 scrutiny:**

- **how it has assured itself that the Bill has struck the right balance between local flexibility and national consistency;**
- **what checks and balances it will put in place to monitor and maintain the correct balance, including ensuring individual schools' curricula are appropriate; and**
- **what more it can do to ensure children and young people in settings in all parts of Wales receive a sufficiently consistent (but not necessarily uniform) education offer and thrive under the approach being taken to the new curriculum.**

**I accept this recommendation.** The Curriculum for Wales Framework provides a robust set of expectations in which schools develop their curriculum. The Framework is determined nationally and includes both the curriculum requirements, which will be set out in legislation, and a range of supporting guidance. This provides subsidiarity but within a wide range of detailed support – more detailed than existing programmes of study.

We have committed to publishing an implementation plan which will set out how we monitor and understand progress and identify issues with implementation. We will also establish a National Network to work closely with a wide range of practitioners to ensure understanding and shared approaches.

**Recommendation 3: That the Welsh Government monitor closely and transparently the impact that curriculum reform has on standards, to ensure that it complements the wider school improvement efforts underway. This should draw on expert advice from the OECD and others**

**I accept this recommendation.** This is an important priority for us and will be outlined in the implementation plan.

**Recommendation 4: That the Welsh Government monitor closely any variation in the curriculum offer, and any impact that has on particular groups of pupils and schools, addressing early any signs of inadvertently exacerbating inequality and disadvantage.**

**I accept this recommendation.** We will work closely with practitioners and partners through our evaluation steps to be outlined in the implementation plan and the National Network to monitor and address barriers to implementation relating to inequality and inclusivity. I intend to publish the implementation plan in the coming weeks.

**Recommendation 5: That the Welsh Government give further consideration to participating in future cycles of the Creativity Thinking element of PISA, in light of the clear read across between it and the new curriculum's approach.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** We do not intend to participate because ETS, the head PISA international contractor, has advised that we can only do so along with England and Northern Ireland. Both nations have decided not to participate.

ETS' implementation, analysis and reporting procedures are not currently scoped to accommodate a requirement combining some domains and not others, as would be the case if one country alone implemented Creative Thinking.

In addition to there are a number of other reasons why we have decided not to participate in the Creative Thinking option, including, because the assessment will provide limited value for our curriculum and wider schools policy to justify the resource needed to administer it (both schools and contractors/officials).

**Recommendation 6: That the Welsh Government set out, as a matter of priority, the principles and reasoning that has guided—and will continue to guide—decisions about what aspects of teaching and learning merit being included on the face of Bill as mandatory elements.**

**I accept this recommendation.** We will shortly provide the committee with a technical briefing paper setting out the rationale for including only a narrow set of specific subjects on the face of the Bill. The breadth and depth of Areas of Learning and Experience is secured through the key concepts when made mandatory in the What Matters Code. There are deliberately only a very small number of subjects that form mandatory elements on the face of the Bill: the four elements which do appear on the face of the Bill are unique in that the Bill needs to mention them in order to address a specific issue or set of circumstances. Extending this to include important aspects of learning such as mental health would not add to the existing requirements of the What Matters Code and would open calls for the bill to expressly list a wide range of critically important subjects and topics. This would undermine the philosophy of the new curriculum.

**Recommendation 7: That the Welsh Government amend the Bill to ensure that the What Matters Code (or revised Code) is subject to the enhanced affirmative, rather than the enhanced negative, procedure. The provision in section 72(2) requiring consultation on the What Matters Code (or revised Code) should remain.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** This is a technical professional document that has been developed in close collaboration with practitioners. Both now and in the future, this Code is the product of co-construction. Opening that to the affirmative procedure calls into question that process. It also raises significant concerns about the validity and trust of that process if practitioners' considered views are then overridden.

The Code is likely to have to be updated in order to respond to changing circumstances in schools in the longer term and we consider that the negative procedure provides the appropriate level of flexibility to allow this to happen in a reasonable timeframe. The key principles are still set out on the face of the Bill – such as the AOLEs themselves and what a curriculum must provide in relation to them. Any changes to the Code would be co-constructed with practitioners, continuing to use their professional judgement and experience.

The Code does not allow us to do certain things which would be considered of special importance such as impose or increase taxation; provision involving substantial Government expenditure; powers to create unusual criminal provisions or unusual civil penalties; or powers to confer unusual powers of entry, examination or inspection, or provide for collection of information under powers of compulsion. None of those matters apply in this instance.

**Recommendation 8: That the Welsh Government consider and outline how the legislation can be future-proofed, within reason, to ensure that future regulations do not undermine the principles of the Curriculum for Wales, for example by making the curriculum overcrowded or too prescriptive**

**I accept this recommendation.** This will be critical and we would seek to ensure any policy underpinning regulations was thoroughly tested through co-construction. We will publish details of that at the appropriate time.

**Recommendation 9: That the Welsh Government amend the Bill to include specific reference, on its face, to mental health and well-being and its place in the curriculum.**

**I recognise the intention behind the Committee's recommendation, and accept this recommendation in principle.** We will table an amendment to place a duty on prescribed persons carrying out functions and duties under the Bill to have regard to pupils' mental health and emotional well-being. This duty would put mental health in a unique position: signalling it is not simply a critical aspect of what is taught, but a system wide consideration to inform every decision around curriculum. This goes further than simply requiring the teaching of mental health and well-being, which is already secured through the proposed What Matters Code and which would not add anything.

**Recommendation 10: That the Welsh Government provide further assurances that explicit references to Welsh history, BAME history, diversity and identity will be made in the suite of Codes and guidance that underpin the Bill.**

**I accept this recommendation.** The What Matters Code and Curriculum for Wales guidance include clear and detailed reference to these and other priority areas, and this will be reviewed. We will work closely with the National Network to ensure these areas are fully considered and understanding shared.

**Recommendation 11: That the Welsh Government provide further assurances of how the various items of learning that stakeholders and petitioners have requested are included as mandatory elements on the face of the Bill will be reinforced by this legislation and the suite of Codes and guidance that underpin it.**

**I accept this recommendation.** A number of areas, including Welsh history, mental health and lifesaving skills have been identified by stakeholders and petitioners to the Senedd in Stage 1. Many will or have been considered for inclusion where appropriate in the suite of codes and guidance. We will work closely with the National Network to consider in the context of curriculum implementation how best to embed these important issues in the learning process.

**Recommendation 12: That the Welsh Government consider how it can ensure that the place of human rights, including children's rights, is secure in the long-term within the Curriculum for Wales**

**I accept this recommendation.** The Curriculum Framework provides for these and we will work closely with the National Network to review their place and explore how these can be supported.

The statements of what matters in the Humanities AoLE published in January include the need for learners to understand their rights and engage with the concept of rights more generally. We would expect this to be a mandatory part of every school's curriculum.

Supporting this, the proposed Curriculum for Wales published in January provides clear guidance on human rights learning and education. This includes explicit reference to children's rights and the UNCRC and was developed in close collaboration with the Office of the Children's Commissioner.

Head teachers and governing bodies of schools will be obliged to design, adopt and implement a curriculum that includes learning on children's rights and the UNCRC.

**Recommendation 13: That the Welsh Government amend the Bill to include, on its face, a duty to have due regard to the UN Convention on the Rights of the Child (UNCRC). Given their respective roles in relation to the Curriculum for Wales, this duty should be placed on all persons listed in section 66(3) of the Bill when exercising any of their functions conferred by or under the Bill**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** The UNCRC is aimed at states and, accordingly, it is for Governments to ensure compliance through their laws, administrative actions and other appropriate measures. This is an important principle and, unless the state is directly providing the service, this Convention is not targeted at frontline providers of service.

A general due regard duty on persons or bodies exercising functions under the Bill would not in itself lead to improved outcomes for children and young people. It would not guarantee a particular action or result and could, in practice, have the opposite effect and work against the well-intended aims of such a duty.

It is specific and practical duties on public bodies that will result in improved outcomes and this is the approach we have taken in the Bill. For example, in relation to the provisions in the Bill concerning pupil choice and the power provided to head teachers to make a determination that the duty to secure teaching and learning does not apply.

If we were to place a due regard duty directly on those exercising functions under the Bill, we risk distracting frontline practitioners from supporting learners by creating layers of red tape and bureaucracy – teachers, schools and governing bodies would have to evidence that they have taken the Convention into account in their interactions with all children and young people with 'better' discernible outcomes for children being questionable. Children's rights are at the forefront of our ambitions for the new curriculum. We think the focus should be on meaningful actions for the benefit of children and young people.

The statements of what matters in the Humanities AoLE published in January include the need for learners to understand their rights and engage with the concept of rights more generally. We would expect this to be a mandatory part of every school's curriculum.

Supporting this, the proposed Curriculum for Wales published in January 2020 provides clear guidance on human rights learning and education. This includes explicit reference to children's rights and the UNCRC and was developed in close collaboration with the Office of the Children's Commissioner.

Head teachers and governing bodies of schools will be obliged to design, adopt and implement a curriculum that includes learning on children's rights and the UNCRC.

**Recommendation 14: That the Welsh Government ensure that there is adequate synergy between the Bill, the new curriculum, and the Well-being of Future Generations Act, and that this is reinforced within the What Matters Code and statutory guidance made under the Bill.**

**I accept this recommendation.** The new curriculum is designed so it maximises its contribution to each of the seven well-being goals outlined in the Well-being of Future Generations Act 2015. The impact assessment published alongside the Bill and Explanatory Memorandum outlines in some detail the contributions it will make.

These will be reflected in the codes and statutory guidance.

The Implementation Plan will set out how the Framework will contribute to the realisation of the goals and how this will be supported by the efforts of government and enabling partners. Through the National Network we will consider with practitioners how these synergies can be maximised.

**Recommendation 15: That the Welsh Government amend the Bill to resolve concerns about the impact on immersion in the Welsh language up to age 7 (prior to Year 3), noting that the Minister intends to table an amendment removing English as a mandatory element for this age group**

**I accept this recommendation.** We will amend the Bill so that English becomes mandatory from age 7 to 16. Under the Bill Welsh will continue to be a mandatory element for 3 to 16 in all schools.

**Recommendation 16: That the Welsh Government work closely with the Welsh Language Commissioner to address his concerns about the Bill, the delivery of the single continuum and the Welsh Government's wider Cymraeg 2050 aims. This should include consideration of amending the Bill to require the Welsh Ministers to issue a statutory Code for the teaching and learning of Welsh under the curriculum, or strengthening the provisional guidance on how schools are expected to deliver the single learning continuum and contribute to the Cymraeg 2050 agenda**

**I recognise the intention behind the Committee's recommendation, and accept this recommendation in part.** We will continue to work closely with the Welsh Language Commissioner and other stakeholders in relation to a Welsh Language continuum and Cymraeg 2050. This will be a priority in our curriculum implementation plan.

The new Curriculum for Wales framework sets out expectations of learners' development of their Welsh language skills and through the National Network all schools will be supported to design their own curriculum to include this. We do not accept the need to issue a Statutory Code for the teaching and learning of Welsh. The specification of Welsh language from 3 on the face of the Bill provides a clear signal as to the priority that we give to this and the government's commitment to progressing this work. The philosophy underpinning the Bill is to retain the educational framework whilst removing the prescription for schools.

**Recommendation 17: That the Welsh Government work closely with Qualifications Wales and other relevant partners to ensure appropriate qualifications in Welsh are**

**developed and made available to align with the single continuum for teaching and learning this mandatory element**

**I accept this recommendation.** The introduction of a single continuum via the Curriculum for Wales provides an opportunity to consider the appropriate qualifications for Welsh. As the regulator Qualifications Wales will lead that work but we will of course work with them and relevant stakeholders in developing qualifications for the new curriculum. Our response to recommendation 55 has further detail about the timing of Qualifications Wales' consultation process.

**Recommendation 18: That the Welsh Government take forward expeditiously work to revise school language categories and consider placing these on a statutory footing, in order to support the understanding and implementation of the continuum for learning Welsh in different schools**

**I acknowledge the intention behind the Committee's recommendation, and accept in part and the rest of this recommendation in principle.** We will be launching a consultation on the draft non-statutory guidance for categorising schools according to their Welsh-medium provision on 14 December until 26 March 2021. The draft non-statutory guidance should be seen as an overarching framework for schools and local authorities to increase the amount of Welsh language instruction in schools. Further guidance may be needed to provide individual schools with additional support on what increasing Welsh medium provision within a school means on a practical level. A view on this is being sought in the consultation. Naturally we will carefully consider all responses post-consultation and refine the guidance as necessary. We recognise that any adjustments to the proposed arrangements for categorising schools will need to be aligned with the new Curriculum as it develops further.

We accept in principle the recommendation to make the language categories statutory. This would require legislation and therefore it will be a matter for the next Government and Senedd.

**Recommendation 19: That the Welsh Government ensure that the required scale of planning, funding and training is provided to support the effective implementation of the single continuum for the teaching and learning of Welsh under the new curriculum.**

**I accept this recommendation.** Professional learning is a key feature of our approach to strengthening Welsh-medium teaching capacity and improving the skills of teachers to teach Welsh as part of the new curriculum and this work is already underway. We continue to support practitioners to develop their Welsh language skills and their ability to teach Welsh in accordance with the Professional Standards for Teaching and Leadership through the sabbatical scheme and support delivered by the regional consortia and in conjunction with other stakeholders.

**Recommendation 20: That the Welsh Government work with Estyn to ensure that monitoring and inspection of educational settings' implementation of the RSE Code is a key feature of the inspectorate's future work programme**

**I accept this recommendation.** In line with their remit, we would expect Estyn to consider all legislative requirements of the new curriculum during their monitoring and inspection of educational settings. RSE would fall into this requirement.

**Recommendation 21: That the Welsh Government, to inform schools' important work to prepare for the Bill's commencement and Members' tabling and consideration of amendments, make available before the start of Stage 3, the draft RSE Code.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** The draft RSE code is being co-constructed with practitioners, stakeholders and experts. The timeline of this work has changed due to COVID restrictions and the remote meeting environment. We are keen that this process progresses at an appropriate pace so that the outcome is fully considered and developmentally appropriate. We are undertaking a range of work to support understanding of the approach to RSE. Work on the code and statutory guidance will continue until the end of March 2021.

**Recommendation 22: That the Welsh Government amend the Bill to ensure that the RSE Code (or revised Code) is subject to the enhanced affirmative, rather than the enhanced negative, procedure. The provision in section 72(2) requiring consultation on the RSE Code (or revised Code) should remain**

**I accept this recommendation.** We accept the need for the affirmative procedure and the Bill already provides for statutory consultation on the Code. We consider this important as the RSE code will have wider public interest beyond the professional and technical elements in the What Matters and Progression Codes. As such, we consider that an aligned process with the Senedd is appropriate. Both the RSE Code, and statutory guidance will be subject to a public consultation in summer 2021.

**Recommendation 23: That the Welsh Government work with the RSE Working Group to provide, in readiness for the Bill's implementation, a framework outlining the core professional learning, resources and specialist support likely to be needed to deliver developmentally appropriate teaching of RSE from ages 3-16 under the new curriculum.**

**I accept this recommendation.** The role of the RSE Working Group is to inform and assist with the design of the new RSE code and statutory guidance, working closely with practitioners on its re-drafting. The group will also consider and advise on pedagogy, resources and professional learning requirements for RSE required to support the delivery of RSE within the new curriculum.

As part of our co-construction work with practitioners and other stakeholders, we will develop a clearer understanding of the likely costs of implementation. The Curriculum Implementation Plan and research and evaluation programme will identify the need for additional resources and any cost implications. Given that the approach is being worked on with our stakeholders on an ongoing basis, we will provide an update to the Senedd when the work is complete later in 2021.

**Recommendation 24: That the Welsh Government, as a matter of urgency, launch a myth-busting campaign about the RSE that will be delivered as a result of this Bill. This campaign should:**

- **challenge the misinformation currently circulating about RSE;**
- **seek to reassure parents about RSE's developmentally appropriate content and approach; and**
- **explain why it is important for all children and young people to be taught RSE.**

**I accept this recommendation.** We recognise the need to develop accurate and positive messaging highlighting the importance of RSE to counter the misinformation. This will start



from early 2021 and we are developing communication material to offer accurate information to schools, parents and communities across Wales. The messaging will focus on safeguarding, ensuring learners are safe and supporting them to develop healthy personal relationships; and the importance of developmental appropriateness.

**Recommendation 25: That the Welsh Government, to inform schools' important work to prepare for the Bill's commencement and Members' tabling and consideration of amendments, make available before the start of Stage 3, the draft RVE guidance**

**I accept this recommendation.** The draft RVE Guidance has been co-constructed with stakeholders and partners and a draft will be made available before the start of Stage 3. Our plan is to consult on the guidance in late Spring 2021.

**Recommendation 26: That the Welsh Government further explore and clarify during the Stage 1 debate whether it would be possible to amend Schedule 1 to the Bill so that there is consistency between how the different categories of school take account of the agreed syllabus when designing and implementing the mandatory element of RVE in the school curriculum.**

**I accept the Committee's recommendation, however, time did not allow for clarification during the Stage 1 debate.** The amendment on requirements for agreed syllabus implementation in Voluntary Aided (VA) schools is being taken forward, to ensure every school has the same duty to "have regard" to an agreed syllabus when providing denominational RVE at the request of the parent.

**Recommendation 27: That the Welsh Government clarify, during the Stage 1 debate, why the Bill does not include a right for learners of sufficient maturity to choose the RVE provision they receive where a choice exists.**

**I accept the Committee's recommendation, however, time did not allow for clarification during the Stage 1 debate.** The position is that up to the age of 16 parents will make the choice for their child, however at post 16 the choice to continue being taught about RVE will rest with the young person.

We are satisfied that this approach is compatible with the rights protected by the Human Rights Act 1998 (principally Article 2 Protocol 1 and Article 14 when read together with Article 2 Protocol 1). Children in the 6th form will be over 16 and that is an age at which society recognises that children are competent to make their own choices in various respects. We do not consider that it is problematic that the UK legislation takes a blanket approach in this respect (as opposed to, for example, assessing the maturity of particular children to make the relevant choice). The difficulties that we anticipate are inherent in and arise out of determining whether a particular child is competent to choose not to attend an act of collective worship, provides a good basis for an argument that this is a situation in which it is proportionate to draw a "bright line" between sixth-formers and non-sixth-formers.

**Recommendation 28: That the Welsh Government further explore, in consultation with the Children's Commissioner for Wales, the options available to maximise the opportunities to further realise the rights of children in relation to the Bill's provision for the mandatory element of RVE, providing an update on this during the Stage 1 debate.**

**I accept the Committee's recommendation, however, time did not allow for clarification during the Stage 1 debate.** We will discuss with Children's Commissioner for

Wales although the development and content of the RVE syllabi will be developed by teachers with regard to the agreed syllabus.

**Recommendation 29: That the Welsh Government explore options to amend the Bill to refer to religious traditions and non-religious philosophical convictions in “Wales” as opposed to “Great Britain”, given that this is a bespoke curriculum for Wales.**

**I accept this recommendation.** We will amend the Bill accordingly.

**Recommendation 30: That the Welsh Government continue with its plan to change the title of Standing Advisory Committees on Religious Education (SACREs) to reflect the new RVE mandatory element in the curriculum, but that consideration be given to addressing concerns raised about the need to be clear about what Standing Advisory Committees (SACs) exist to advise on**

**I recognise the intention behind the Committee’s recommendation, however, I do not accept this recommendation.** The legislation around the SACREs is not part of the Curriculum and Assessment (Wales) Bill. A review of SACRE including change of name is an issue for a future government.

**Recommendation 31: That the Welsh Government continue with its plan for the Bill to place a requirement on local authorities “to include in their Agreed Syllabus Conferences a group of persons to represent such non-religious philosophical convictions as, in the opinion of the authority, ought to be represent[ed]”, but that consideration be given to addressing concerns raised (from religious, non-religious and advisory groups) about the balance and fairness of the composition of SACs and ASCs, particularly in relation to voting rights**

**I accept this recommendation.** The Bill already ensures that persons representing non-religious philosophical convictions will in the opinion of the authority be represented. However, in addition to the current Bill provisions we will provide guidance to LAs on membership of SACREs and Agreed Syllabus Conference to ensure fairness, appropriate representation, whilst also having the least impact on constitution of SACREs.

**Recommendation 32: That the Welsh Government work with relevant and expert representatives in the education sector to provide, in readiness for the Bill’s implementation, a framework outlining the core professional learning, resources and specialist support likely to be needed to deliver the necessarily objective, critical and pluralistic teaching of RVE under the new curriculum.**

**I accept this recommendation.** Professional learning is critical to ensure awareness and engagement of all practitioners with the new curriculum and to equip practitioners with the appropriate skills in relation to a purpose-led curriculum. As such we will continue to provide support for Professional Learning during the transition and implementation periods.

We recognise additional support will be required to commission robust and purposeful professional learning for teaching practitioners to increase their skills in this and other very important new areas of learning. We will continue to review teaching and learning resources currently available to support teaching across the areas of learning; advising on the commission of new learning resources; and reviewing and building on existing provision.

We are also in discussions with WASACRE on professional learning requirements for RVE and we are providing support to develop frameworks to support the delivery of denominational Religion values and ethics in Church in Wales and Catholic schools and

ensure that the discipline of religious education is delivered in accordance with the trust deeds of the school and the tenets of the Church.

Costs will be monitored and reviewed as part of the Research and Evaluation programme.

**Recommendation 33: That the Welsh Government work at pace to make the early years curriculum available, to maximise the time settings have to prepare for its implementation. Relevant stakeholders must be closely involved in its development.**

**I accept this recommendation.** We are working closely with stakeholders from the non-maintained sector, including practitioners and early years advisory teachers to co-construct an inclusive, quality assured curriculum and assessment framework for learners accessing education in non-maintained settings. This is a core part of the learning and consultative engagement process.

We intend to use the summer term 2021 to pilot the draft curriculum and assessment arrangements, alongside a public consultation to ensure the sector and others are fully and effectively engaged before the final curriculum and assessment framework is published during the autumn term.

**Recommendation 34: That the Welsh Government undertake work to estimate the Bill's cost implications for funded non-maintained nursery settings, and provide this to the Senedd to aid its consideration of the Bill.**

**I accept this recommendation.** As part of our co-construction work with practitioners on the early years curriculum, we will develop a clearer understanding of the likely costs of implementation. We will continue to work with all schools and settings as part of the Implementation Plan and research and evaluation programme and costs will be monitored and reviewed as part of this. Given that the approach is being worked on with our stakeholders on an ongoing basis, we will provide an update to the Senedd later in 2021.

**Recommendation 35: That the Welsh Government proceed at pace with its work to develop supplementary guidance to support children's progression and assessment prior to age 5, and consider the need for—and purpose of—an earlier progression step on its proposed continuum of learning than age 5.**

**I recognise the intention behind the Committee's recommendation, and accept this recommendation in part.** Following the publication of the Curriculum for Wales Framework in January, there was an identified need for more detailed guidance to support practitioners working with learners in the period of learning leading to progression step 1. We have worked closely with a range of stakeholders, including head teachers, special schools, non-maintained practitioners, early years advisory teachers and academics to co-construct additional guidance to meet this need.

This Enabling Pathways guidance will form part of the Curriculum for Wales Framework and will be for use by all practitioners working with learners who are, developmentally, in the period of learning leading to progression step 1, regardless of their chronological age. This might include some non-maintained settings, schools, special schools and some PRU/EOTAS settings. The guidance will be clearly and explicitly linked to the four purposes of the curriculum, the AoLEs and the statements of what matters to ensure learners are able to move seamlessly along the continuum into the progression steps. Due to the development of this guidance an earlier progression step is not considered necessary. The draft Enabling Pathways guidance will be published for consultation during the summer term 2021 with the final version made being made available during the autumn term.

**Recommendation 36: That the Welsh Government, in light of the Curriculum for Wales's new approach, undertake further work to ensure that learners' transitions between age 3-16 education and post-16 education and training are as effective and seamless as possible. This needs to be considered from the perspective of this Bill and any future reform of post-compulsory education and training.**

**I accept this recommendation.** To support continuity of learning post 16 we need a post compulsory education and training system that aligns with our values and objectives as set out in Our National Mission and the recently published Vision for post-16 that supports the four purposes that underpin the Curriculum for Wales.

We recognise that there needs to be a smoother transition between schools and colleges and between vocational and academic routes. This is an issue that the implementation plan will identify for the National Network to consider and we will work closely with the post 16-education sector to achieve this.

The research and evaluation programme, as explained in Chapter 11 of the Explanatory Memorandum, will examine how well the aims of the reforms are being met, including the key aims that each school's curriculum will meet the needs of all learners, that learners will be ready to learn throughout their lives, and to play a full part in life and work. The programme will extend past 2030 and will look at the longer term outcomes for learners beyond statutory schooling, into further and higher education and employment.

**Recommendation 37: That the Welsh Government amend the Bill to require schools to provide RSE to sixth form pupils who request it.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** The priority age group is 3-16, so by the time the learner is 16 they have the necessary learning during their compulsory schooling. The RSE guidance will support post-16 providers on RSE and other health and well-being matters, as part of their wider duty care and pastoral duties. Whilst there is a different approach to RVE, the position for RSE in 6<sup>th</sup> forms will be the same for RSE for students in FEIs.

**Recommendation 38: That the Welsh Government must fully ensure that the new curriculum is ambitious about the learning and life-chances of learners who are EOTAS, through the provisions of the Bill and the forthcoming statutory guidance on implementation of the new curriculum in EOTAS settings**

**I accept this recommendation.** The statutory guidance will be published specifically for PRUs and EOTAS settings and this guidance is being developed in partnership and through co-construction by practitioners and others with experience and expertise in this area. We are clear within this statutory guidance that all EOTAS settings should aim to develop innovative, creative curriculum design that provides all learners with pathways which are secure, appropriate, coherent and aspirational.

It is proposed in the new curriculum that PRUs must provide learning which enables learners to develop in the ways described by the four purposes: that it is suitable for the learners' ages, abilities and aptitudes; offers appropriate progression and is broad and balanced. It must also make provision for teaching and learning that develops mandatory cross curricula skills that are vital to the life chances of learners and also encompasses health and wellbeing and relationship and sexuality education learning.

In 2019/20, £24m was made available to schools through the professional learning grant and an additional £180,000 was allocated to all PRUs in Wales to ensure that they are able to access the professional learning required to lead a profound transformation in the way our practitioners and leaders think about their professional learning in light of the new curriculum. A further £7m has been made available to schools and PRUs in 2020-2021

**Recommendation 39: That the Welsh Government must fully ensure the new curriculum has a personalised approach to tailor the curriculum provided to learners in EOTAS settings (e.g. provision that pays attention to their ALN, considers emotional, social and behavioural difficulties, or recognises medical factors). This should be achieved through the provisions of the Bill and the forthcoming statutory guidance on implementation of the new curriculum in EOTAS settings.**

**I accept this recommendation.** The new curriculum enables a tailored approach for learners which is outlined in our statutory guidance to practitioners. The curriculum in EOTAS settings will be planned, designed and implemented in collaboration with the learner, provider, school and parents/carers and will focus specifically on the needs of that learner. It will also support the learner for reintegration back into mainstream education and enable them to progress further into the next stage of education or the world of work.

One of the key principles of the new statutory guidance for EOTAS settings is that curriculum planning, design and implementation must facilitate the well-being of each learner. Learning should support learners' mental, emotional, physical and social well-being. Well-being is a critical enabler of learning – learners who are not content, safe and secure will not learn effectively.

We are clear that EOTAS has been designed for short-term placements to support learners to return to mainstream education although we recognise that some learners will remain in EOTAS for the duration of their compulsory education.

**Recommendation 40: That the Welsh Government must fully ensure the curriculum provided in EOTAS settings enables learners' re-integration into mainstream school, where this is appropriate and possible, through the provisions of the Bill and the forthcoming statutory guidance on implementation of the new curriculum in EOTAS settings.**

**I accept this recommendation.** The additional statutory guidance states that the new curriculum will be planned, designed and implemented to provide support for the reintegration of learners receiving EOTAS into mainstream or specialist provision, and/or for enabling them to progress towards further education, training or the world of work.

We are developing EOTAS Referral and Commissioning Guidance that will provide advice on our expectations surrounding reintegration. Furthermore, curriculum planning will be based on learner needs and can be changed and updated over time to reflect changing needs and priorities.

**Recommendation 41: That the Welsh Government clarify what mechanisms exist for parents and learners to challenge the curriculum that is offered for learners who are EOTAS in the event they do not believe it complies with the requirements under the Bill.**

**I accept this recommendation.** There are existing mechanisms for parents and/or pupils to challenge the curriculum provision in PRUs. Schedule 1 of the Education Act 1996 provides that each LA must make arrangements for the consideration and disposal of any complaint

to the effect that the authority, or the teacher in charge of any pupil referral unit in Wales have acted or are proposing to act unreasonably with respect to the exercise of any power conferred, or the performance of any duty imposed, on them in respect of the provision of the curriculum or that they have failed to discharge any such duty.

If they remain dissatisfied after referring the matter to the LA they can ask the Welsh Ministers to exercise their powers of intervention in Part 2 of the School Standards and Organisation (Wales) Act 2013 if they consider that any of the Grounds of intervention set out there are engaged.

For non-PRU EOTAS the challenge would be to the LA who made the arrangements.

**Recommendation 42: That the Welsh Government clarify how “capacity to understand” is to be interpreted for the purposes of the Bill. This could include guidance on the factors head teachers and governing bodies should take into account when deciding whether a pupil has capacity to understand.**

**I accept this recommendation.** We intend to include clarification on this in the statutory guidance currently being developed for head teachers and governing bodies.

**Recommendation 43: That the Welsh Government explain the reasons why additional exceptions to curriculum requirements under regulations made under section 50 will not necessarily be conditional on the general curriculum requirements being met, unlike exceptions provided for by other sections of the Bill.**

**I accept this recommendation.** It is not practical or appropriate to compel education practitioners to fulfil the general curriculum requirements in all cases. There are exceptional circumstances where teaching and learning cannot practically meet the general curriculum requirements, including enabling pupils or children to fully develop in ways described in the four purposes. For example, if a child is seriously ill they may only receive limited education that is sufficient to keep them engaged but not enough to satisfy the basic concepts in the Bill. These powers enable the Welsh Ministers to confer a discretion on head teachers and other education providers to manage appropriate provision in such limited cases.

**Recommendation 44: That the Welsh Government:**

- **provide assurances that the curriculum framework will ensure a sufficiently broad offer for 14 to 16 year olds, with a wide range of course options available, including vocational courses; and**
- **monitor this situation closely and keep under consideration the need to promptly make regulations specifying further requirements as may be necessary.**

**I accept this recommendation.** The Bill requires that at 14 to 16 pupils must study something from each of the AOLES and all of the mandatory elements. If the Welsh Ministers become aware of any narrowing of the curriculum offer for this cohort they may make regulations under section 25 of the Bill. Section 25 confers power on the Welsh Ministers to specify further requirements for a curriculum for 14-16 years olds.

The power in section 25 can be used to require something to be included in a curriculum, or to require something not to be included. Should there be evidence that some schools are offering a narrow curriculum to this age group, or are not providing courses of study that lead to certain qualifications then this power can be used to address the position.

The research and evaluation programme, as summarised in Chapter 11 of the Explanatory Memorandum, includes tasks to identify and monitor both benefits and unintended impacts of the reforms, and ensure they are brought to the attention of Ministers.

**Recommendation 45: That the Welsh Government monitor closely how the power given to head teachers in section 33 is used and ensure, including through the statutory guidance underpinning the curriculum, that it is not used to unnecessarily deny pupils' choices nor inhibit high aspirations for all learners.**

**I accept this recommendation.** This will form part of the Post Implementation Review set out in Chapter 11 of the Explanatory Memorandum, which will be an ongoing process of learning, including an evaluation of the impacts of the new curriculum. Also set out in Chapter 11 is the intention of conducting a research and evaluation programme, which will identify how high quality evidence about the implementation and impacts of the reforms can be reliably collected and presented. Finally, the encouragement of high aspirations amongst all learners and the design of inclusive curricula in which all can participate, are fundamental aims of the reforms.

The research and evaluation programme, as summarised in Chapter 11 of the Explanatory Memorandum, includes tasks to identify and monitor both benefits and unintended impacts of the reforms, and ensure they are brought to the attention of Ministers.

**Recommendation 46: That the Welsh Government:**

- **ensure that both the strategic approach to the Curriculum for Wales and its implementation fully support the interests of pupils with Additional Learning Needs and disabilities, and are consistent with the provisions of the Additional Learning Needs and Education Tribunal (Wales) Act 2018; and**
- **monitor this situation closely and consider strengthening the references to ALN and disabilities in guidance on curriculum implementation.**

**I accept this recommendation.** The ALN system and Curriculum for Wales are based on shared principles and both are designed to deliver an inclusive and equitable education system. The ALNET Act contains duties about the inclusion of children within mainstream maintained schools and about their inclusion in the activities of such a school alongside children who do not have ALN (see sections 51 and 52 of ALNET). Further, the design of the Curriculum for Wales and the principle of learner progression along a continuum of learning from 3-16 will help to remove barriers that society itself places to learning that children with ALN must overcome in order to achieve their potential.

The AoLEs have been designed to be accessible and inclusive for all learners including those with ALN and provide greater scope for staff to use their knowledge of a child's skills and abilities to identify and implement ways of providing appropriate and tailored access to the curriculum for children with ALN. Curriculum guidance includes specific guidance on ALN in the curriculum and officials continue to work together across the Education Directorate to help ensure alignment between the new ALN system, curriculum reform and the broader professional learning programme.

The research and evaluation programme, as summarised in Chapter 11 of the Explanatory Memorandum, includes tasks to identify and monitor both benefits and unintended impacts of the reforms, and ensure they are brought to the attention of Ministers.

**Recommendation 47: That the Welsh Government amend the Bill to include, on its face, a duty to have due regard to the UN Convention on the Rights of Persons With Disabilities (UNCRPD). Given their respective roles in relation to the Curriculum for**

**Wales, this duty should be placed on all persons listed in section 66(3) of the Bill when exercising any of their functions conferred by or under the Bill.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** The Bill has been developed to be fully inclusive and regardless of a child's abilities they are entitled to teaching and learning under the Curriculum for Wales. There are further protections in the Equality Act 2010 under which claims for disability discrimination in schools are heard in the Education Tribunal.

The UNCRPD like the UNCRC is aimed at states and, accordingly, it is for Governments to ensure compliance through their laws, administrative actions and other appropriate measures. This is an important principle and, unless the state is directly providing the service, this Convention is not targeted at frontline providers of service.

A general due regard duty on persons or bodies exercising functions under the Bill would not in itself lead to improved outcomes for children and young people. It would not guarantee a particular action or result and could, in practice, have the opposite effect and work against the well-intended aims of such a duty. It is specific and practical duties on public bodies that will result in improved outcomes and this is the approach we have taken in the Bill. For example, in relation to the provisions in the Bill concerning pupil choice and the power provided to head teachers to make a determination that the duty to secure teaching and learning does not apply.

If we were to place a due regard duty directly on those exercising functions under the Bill, we risk distracting frontline practitioners from supporting learners by creating layers of red tape and bureaucracy – teachers, schools and governing bodies would have to evidence that they have taken the Convention into account in their interactions with all children and young people with 'better' discernible outcomes for children being questionable.

**Recommendation 48: That the Welsh Government develop the Progression Code with a view to promoting the highest aspirations for all learners, supporting them to reach their full potential.**

**I accept this recommendation.** The Welsh Government published the draft Progression Code in January 2019 to promote the highest aspirations for all learners, supporting them to reach their full potential.

**Recommendation 49: That the Welsh Government amend the Bill to ensure that the Progression Code is subject to the enhanced affirmative, rather than the enhanced negative, procedure. The provision in section 72(2) requiring consultation on the Progression Code (or revised Code) should remain.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** This is a technical professional document that has been developed in close collaboration with practitioners. Both now and in the future, this code will be the product of co-construction. Opening that to the affirmative procedure calls into question that process. It also raises significant concerns about the validity and trust of that process if practitioners' considered views are then overridden.

The Code is likely to have to be updated in order to respond to changing circumstances in schools in the longer term and we consider that the negative procedure provides the appropriate level of flexibility to allow this to happen in a reasonable timeframe. Any changes to the Code would be co-constructed with practitioners, continuing to use their professional judgement and experience.



The code does not allow us to do certain things which would be considered of special importance such as impose or increase taxation; provision involving substantial Government expenditure; powers to create unusual criminal provisions or unusual civil penalties; or powers to confer unusual powers of entry, examination or inspection, or provide for collection of information under powers of compulsion. None of those matters apply in this instance.

**Recommendation 50: That the Welsh Government amend section 58(1) of the Bill to delete “may” and replace with “must”.**

**I accept this recommendation.** We will be making regulations in order to implement the new assessment arrangements effectively and are content to put this beyond doubt through an amendment.

**Recommendation 51: That the Welsh Government amend the Bill to ensure that regulations made under section 58 regarding assessment arrangements are subject to the affirmative procedure.**

**I recognise the intention behind the Committee’s recommendation, however, I do not accept this recommendation.** The subordinate legislation made under this section will prescribe operational and technical detail and therefore we consider that the negative procedure is appropriate. Also the regulations currently prescribing assessment arrangements under Section 108 of the Education Act 2002 follow the negative procedure. The approach taken in this Bill is consistent with that.

The detail of those regulations is technical and is often updated to reflected evolving practice in this area. Applying the negative procedure will allow the Welsh Ministers to respond more quickly to those changes. Finally we would like to note that the regulations will not deal with matters with structural or financial implications such as imposing fines or amending primary legislation.

**Recommendation 52: That the Welsh Government provide an update, in readiness for the Bill’s implementation, on the ongoing work beyond the Bill to reform school accountability arrangements and explain how they will align with the new curriculum.**

**I accept this recommendation.** We set out in ‘Our national mission update’ an intention to produce non-statutory school improvement guidance. The guidance will formalise and consolidate our thinking of how the evaluation, improvement and accountability framework will work and align to the Curriculum for Wales. We will be setting out, to schools and the middle tier, a coherent and consistent approach to school improvement and accountability, in one over-arching piece of guidance, for the first time. Officials have been working with a broad group of stakeholders to develop the guidance and will be undertaking a public consultation early in the New Year with the intention of producing guidance to be used from September 2021.

**Recommendation 53: That the Welsh Government ensure that teacher assessment and feedback to learners are a key focus of the assessment guidance to be issued alongside the new curriculum.**

**I accept this recommendation.** We have published comprehensive as part of the Curriculum for Wales guidance,

**Recommendation 54: That the Welsh Government clarify whether the guidance to be issued on assessment will be statutory, and if it is not statutory, consider whether it needs to be.**

**I accept this recommendation.** The guidance to be issued on assessment will be statutory.

**Recommendation 55: That the Welsh Government work with Qualifications Wales to proceed with pace on the work to reform qualifications, ensuring maximum alignment between the qualifications available to 16 year olds and the Curriculum for Wales.**

**I accept this recommendation.** The Curriculum for Wales provides a fresh opportunity to consider the role and nature of qualifications taken by 16 year olds and Qualifications Wales has been an active participant in the development of the Curriculum for Wales and continues to be so, in order to ensure alignment. They are also bringing together further alignment between their sector review work and work on developing qualifications to support the new curriculum.

Qualifications Wales is delivering a three-stage consultation programme to revise and reform the qualification offer to ensure it aligns with the Curriculum for Wales. The first of these considered the principles that should shape the future range of qualifications for 16-year-olds concluded in February 2020. The next phase which will consider the main qualifications that should be available for 16-year-olds to study will start early in the New Year 2021. This looks at which made in Wales qualifications are required after which the consultation will look at how they are designed and assessed. New qualifications will be available for first teaching in 2025 with first exams in 2027.

Qualifications Wales are also reviewing lessons from the pandemic in terms of consideration of digital assessments and more on-going and/or continuous assessments.

**Recommendation 56: That the Welsh Government closely monitor and support the work of Qualifications Wales in reforming qualifications to align with the Curriculum for Wales and, whilst maintaining Qualifications Wales' role as an independent regulator, provide clear leadership and direction to ensure this work remains on track.**

**I accept this recommendation.** The Welsh Government works closely with Qualifications Wales to support the reform of qualifications and ensure alignment with the Curriculum for Wales. Robust accountability arrangements are in place to provide oversight of delivery and manage key risks.

**Recommendation 57: That the Welsh Government, in light of our conclusion that the potential barriers identified as part of our Stage 1 scrutiny pose significant risks to the Bill's successful implementation:**

- **proceed at pace with its intention to review the 'Curriculum for Wales: The journey to 2022' document and use the learning from that exercise, and any further advice from the OECD, to inform the implementation of the Bill (including the relevant timescales); and**
- **set out the steps it will take to satisfy itself and stakeholders that all settings will be able to implement this legislation effectively from day one.**

**I accept this recommendation.** We published the Journey to 2022 in October, based on collaboration with regional consortia and Estyn. We will continue to monitor and review this regularly.

As set out in the update to Our National Mission, we are developing an implementation plan to set out the steps the system will take to support all settings to implement the legislation effectively from the beginning of rollout. This has been co-developed with regional consortia and Estyn. This will be supported by a National Network which will bring policy makers, enabling partners and practitioners together to understand and better address schools' challenges and barriers to implementation. This will continue to be based on co-construction, collaboration and engagement. The implementation plan will also set out arrangements for evaluating the process of curriculum reform. We will look to publish this implementation plan in early 2021.

We all recognise the significant impact of the pandemic on schools, but as Estyn has confirmed there remains a lot of enthusiasm and support for curriculum reform. Estyn also advises that important gains have been made by schools in their planning and provision of learning since March.

**Recommendation 58: That the Welsh Government, taking account of the impact of COVID-19, provide assurances before the end of the Bill's passage through the Senedd that it will:**

- **assess the extent to which professional learning and development opportunities have been affected by the pandemic;**
- **commit to providing the substantial additional support we believe will be needed to make up for the impact of the pandemic on professional learning and development; and**
- **provide an update on how peer-to-peer and cluster work is supporting professional learning and development, and to what timescales**

**I recognise the intention behind the Committee's recommendation, and accept this recommendation in principle.** In regard to assessing the extent to which professional learning and development opportunities have been affected by the pandemic we continue to work with regional consortia, professional learning leads and other stakeholders to fully scope and understand the impact of the pandemic on professional learning. We have continued to meet with groups established as part of our "Continuity of Learning" response to understand and share intelligence in regard to ongoing Professional Learning (PL). We are aware of continued and sustained engagement in PL by schools throughout the pandemic. While a focus of that PL has been the skills and technologies necessary to respond to remote and blended learning, schools and practitioners continue to engage in programmes such as the National Professional Enquiry Programme. We will continue to provide feedback and assurance on progress in this area.

PL has seen the largest investment since devolution (with some £31million being made available directly to schools over the last 30 months). It is clearly recognised that investment in PL is a critical element in the realisation of the new curriculum, and that time and space is necessary for schools and practitioners to engage. We will continue to keep under review the investment in PL in light of emerging evidence. We will provide an update on the peer to peer and cluster work in due course.

The Welsh Government will continue to work with all schools and settings as part of the Implementation Plan and research and evaluation programme. Costs will be monitored and reviewed as part of this.

**Recommendation 59: That the Welsh Government provide assurances about how plans for engagement, co-construction, collaboration and communication relating to**

**the implementation of the new curriculum have been—and will be—adjusted to take account of COVID-19’s impact.**

**I accept this recommendation.** We have worked closely with stakeholders to understand the impact and implications of COVID-19. The Journey to 2022 was revised in light of this, and is clear in respect of the ways of working we expect to see across the education system in taking curriculum reform forward. It also made clear our recognition that the impact of the pandemic means schools will be at different points on their curriculum journeys, and that the pace and focus of activity will naturally vary across schools.

The Implementation Plan will account for the difficult context for the profession brought about by COVID-19’s impact. It will do this by detailing clearly what support schools can expect from the Welsh Government and its partners through the implementation phase, and when they can expect it.

Similarly, we will ensure that the design of the National Network – which will address barriers to implementation through co-construction – accounts for the impact of the pandemic. We will ensure that schools are not required to engage right away, but that they are fully supported to do so when they are better able to engage and that we are taking a prioritised and clear approach to ensure that schools can engage as effectively as possible when they are able.

**Recommendation 60: That the Welsh Government undertake further work to ensure that, as part of the preparation for—and roll out of—this legislation, external expertise is sought to inform schools’ curricula and educational resources. New materials and resources, in both languages, should be developed nationally but be suitable for local adaptation, in keeping with the subsidiarity principle that underpins the Curriculum for Wales.**

**I accept this recommendation.** Part of the work of the National Network will be to inform and shape the resources and supporting materials needed to support schools and practitioners. This will, as the Committee says, need to recognise and support the principle of subsidiarity while also providing appropriate support for schools. We agree on the importance of engaging a range of external expertise to support this work.

A new infrastructure to ensure the availability of high quality educational resources in Welsh and English is being developed. This will include identifying resources to meet the requirements on a national and local level. Education practitioners will be central to this pan-Wales approach which will involve content creators and publishers from all sectors.

**Recommendation 61: That the Welsh Government undertake, before the start of Stage 3, an assessment of the feasibility of the planned timescales for the implementation of the curriculum. In making this recommendation we emphasise that we do not believe the timetable for the Bill should change, nor are we concluding that a delay to the implementation timescales is necessary, merely that it is prudent—in light of the impact of the COVID-19 pandemic—to consider what is feasible.**

**I recognise the intention behind the Committee’s recommendation, and accept this recommendation in principle.** Through the National Network, we will work closely with practitioners and other key stakeholders to understand the barriers to implementation and the potential impact of these and co-construct support to ensure that the barriers are addressed. We have monitored the situation closely and at present the overall timescales remain realistic.

**Recommendation 62: That the Welsh Government amend the Bill to include a duty on the Welsh Ministers to review the implementation of the Bill and its provisions.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** Through the curriculum implementation plan, we will set out our plans for evaluating the progress and success of the reforms over the short, medium and long term. This will use the National Network as the vehicle for understanding the progress and implementation of the reforms. A legislative requirement is not necessary as this will be done in co-construction with practitioners rather than undertaken solely by the Welsh Ministers.

**Recommendation 63: That the Welsh Government, before publishing a revised Explanatory Memorandum after Stage 2, and with a view to estimating more representative and accurate costs, undertake further work on the RIA. This should draw on information from schools that have not been engaged in the development of the new curriculum to the same extent as Innovation Schools.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** Our work with Innovation Schools to assess costs revealed clearly that estimating the costs to schools requires a depth of understanding by each school of the reforms and their implications, consideration of the professional learning needs of practitioners, and estimation of the changes that will need to be made. It will not be possible to undertake and complete this task meaningfully ahead of Stage 3, and without placing a significant burden on schools.

The research and evaluation programme, set out in Chapter 11, and explained in more detail in response to recommendations 1 and 9 will assess emerging costs and other support needs amongst a representative sample of schools, as the wider sector grows more confident about the requirements and their professional learning and other resource implications.

Through this work, we commit to providing an update to the Senedd later in 2021.

**Recommendation 64: That the Welsh Government ensure that the RIA is updated with the information on costs provided by key stakeholders who were delayed from completing their work due to the COVID-19 pandemic, and that this is reflected fully in the revised Explanatory Memorandum that will be published after Stage 2.**

**I accept this recommendation.** Following the update provided to the CYPE Committee on 5 November and to Finance Committee on 20 November, we will update the RIA to reflect the latest information.

**Recommendation 65: That the Welsh Government state clearly that the financial resources required to implement this legislation successfully will be provided, to allay concerns that existing school funding constraints, other changes to be implemented such as ALN transformation, and the impact of COVID-19 will leave schools unable to resource this ambitious reform.**

**I accept this recommendation.** Funding implications for the Welsh Government budget beyond 2020-21 have been determined as part of the UK Government's Spending Review published on 25 November. The financial resources available to support implementation of the Bill were published as part of Draft Budget for 2021-22 on 21 December.

Whilst the UK Government Spending Review has brought some clarity to the Welsh Government's finances, coupled with the ongoing transition following EU exit and reconstruction from the Covid-19 pandemic, it creates an unprecedented challenge for us in developing our spending plans for the future. Welsh Government is continuing to work closely with delivery partners to inform future funding requirements and to ensure effective implementation of the new Curriculum for Wales.

**Recommendation 66: That the Welsh Government:**

- **update the RIA to reflect the concerns raised in our Stage 1 scrutiny about the scale of professional learning required to implement this legislation successfully;**
- **provide revised estimated costs in light of that update; and**
- **commit to providing the funding necessary to deliver this level of professional learning.**

**I recognise the intention behind the Committee's recommendation, and accept this recommendation in principle.** Over the last 3 years, £31 million has been awarded to regional consortia to fully implement a national Curriculum for Wales Development Programme to equip all schools to realise the new curriculum.

It is anticipated that funding of **£15m** per annum will continue going forward, with the expectation that this will be used to help offset the costs to schools. The additional PL funding for schools is anticipated to come to an end in 2025-26, as the new curriculum will be embedded by that point.

We recognise that Professional learning is critical to ensure awareness and engagement of all practitioners with the new curriculum and to equip practitioners with the appropriate skills in relation to a purpose-led curriculum.

We recognise that professional learning is also critical in supporting the non-maintained sector before the curriculum becomes a requirement in autumn 2022. We will be working closely with stakeholders from the non-maintained sector to determine the most effective way of developing an appropriate professional learning package, and the resources needed to support them.

Ongoing dialogue and engagement with schools and settings will continue through the Curriculum Implementation Plan, National Network, and the Research and Evaluation programme will examine the ongoing sufficiency of the PL offer. We commit to providing the Senedd with an update in 2021.

Kirsty Williams AS/MS  
Y Gweinidog Addysg  
Minister for Education



Llywodraeth Cymru  
Welsh Government

Llyr Gruffydd, MS  
Chair  
Finance Committee  
Welsh Parliament  
Ty Hywel  
Cardiff Bay  
CF99 1SN

11 January 2021

Dear Llyr,

### **Curriculum and Assessment (Wales) Bill**

I would like to thank the Finance Committee for their scrutiny of the Curriculum and Assessment (Wales) Bill during Stage 1 and for the report which was published on 4 December 2020.

I have set out responses to the Committee's recommendations at Annex A. In summary I have accepted (or accepted in part) nine of the recommendations.

I hope this letter is helpful in setting out responses to the Committee's Report. I will also be writing to the Chairs of the Children, Young People and Education Committee and the Legislation, Justice and Constitution Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely,

**Kirsty Williams AS/MS**  
Y Gweinidog Addysg  
Minister for Education

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## **Annex A: Response to Finance Committee Stage 1 Report Conclusions and Recommendations**

**Recommendation 1. The Committee recommends that the Welsh Government identifies how it will define and evaluate the success of the new Curriculum and outlines this in a revised Regulatory Impact Assessment.**

**I accept this recommendation.** Our Research and Evaluation programme is being developed alongside the Curriculum Reform Implementation plan, with the close involvement of stakeholders and practitioners. Since the Regulatory Impact Assessment (RIA) was published, we have been preparing a specification for the first exercise in the programme - a scoping study - which will include:

- Establishing agreed definitions of readiness, progress and success, what they entail, and how they will be assessed.
- A readiness assessment, to understand the distance that each tier of the system needs to travel, the support that settings will need to be fully ready, and how we and the middle tier can provide that support.
- A robust research design for ongoing monitoring of readiness, progress and success, over short, medium and long term timeframes.
- A data audit to understand what information we have, and will need, to evaluate success against a range of indicators (some of which are set out in the implementation plan)
- A set of baselines and counterfactuals to enable us to evidence the impact the reforms have had.

We will approach the definition and evaluation of progress and success in a collaborative way, including the perspectives and contribution of our middle tier and academic stakeholders, whose role in inspection, challenge, research and support for settings makes a key contribution to understanding implementation progress and support needs.

We will publish the outcome of the scoping study, including the readiness assessment and detailed plans for ongoing research and evaluation before the end of 2021. These outcomes will inform the commissioning of a research contractor to deliver the first 5 years of the Monitoring and Evaluation programme committed in the Regulatory Impact Assessment, beginning in 2022.

**Recommendation 2. The Committee recommends that the Welsh Government undertakes further work to assess the costs to schools and engages with schools other than Innovation Schools regarding the costs included in the RIA. Information gathered should be represented in a revised Regulatory Impact Assessment.**

**I accept this recommendation.** Our work with Innovation Schools to assess costs revealed clearly that estimating the costs to schools will need to continue. It requires a depth of understanding of the reforms and their implications, consideration of the professional learning needs of practitioners, and estimation of a wide range of changes that will need to be made.



The Research and Evaluation programme, set out in Chapter 11, and explained in more detail in response to recommendations 1 and 9, will continue to assess emerging costs and other support needs amongst a wider representation of schools. The accuracy of these estimates will improve as the sector grows more confident about the requirements and their professional learning and other resource implications.

The process of co-construction of the detailed guidance, which has begun and continues, will provide a lot of detail as to how the reforms might be taken forward and the costs. We will provide an update to the Senedd on costs in 2021.

**Recommendation 3. The Committee recommends that the Welsh Government provide further information on the basis of its +/-50 per cent range to schools costs.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** The RIA summarises the research with schools and the decision to use +/- 50%. Pages 66 and 67 (paras. 8.48 to 8.50) set out the analysis methods in more detail and provide a rationale for the decision, explaining first the position in relation to absorbed costs, and then the position in relation to days for which supply cover would be required (direct costs).

The figures are provided for:

- overall days in Table 10 on page 107, with a table description in para. 8.232 on the previous page
- supply days required (direct costs) in table 11 on page 109, with a table description in para 8.234 on the previous page
- opportunity (absorbed) costs on table 13 on page 111, with explanation on page 111-112.

**Recommendation 4. The Committee recommends that the Welsh Government undertakes further work to define and estimate the costs for 'Education Other Than At School' and assessment arrangements costs in consultation with stakeholders. This information should be provided in a revised Regulatory Impact Assessment.**

**I recognise the intention behind the Committee's recommendation, and accept this recommendation in part.** The new curriculum enables a tailored approach for learners which is outlined in our statutory guidance to practitioners. The curriculum in EOTAS settings will be planned, designed and implemented in collaboration with the learner, provider, school and parents/carers and will focus specifically on the needs of that learner. As part of our ongoing co-construction work with practitioners and other stakeholders, we will develop a clearer understanding of the likely costs of implementation.

The Curriculum Implementation Plan and research and evaluation programme will identify the need for additional resources and any cost implications. The research and evaluation programme will include EOTAS provision. It will continue to explore the support the sector needs and the impacts of the reforms to this sector as they emerge.

In doing this, the programme will define and estimate costs as the sector becomes more familiar with the implications of the new requirements and the distance it needs to travel to meet them.

Given that the approach is being worked on with our stakeholders on an ongoing basis, we will provide an update to the Senedd in 2021.

**Recommendation 5. The Committee recommends that the Welsh Government publishes details of the teacher based formula used to fund schools as well as providing the Committee with information on the other ways schools receive funding to aid transparency.**

**I recognise the intention behind the Committee's recommendation, however, I do not accept this recommendation.** The annual publication, commonly known as the “Green Book”, provides background information used in the calculation of the revenue and capital settlements for unitary authority and police forces in Wales. This includes information in the Standard Spending Assessment for education. The Green Book sets out how the settlement amount is built up and calculated and the formulas used for the notional allocations within the un-hypothecated local government settlement for education. The relevant service areas for schools are Nursery and Primary school teaching and other services, Secondary school teaching and other services and Special Education. These formulas are based on a combination of pupil numbers, rurality and deprivation factors.

A link to the Green book is provided for reference -

[https://gov.wales/sites/default/files/publications/2020-08/green-book\\_0.pdf](https://gov.wales/sites/default/files/publications/2020-08/green-book_0.pdf).

In addition, all grants to local authorities are published alongside the Local Government settlement each year in table seven of the settlement tables –

<https://gov.wales/local-government-revenue-and-capital-settlement-final-2020-2021>.

Local authorities then have their own allocation formulas to individual schools. Local authorities overall funding is a combination of unhypothecated settlement from Welsh Government, specific grants, council tax and fees and charges. They may draw on all these sources to fund schools.

The recent [Review of School Spending in Wales](#) was published in October and includes a detailed and informative overview of what the current offer for children in Wales, including where the money comes from, who spends the money, how it's changed over time and what pupils get in terms of actual resources for their education.

The school funding review assesses the different levels of funding required, in different circumstances, needed to inform policy on school funding both now and in the future to support our education reforms.

**Recommendation 6. The Committee recommends that the Welsh Government details all sunk costs relating to the Bill in the same part of a revised Regulatory Impact Assessment.**

**I accept this recommendation.** All sunk costs relating to the Bill will be in the same part of the revised Regulatory Impact Assessment.

**Recommendation 7. The Committee recommends that the Welsh Government should provide the detail on its discussions with stakeholders around the potential costs to the post-16 education system and publish any details of the financial implications.**

**I accept this recommendation.** The Welsh Government provided the detail in the letter to the Finance Committee on 20 November. Officials met with representatives from the further

education (FE) sector in August 2020 who shared thoughts on the potential impact on the post-16 education system. These can be grouped as follows:

- financial implications for professional learning and development in the post-16 sector;
- the potential need for additional teaching hours in some subjects should certain areas of knowledge not be gained from the new compulsory curriculum; and
- the need to invest in Welsh language skills development in FE. For example, there may be further need for transition activities to be completed in order to ensure effective preparation onto post-16 courses for specific subjects.

Colegau Cymru recognises these issues do not necessarily form part of the financial scope of the Bill which focuses on the compulsory curriculum but consider these are costs that will need to be factored to make the new curriculum succeed in its aims.

The Welsh Government will continue to liaise with Colegau Cymru to ensure they are sufficiently prepared for the first tranche of learners in 2027, feeding into the Post-16 Professional Learning action plan and the Professional Learning Framework for staff within the post-16 sector as appropriate. Financial implications will be met from budgets committed to the realisation of the new curriculum, building on the £124,000 allocated between 2018-19 and 2020-21 to FE to support the new curriculum. This expenditure is included in the 'Curriculum Reform Project' lines of tables 2 and 3 (pages 78 and 79) of the RIA.

The RIA will be updated to reflect discussions ahead of Stage 3.

**Recommendation 8. The Committee recommends that the Welsh Government provides details of how it will review the costs provided by stakeholders (and advise the Senedd of those costs) and the timescales of implementation.**

**I accept this recommendation.** In July a number of key stakeholders were invited to submit additional evidence to the Welsh Government to inform the costs identified in the RIA. These included WLGA, ADEW, Regional Consortia, ITE providers, Estyn, Catholic Education Service, WASACRE, Church in Wales, and Colegau Cymru.

WASACRE advised there will be no additional costs relating to their organisation. Estyn have advised they will meet any costs relating to the new curriculum from their core funding allocation.

As advised in my letter of 5 November, work is ongoing to identify potential costs to awarding bodies, resulting from the change in qualifications and how these may impact on exam centres. The current situation with exams caused by the pandemic continues to make this exercise extremely challenging. Qualifications Wales are due to carry out a further consultation on qualifications for the new curriculum in the New Year 2021. As their work on qualifications progresses proposals will be subject to a separate RIA and any costs of the new qualifications to awarding bodies, schools and other parts of the sector will be looked at in detail and published at the appropriate time.

We have agreed funding for the Church in Wales and the Catholic Education Service to develop guidance to support the delivery of the new curriculum, from within existing budgets. This guidance is also intended to support schools to develop a curriculum that meets the wider framework requirements while also meeting their requirements as schools

with a religious character. The Church in Wales and the Catholic Education Service maintain that the requirements for them to deliver both agreed syllabus RVE and denominational RVE would mean additional costs and resources for their schools. Work on this continues to ensure the requirements on schools of a religious character to apply each of the two required syllabi are appropriate. Financial implications will be met from budgets committed to the realisation of the new curriculum.

The RIA will be updated ahead of Stage 3 on the above matters.

The Research and Evaluation programme (which will include the post-implementation review), will include evidence on the part played by each stakeholder in contributing and responding to the reforms. In doing this, the programme will collect and set out information on emerging costs to stakeholders, increasing the accuracy of the cost estimates over time. This will be based in part on the shared learning through the co-construction of guidance, providing the detail of what needs to happen and how. We will provide an update in 2021.

We have worked closely with stakeholders to understand the impact and implications of COVID-19. The Journey to 2022 was revised in light of this, and is clear in respect of the ways of working we expect to see across the education system in taking curriculum reform forward. It also made clear our recognition that the impact of the pandemic means schools will be at different points on their curriculum journeys, and that the pace and focus of activity will naturally vary across schools.

The Curriculum Implementation Plan will account for the difficult context for the profession brought about by COVID-19's impact. It will do this by detailing clearly what support schools can expect from the Welsh Government and its partners through the implementation phase, and when they can expect it.

Similarly, we will ensure that the design of the National Network – which will address barriers to implementation through co-construction – accounts for the impact of the pandemic. We will ensure that schools are not required to engage right away, but that they are fully supported to do so when they are better able to engage and that we are taking a prioritised and clear approach to ensure that schools can engage as effectively as possible when they are able.

**Recommendation 9. The Committee recommends that the Welsh Government updates the Explanatory Memorandum on its proposals for evaluating the legislation, including how and when it intends to do this.**

**I recognise the intention behind the Committee's recommendation, and accept this recommendation in principle.** As mentioned in response to recommendation 1, the Research and Evaluation programme is being developed collaboratively, and it would not be in-line with HMT Magenta Book guidance to confirm research and evaluation plans prior to the completion of a scoping study. An indicative timetable for the Research and Evaluation programme is available in section 11.7 of the Explanatory Memorandum and will be included in the Curriculum Implementation Plan, with full details of research activities and outputs to be set out in 2021/22.

The EM will be updated ahead of Stage 3 with progress to date in developing the Research and Evaluation plan.



Llywodraeth Cymru  
Welsh Government

Mick Antoniw, MS  
Chair of the Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
CF99 1SN

13 January 2021

Dear Mick

## **The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020**

Thank you for your letter of 21 December on behalf of the Legislation, Justice and Constitution Committee regarding the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 ('the Regulations').

The Committee has asked for clarification that the Welsh Government 'undertook a formal assessment of the human rights implications of the Regulations'. I would like to assure you that a very thorough assessment of provisions contained within the Regulations has taken place to ensure they are compatible with Human Rights/Convention rights.

With regard to the Explanatory Memorandum published alongside the Regulations, I remain satisfied that it gives a fair and reasonable view of the expected impact of the Regulations.

Yours sincerely

**Julie James AS/MS**  
Y Gweinidog Tai a Llywodraeth Leol  
Minister for Housing and Local Government

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Julie James MS  
Minister for Housing and Local Government

21 December 2020

Dear Julie

**The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020**

We scrutinised [The Public Health \(Protection from Eviction\) \(Wales\) \(Coronavirus\) Regulations 2020](#) at our meeting on 14 December 2020, reporting on the same day.

In our [report](#), we noted that the Explanatory Memorandum fails to refer specifically to the fact that these regulations engage human rights and how they deem the provisions to be justifiable and proportionate in the context of those rights. In your response to our request for you to justify this approach you said:

“We consider that the Regulations are compatible with the European Convention on Human Rights.”

However, this response does not answer our question and is simply a statement of opinion without an analysis of how you reached this view. It is this analysis we are requesting and as a consequence, how you deem the provisions to be justifiable and proportionate in the context of human rights. We note that you did not address this issue during the debate on the Regulations in plenary on 15 December 2020.

In requesting this information, we should make it clear that we are not seeking to comment on the policy objectives of the Regulations. However, we do have a role in monitoring the compliance of subordinate legislation with human rights. In this instance, we wish to ensure that the Welsh Government has carefully considered human rights, including the Article 1 of Protocol 1 rights of landlords.

I would therefore welcome clarification that you undertook a formal assessment of the human rights implications of the Regulations, an explanation of why it was not covered in the Explanatory Memorandum and publication of the outcome of that assessment as soon as possible.



We raised similar concerns in our reports on The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020 and The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020 with subsequent exchanges of correspondence in each case.

We are becoming concerned at the apparent reluctance of the Welsh Government to provide information about how provisions contained in Regulations relating to tenancies are justifiable and proportionate in the context of human rights. We believe this to be essential not only in terms of good law-making (and for the benefit of all those affected by the legislation) but also as regards a commitment to open and transparent government.

We therefore seek an assurance that Explanatory Memoranda accompanying such Regulations will, in future, contain this information, thereby avoiding the need for the Committee to request it each time.

Yours sincerely



**Mick Antoniw AM**  
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg  
We welcome correspondence in Welsh or English



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Mick Antoniw MS

Chair of the Legislation, Justice, and Constitution Committee

14 January 2021

Dear Mick,

### European Union (Future Relationship) Act 2020

The Counsel General and Minister for European Transition (“the Counsel General”) appeared before the External Affairs and Additional Legislation Committee on Monday 11 January 2021.

During the course of the session, we sought further information about the use of powers available to UK Ministers to legislate in areas of devolved competence, under the European Union (Future Relationship) Act 2020.

The Counsel General responded in the following terms:

Our clear understanding is that there's no immediate need for any secondary legislation, so there isn't any immediate secondary legislation planned. That's partly by virtue of the operation of section 29 in the Act, which is a—what's the best way of putting this—an omnibus provision, I suppose would be the benign way of describing it, which effectively requires all domestic law to be interpreted in compliance or in conformity, rather, with the provisions of the agreement. That's highly unsatisfactory, obviously, for reasons that we will all be conscious of. But the one benefit of it is that it removes the immediate need for a whole raft of secondary legislation.

The UK Government has made a commitment in the delegated powers memorandum for the Act to mirror the provision that appears in other arrangements to not normally legislate without the agreement of the Welsh Government in Wales. Obviously, we have similar commitments in other parts of our constitutional and Brexit arrangements. We have seen that work in parts, but not in other parts, obviously. And I think in terms of the role of the Senedd, we'll probably envisage using something like the Standing Order 30 mechanism to notify the Senedd

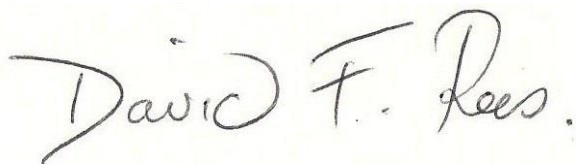


where Welsh Ministers are consenting to the UK Government legislating, but that's very much a kind of evolving picture at the moment about how the Senedd can best be engaged in that, it seems to me.

Additionally, the Counsel General said that he would welcome a view from Senedd committees on how best to proceed with scrutiny arrangements.

We wanted to draw this to your attention, given the likely interest that the Legislation, Justice, and Constitution Committee would have in this matter.

Yours sincerely,

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large initial 'D' and 'R'.

David Rees MS

Chair of the External Affairs and Additional Legislation Committee



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