Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:
Video conference via Zoom
Meeting date: 25 January 2021
Meeting time: 10.00

For further information contact:
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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

Informal pre-meeting (09.30-10.00)

1 Introduction, apologies, substitutions and declarations of interest

10.00

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

10.00-10.05 (Page 1)

CLA(5)-03-21 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

2.1 **SL(5)717 – The Education (Student Fees, Awards and Support) (Ordinary Residence) (Wales) Regulations 2021**

3 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

10.05-10.15

Negative Resolution Instruments

3.1 **SL(5)702 - The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020**

(Pages 2 - 102)

CLA(5)-03-21 - Paper 2 - Report

CLA(5)-03-21 - Paper 3 - Order

CLA(5)-03-21 - Paper 4 - Explanatory Memorandum

CLA(5)-03-21 - Paper 5 - Letter from the Minister for Finance and Trefnydd, 17 December 2020

3.2 **SL(5)707 - The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020**

(Pages 103 - 126)

CLA(5)-03-21 - Paper 6 – Report

CLA(5)-03-21 - Paper 7 – Regulations

CLA(5)-03-21 - Paper 8 – Explanatory Memorandum

CLA(5)-03-21 - Paper 9 – Letter from the Minister for Finance and Trefnydd, 21 December 2020

3.3 **SL(5)721 - The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021**

(Pages 127 - 142)

CLA(5)-03-21 - Paper 10 – Report

CLA(5)-03-21 - Paper 11 – Regulations

CLA(5)-03-21 - Paper 12 – Explanatory Memorandum

CLA(5)-03-21 - Paper 13 – Letter from the Minister for Finance and Trefnydd, 11 January 2021

CLA(5)-03-21 - Paper 14 – Written statement, 11 January 2021

3.4 **SL(5)724 - The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021**

(Pages 143 - 166)

CLA(5)-03-21 - Paper 15 – Report

CLA(5)-03-21 - Paper 16 – Regulations

CLA(5)-03-21 - Paper 17 – Explanatory Memorandum

CLA(5)-03-21 – Paper 18 – Letter from the Minister for Finance and Trefnydd, 15 January 2021

3.5 SL(5)725 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021

(Pages 167 – 181)

CLA(5)-03-21 – Paper 19 – Report

CLA(5)-03-21 – Paper 20 – Regulations

CLA(5)-03-21 – Paper 21 – Explanatory Memorandum

CLA(5)-03-21 – Paper 22 – Letter from the Minister for Health and Social Services, 16 January 2021

Made Affirmative Resolution Instruments

3.6 SL(5)723 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021

(Pages 182 – 204)

CLA(5)-03-21 – Paper 23 – Report

CLA(5)-03-21 – Paper 24 – Regulations

CLA(5)-03-21 – Paper 25 – Explanatory Memorandum

CLA(5)-03-21 – Paper 26 – Letter from the Minister for Health and Social Services, 14 January 2021

CLA(5)-03-21 – Paper 27 – Written statement, 14 January 2021

3.7 SL(5)726 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021

(Pages 205 – 225)

CLA(5)-03-21 – Paper 28 – Report

CLA(5)-03-21 – Paper 29 – Regulations

CLA(5)-03-21 – Paper 30 – Explanatory Memorandum

CLA(5)-03-21 – Paper 31 – Letter from the First Minister, 19 January 2021

CLA(5)-03-21 – Paper 32 – Written statement, 19 January 2021

3.8 SL(5)703 – The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020

(Pages 226 – 253)

CLA(5)-03-21 – Paper 33 – Report

CLA(5)-03-21 – Paper 34 – Regulations

CLA(5)-03-21 – Paper 35 – Explanatory Memorandum

CLA(5)-03-21 – Paper 36 – Letter from the Minister for Environment, Energy and Rural Affairs, 15 December 2020

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

10.15–10.20

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

(Pages 254 – 257)

CLA(5)-03-21 – Paper 37 – Report

CLA(5)-03-21 – Paper 38 – Welsh Government response

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

10.20–10.25

5.1 SL(5)722 – The Primary Care (Oxford/AstraZeneca Vaccine COVID-19 Immunisation Scheme) Directions 2020

(Pages 258 – 284)

CLA(5)-03-21 – Paper 39 – Report

CLA(5)-03-21 – Paper 40 – Directions

6 Written Statements under Standing Order 30C

10.25–10.30

6.1 WS-30C(5)214 – The Organic Production (Organic Indications) (Amendment) (EU Exit) Regulations 2020

(Pages 285 – 288)

CLA(5)-03-21 – Paper 41 – Written statement

CLA(5)-03-21 – Paper 42 – Commentary

7 Papers to note

10.30–10.35

7.1 **Letter from the Llywydd to the Chair of the Procedure Committee, House of Commons: The procedure of the House of Commons and the territorial constitution**

(Pages 289 – 294)

CLA(5)-03-21 – Paper 43 – Letter from the Llywydd to the Chair of the Procedure Committee, 4 January 2021

7.2 **Welsh Government written statement: Legal challenge to the UK Internal Market Act 2020**

(Pages 295 – 323)

CLA(5)-03-21 – Paper 44 – Written statement, 19 January 2021

7.3 **Letter from the Commissioner for Public Law and the Law in Wales, the Law Commission: Consultation paper on the future of devolved tribunals in Wales**

(Page 324)

CLA(5)-03-21 – Paper 45 – Letter from Nicholas Paines QC, Commissioner for Public Law and the Law in Wales, 20 January 2021

7.4 **Letter from the Counsel General: Government of Wales Act 2006 (Amendment) Order 2021**

(Page 325)

CLA(5)-03-21 – Paper 46 – Letter from the Counsel General, 20 January 2021

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

10.35

9 Supplementary Legislative Consent Memorandum on the Environment Bill – consideration of draft report

10.35–10.55 (Pages 326 – 353)

CLA(5)-03-21 – Paper 47 – Draft report

CLA(5)-03-21 – Paper 48 – Letter to the Minister for Environment, Energy and Rural Affairs, 23 December 2020

CLA(5)-03-21 – Paper 49 – Letter from the Minister for Environment, Energy and Rural Affairs, 28 August 2020

CLA(5)-03-21 – Paper 50 – Legal Advice Note

10 Scrutiny of regulations made under the EU (Withdrawal) Act 2018 - update

10.55-11.00 (Page 354)

CLA(5)-03-21 - Paper 51 - Letter from the Minister for Finance and Trefnydd, 21 January 2021

Date of the next meeting - 1 February 2021

Statutory Instruments with Clear Reports
25 January 2021

SL(5)717 – The Education (Student Fees, Awards and Support) (Ordinary Residence) (Wales) Regulations 2021

Procedure: Negative

These Regulations make amendments to the regulations listed below. These amendments concern ordinary residence requirements in those regulations and aim to ensure that persons who have been granted humanitarian protection, leave to remain as a stateless person or granted leave under section 67 of the Immigration Act 2016 are treated in the same manner as those who have been granted refugee status:

- The Education (Fees and Awards) (Wales) Regulations 2007;
- The Education (European University Institute) (Wales) Regulations 2014;
- The Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015;
- The Education (Student Support) (Wales) Regulations 2017;
- The Education (Postgraduate Master's Degrees Loans) (Wales) Regulations 2017;
- The Education (Student Support) (Wales) Regulations 2018;
- The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018; and
- The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

The amendments will remove the three year ordinary residence requirement ("ORR") for these categories of student. In relation to eligibility for student support, this is the requirement that a person be ordinarily resident in the United Kingdom for three years preceding the first day of the first academic year of their course. The three year ORR is to be removed for those with a protection-based form of leave to enter or remain in the UK. As a result, these categories of student will be treated in the same way that refugees are treated for the purposes of student support. Currently, refugees do not need to satisfy a three year ORR prior to the start of their course.

Parent Act: Education (Fees and Awards) Act 1983, Teaching and Higher Education Act 1998, Higher Education (Wales) Act 2015
Date Made: 06 January 2021
Date Laid: 07 January 2021
Coming into force date: 28 January 2021

SL(5)702 – The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020

Background and Purpose

The United Kingdom Emissions Trading Scheme (the "UK ETS") was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the "UK ETS Order"). The UK ETS runs for ten "scheme years" beginning in 2021, divided into two "allocation periods", the 2021-2025 allocation period and the 2026-2030 allocation period. Operators of certain industrial installations and certain aircraft operators are required to monitor, report on, and surrender "allowances" equivalent to, their greenhouse gas emissions in each scheme year.

This Order amends the UK ETS Order and other legislation, largely to provide for a registry for the UK ETS and for the free allocation of allowances. The legislation amended includes Commission Delegated Regulation (EU) 2019/331 (the "Free Allocation Regulation") and Commission Implementing Regulation (EU) 2019/1842 (the "Activity Level Changes Regulation"). Both Regulations are retained EU law, originally made for the EU Emissions Trading System ("EU ETS"), but adapted for the UK ETS.

The new article 8A of the UK ETS Order defines five bodies as the "registry administrator", including Natural Resources Wales and the Secretary of State. In practice, the intention is for the Environment Agency to exercise the functions of the registry administrator on behalf of the other four bodies.

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 (ix) – that it is not made or to be made in both English and Welsh

The Order has been made in English only. Part 1, Section 2 of The Welsh Government's Explanatory Memorandum (at page 2) states as follows:

> *"As the Order in Council will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually."*

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

We note the breach of the 21- day rule (i.e. the rule that 21 days should pass between the date a negative resolution 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 17 December 2020.

In particular, we note the following in the letter:

> *"This Order was made on 16 December 2020, the date of the first Privy Council meeting after the meeting at which the principal Order was made, and was laid as soon reasonably practicable thereafter. A later commencement date is considered impossible for two reasons. Firstly, in order to ensure that there will be no pause in the obligations on operators of installations relating to the monitoring of data for the purposes of free allocation. This avoids uncertainty for participants and ensures a seamless transition from the EU Emissions Trading System to the UK ETS. Secondly, there is a need to undo a prospective revocation of Commission Delegated Regulation (EU) 2019/331 ("the Free Allocation Regulation") by regulation 62 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019, which takes effect from Implementation Period completion day. This instrument was made as part of the UK Government's previous "no deal" preparations in spring 2019."*

Welsh Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
20 January 2021

STATUTORY INSTRUMENTS

2020 No. 1557

CLIMATE CHANGE

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020

Made - - - -	*16th December 2020*
Laid before Parliament	*17th December 2020*
Laid before the Northern Ireland Assembly	*17th December 2020*
Laid before the Scottish Parliament	*17th December 2020*
Laid before Senedd Cymru	*17th December 2020*
Coming into force in accordance with article 2	

At the Court at Windsor Castle, the 16th day of December 2020

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 44, 46(3), 54 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3 to, the Climate Change Act 2008(**a**).

In accordance with paragraph 10 of Schedule 3 to that Act, before the recommendation to Her Majesty in Council to make this Order was made—

(a) the advice of the Committee on Climate Change, including on the amount of the limit referred to in section 48(2) of that Act, was obtained and taken into account; and

(b) such persons likely to be affected by the Order as the Secretary of State, the Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers, the Welsh Ministers considered appropriate were consulted.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

(**a**) 2008 c. 27.

PART 1

Preliminary

Citation

1. This Order may be cited as the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020.

Commencement

2.—(1) Except as provided by paragraph (2), this Order comes into force on 31st December 2020.

(2) The following provisions come into force on IP completion day—

(a) article 46 and Schedule 1 (Free Allocation Regulation amended);

(b) article 47 and Schedule 2 (Activity Level Changes Regulation amended).

Extent

3. This Order extends to the whole of the United Kingdom.

PART 2

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

Greenhouse Gas Emissions Trading Scheme Order 2020 amended

4. The Greenhouse Gas Emissions Trading Scheme Order 2020(**a**) is amended in accordance with this Part.

Article 4 amended (interpretation)

5.—(1) Article 4 is amended as follows.

(2) In paragraph (1)—

(a) after the definition of "2026-2030 allocation period" insert—

""account" means account in the registry;

"Activity Level Changes Regulation" means Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019, as it forms part of domestic law;";

(b) after the definition of "aircraft operator" insert—

""aircraft operator holding account" means an aircraft operator holding account opened under paragraph 13(3) of Schedule 5A;";

(c) after the definition of "allocation period" insert—

""allocation table" means an allocation table for the 2021-2025 allocation period or the 2026-2030 allocation period referred to in article 34A;";

(d) after the definition of "aviation activity" insert—

""aviation allocation table" means the aviation allocation table for the 2021-2025 allocation period referred to in article 34N;";

(e) after the definition of "CCA 2008" insert—

(**a**) S.I. 2020/1265.

""central account" has the meaning given in paragraph 9(2) of Schedule 5A;";

(f) after the definition of "excluded flights" insert—

""FA installation", "FA installation for the 2021-2025 allocation period" and "FA installation for the 2026-2030 allocation period" must be construed in accordance with article 4A;";

(g) after the definition of "flight" insert—

""free allocation" means the allocation of allowances free of charge under Part 4A;

"free allocation conditions" means the conditions referred to in paragraph 4(6) of Schedule 6;

"Free Allocation Regulation" means Commission Delegated Regulation (EU) 2019/331 of 19 December 2018, as it forms part of domestic law;";

(h) in the definition of "Monitoring and Reporting Regulation 2018" after "of the Council" insert "(disregarding any amendments adopted after 11th November 2020) and, except in article 24 and Schedule 4, it means that Regulation";

(i) after the definition of "operator" insert—

""operator holding account" means an operator holding account for an installation opened under paragraph 11(4) or 12(3) of Schedule 5A;";

(j) in the definition of "permit" after "Schedule 7)" insert "and, in the case of a greenhouse gas emissions permit, any monitoring methodology plan (see paragraph 4(1)(hb) and (7) of Schedule 6)";

(k) after the definition of "permit" insert—

""registry" has the meaning given in paragraph 5(1) of Schedule 5A;

"registry administrator" has the meaning given in article 8A;";

(l) in the definition of "surrender" for "in such a way that the allowance ceases to be available for any other purpose" substitute "in accordance with article 27 or 34";

(m) in the definition of "Verification Regulation 2018" after "of the Council" insert "(disregarding any amendments adopted after 11th November 2020) and, except in article 25 and Schedule 5, it means that Regulation as given effect subject to modifications by article 25";

(n) after the definition of "Verification Regulation 2018" insert—

""verification report" has the same meaning as in the Verification Regulation 2018.".

Article 4A inserted

6. After article 4 insert—

"Meaning of FA installation, etc.

4A.—(1) For the purposes of this Order, an installation is an "FA installation" if the installation is—

(a) an FA installation for the 2021-2025 allocation period; or

(b) an FA installation for the 2026-2030 allocation period.

(2) For the purposes of this Order, an installation is an FA installation for the 2021-2025 allocation period from—

(a) the date of publication of the allocation table for the 2021-2025 allocation period (including an updated allocation table) that first includes an entry for the installation; or

(b) if earlier, the date on which the regulator gives notice of the final annual amount of allowances to be allocated in respect of the installation for any scheme year in the 2021-2025 allocation period under—

(i) article 34H(7) (installations: errors in applications for free allocation, etc.);

(ii) Article 18a(9) of the Free Allocation Regulation (new entrants);

(iii) Article 25(9) of that Regulation (mergers and splits).

(3) An installation ceases to be an FA installation for the 2021-2025 allocation period at the earliest of—

(a) the end of the 2025 scheme year;

(b) if the operator of the installation gives a renunciation notice under Article 24 of the Free Allocation Regulation in respect of the installation as a whole, the end of the scheme year in which the renunciation notice is given;

(c) the date on which, following the partial transfer under paragraph 9 of Schedule 6 of the greenhouse gas emissions permit of an installation that is an FA installation, the regulator gives notice to the transferring operator (within the meaning of that paragraph) under Article 25(9)(b) of the Free Allocation Regulation that the installation is not an FA installation for the 2021-2025 allocation period;

(d) if the installation's permit is surrendered under paragraph 11(1) of Schedule 6 or revoked under paragraph 12(1) of that Schedule, the end of the scheme year in which the installation ceases operation;

(e) if the installation's permit is surrendered under paragraph 11(2) of Schedule 6 or revoked under paragraph 12(3) of that Schedule, the end of the scheme year in which the surrender or revocation takes effect;

(f) the date on which, following the inclusion of an entry for the installation in the allocation table for the 2021-2025 allocation period in error, the regulator gives notice to the operator under article 34H(7)(c) that the installation is not an FA installation for the 2021-2025 allocation period.

(4) For the purposes of this Order, an installation is an FA installation for the 2026-2030 allocation period from—

(a) the date of publication of the allocation table for the 2026-2030 allocation period (including an updated allocation table) that first includes an entry for the installation; or

(b) if earlier, the date on which the regulator gives notice of the final annual amount of allowances to be allocated in respect of the installation for any scheme year in the 2026-2030 allocation period under—

(i) article 34H(7) (installations: errors in applications for free allocation, etc.);

(ii) Article 18a(9) of the Free Allocation Regulation (new entrants);

(iii) Article 25(9) of that Regulation (mergers and splits).

(5) An installation ceases to be an FA installation for the 2026-2030 allocation period at the earliest of—

(a) the end of the 2030 scheme year;

(b) if the operator of the installation gives a renunciation notice under Article 24 of the Free Allocation Regulation on or after 1st January 2025 in respect of the installation as a whole, the end of the scheme year in which the renunciation notice is given;

(c) the date on which, following the partial transfer under paragraph 9 of Schedule 6 of the greenhouse gas emissions permit of an installation that is a FA installation, the regulator gives notice to the transferring operator (within the meaning of that paragraph) under Article 25(9)(b) of the Free Allocation Regulation that the installation is not an FA installation for the 2026-2030 allocation period;

(d) if the installation's permit is surrendered under paragraph 11(1) of Schedule 6 or revoked under paragraph 12(1) of that Schedule, the end of the scheme year in which the installation ceases operation;

(e) if the installation's permit is surrendered under paragraph 11(2) of Schedule 6 or revoked under paragraph 12(3) of that Schedule, the end of the scheme year in which the surrender or revocation takes effect;

(f) the date on which, following the inclusion of an entry for the installation in the allocation table for the 2026-2030 allocation period in error, the regulator gives notice to the operator under article 34H(7)(c) that the installation is not an FA installation for the 2026-2030 allocation period.".

Article 8A inserted

7. After article 8 insert—

"Meaning of registry administrator

8A.—(1) A reference in this Order to the "registry administrator" is a reference to—

(a) the chief inspector;

(b) the Environment Agency(**a**);

(c) NRW(**b**);

(d) the Secretary of State; and

(e) SEPA(**c**).

(2) Functions conferred or imposed by this Order on the "registry administrator" may be exercised—

(a) by all of the persons referred to in paragraph (1) jointly; or

(b) by one of the persons referred to in paragraph (1) (or by more than one of the persons referred to in paragraph (1) jointly) on behalf of the other persons referred to in paragraph (1) with their agreement.".

Article 9 amended (meaning of regulator)

8.—(1) Article 9 is amended as follows.

(2) After paragraph (2) insert—

"(2A) Articles 11 to 13 apply for the purpose of determining the regulator of a person other than an aircraft operator in relation to—

(a) monitoring and reporting of the person's aviation emissions;

(b) free allocation to the person under Chapter 2 of Part 4A (aviation free allocation);

(c) the opening, operation or closure of the person's aircraft operator holding account,

as if references to "aircraft operator" were to the person.".

Article 14 amended (meaning of UK ETS authority, etc.)

9.—(1) Article 14 is amended as follows.

(2) After paragraph (4) insert—

"(5) In this article, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation.".

(**a**) The Environment Agency was established by section 1 of the Environment Act 1995 (c. 25).

(**b**) "NRW" is defined in article 4(1) of S.I. 2020/1265 as the "Natural Resources Body for Wales", which was established by article 3 of S.I. 2012/1903 (W.230).

(**c**) "SEPA" is defined in article 4(1) of S.I. 2020/1265 as the "Scottish Environment Protection Agency", which was established by section 20 of the Environment Act 1995.

Article 18 amended (allowances)

10.—(1) Article 18 is amended as follows.

(2) In paragraph (1) for "direct that allowances be created" substitute "create allowances in the registry".

(3) After paragraph (2) insert—

"(3) Allowances may be held only in accounts in the registry.".

Article 20 amended (cap for scheme years)

11.—(1) Article 20 is amended as follows.

(2) For paragraph (1) substitute—

"(1) The number of allowances created in a scheme year may not exceed the sum of—

(a) the base for the scheme year multiplied by—

(i) if the scheme year is in the 2021-2025 allocation period, the 2021-2025 hospital and small emitter reduction factor;

(ii) if the scheme year is in the 2026-2030 allocation period, the 2026-2030 hospital and small emitter reduction factor; and

(b) the balance of allowances in the new entrants' reserve on 1st January in the scheme year (see article 34G for the new entrants' reserve).".

Article 21 amended (cap: hospital and small emitter reduction factors)

12.—(1) Article 21 is amended as follows.

(2) In paragraph (4)—

(a) in sub-paragraph (a) after "verified" insert "as satisfactory";

(b) after sub-paragraph (a) insert—

"(aa) determined under regulation 44 of GGETSR 2012 or article 45 of this Order;".

Article 24 amended (monitoring and reporting of emissions)

13.—(1) Article 24 is amended as follows.

(2) For "Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council" substitute "The Monitoring and Reporting Regulation 2018".

Article 25 substituted

14. For article 25 substitute—

"Verification of data and accreditation of verifiers

25. The Verification Regulation 2018 has effect for the purpose of the UK ETS, subject to the modifications in Schedule 5 (see also paragraph 4 of Schedule 8 which makes further modifications in relation to ultra-small emitters).".

Chapter 4 of Part 2 inserted

15. After article 25 insert—

"CHAPTER 4

Registry

Registry

25A. Schedule 5A (registry) has effect.".

Article 27A inserted

16. After article 27 insert—

"Installations: information to be submitted before 2026-2030 allocation period where no application for free allocation, etc. is made

27A.—(1) This article applies where the operator of an installation referred to in paragraph (2) does not make an application under any of the following—

(a) paragraph 5 of Schedule 7 (hospital or small emitter status for 2026-2030 allocation period);

(b) paragraph 3 of Schedule 8 (ultra-small emitter status for 2026-2030 allocation period);

(c) Article 4 of the Free Allocation Regulation (free allocation in 2026-2030 allocation period).

(2) The installations are—

(a) an installation for which a permit is issued on or before 30th June 2024;

(b) an installation that is an ultra-small emitter for the 2024 scheme year;

(c) an installation for which an application for a permit has been made but not yet determined.

(3) The operator must submit the following to the regulator—

(a) details of the installation, including details of any permit in force;

(b) activity information (that is to say, the information set out in section 1.3 of Annex 4 to the Free Allocation Regulation);

(c) details of eligibility for free allocation (that is to say, the information set out in section 1.4 of Annex 4 to the Free Allocation Regulation);

(d) a statement that the operator is not applying for free allocation in the 2026-2030 allocation period under Article 4 of the Free Allocation Regulation.

(4) The information referred to in paragraph (3) must be submitted in the period beginning on 1st April 2024 and ending on 30th June 2024.

(5) The regulator must send the information submitted by the operator to the UK ETS authority on or before 30th September 2024.".

Article 33 amended (reporting aviation emissions)

17.—(1) Article 33 is amended as follows.

(2) In paragraph (1) after "verified" insert "as satisfactory".

(3) In paragraph (2) for "verified in accordance" substitute "verified as satisfactory in accordance".

(4) In paragraph (3) after "under paragraph (1)" insert "(and the verification report)".

Part 4A inserted

18. After Part 4 insert—

"PART 4A

Free Allocation

CHAPTER 1

Installations

Allocation tables

34A.—(1) The UK ETS authority must compile a table (an "allocation table") for each allocation period as soon as reasonably practicable after approval under Article 16b of the Free Allocation Regulation of the final annual number of allowances to be allocated in respect of installations—

(a) in the case of the allocation table for the 2021-2025 allocation period, in respect of which a deemed application for free allocation in the 2021-2025 allocation period (as defined in Article 2(19) of that Regulation) is made;

(b) in the case of the allocation table for the 2026-2030 allocation period, in respect of which an application for free allocation in the 2026-2030 allocation period is made under Article 4 of that Regulation.

(2) The allocation table for the 2021-2025 allocation period must contain an entry for each relevant installation.

(3) For the purposes of paragraph (2), an installation is a "relevant" installation if—

(a) a deemed application for free allocation in the 2021-2025 allocation period (as defined in Article 2(19) of the Free Allocation Regulation) is made in respect of the installation that the UK ETS authority subsequently informs the regulator is valid; or

(b) an application for free allocation in the 2021-2025 allocation period is made in respect of the installation under Article 5(1)(a) of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid.

(4) But an installation referred to in paragraph (3)(a) is not a "relevant" installation if—

(a) the installation is included in the hospital and small emitter list for 2021-2025 or the ultra-small emitter list for 2021-2025;

(b) the installation ceases operation (within the meaning of GGETSR 2012) on or before 31st December 2020; or

(c) the installation's permit (within the meaning of GGETSR 2012) is revoked under regulation 14 of GGETSR 2012 on or before that date.

(5) The allocation table for the 2026-2030 allocation period must contain an entry for each relevant installation.

(6) For the purposes of paragraph (5), an installation is a "relevant" installation if—

(a) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 4 of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid; or

(b) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 5(1)(b) of the Free Allocation Regulation that the UK ETS authority subsequently informs the regulator is valid.

(7) But an installation referred to in paragraph (6)(a) is not a "relevant" installation if—

(a) the installation is included in the hospital and small emitter list for 2026-2030 or the ultra-small emitter list for 2026-2030;

(b) the installation ceases operation on or before 31st December 2025; or

(c) the installation's permit is revoked under paragraph 12 of Schedule 6 on or before that date.

(8) The entry for an installation must set out—

(a) the installation identifier used in the registry;

(b) for each scheme year in the allocation period, the final annual number of allowances to be allocated in respect of the installation for the scheme year, in 3 columns as follows (see article 34B)—

(i) column A (standard free allocation);

(ii) column B (new entrants' reserve);

(iii) column C (total).

Allocation tables: supplementary

34B.—(1) This article applies for the purposes of article 34A(8)(b).

(2) Where the final annual number of allowances to be allocated in respect of an installation is approved under Article 16b of the Free Allocation Regulation, that number must be included in column A.

(3) Where the final annual number of allowances to be allocated in respect of an installation is approved under Article 18a of that Regulation, that number must be included in column B.

(4) Paragraphs (5) and (6) apply where a calculation (a "relevant calculation") of the final annual number of allowances to be allocated in respect of the installation for a scheme year is approved by the UK ETS authority under either or both of the following—

(a) Article 24(3)(a)(ii) of the Free Allocation Regulation (renunciation other than in respect of whole installation);

(b) Article 6a of the Activity Level Changes Regulation.

(5) If the effect of the relevant calculation is a final annual number of allowances to be allocated in respect of the installation for the scheme year that is greater than the number that would otherwise be set out in the entry for the installation for the scheme year, the net increase must be added to the amount that would otherwise be included in column B.

(6) If the effect of the relevant calculation is a final annual number of allowances to be allocated in respect of the installation for the scheme year that is less than the number that would otherwise be set out in the entry for the installation for the scheme year, the net decrease must be deducted first from any amount that would otherwise be included in column B, before being deducted from any amount that would otherwise be included in column A.

(7) The total final annual number of allowances to be allocated in respect of the installation for the scheme year (that is to say, the sum of columns A and B) must be included in column C.

Allocation tables: updates

34C.—(1) The UK ETS authority must update an allocation table to take account of any approval of the UK ETS authority under—

(a) Article 18a of the Free Allocation Regulation (new entrants);

(b) Article 6a of the Activity Level Changes Regulation (activity level changes);

(c) Article 24 of the Free Allocation Regulation (renunciation);

(d) Article 25 of that Regulation (mergers and splits);

(e) Article 26 of that Regulation (cessation);

(f) article 34H of this Order (installations: errors in applications for free allocation, etc.).

(2) To avoid doubt, the UK ETS authority may update an allocation table under paragraph (1) so as to increase or reduce the final annual number of allowances to be allocated in

respect of an installation for a scheme year after allowances have already been allocated in respect of the installation for the scheme year under article 34E. (See article 34S in relation to the return of allowances where the number of allowances to be allocated in respect of an installation for a scheme year is reduced after allowances for the scheme year have been allocated, for example, because of a decrease in activity levels.)

Allocation tables: publication, etc.

34D.—(1) The UK ETS authority must notify the registry administrator of an allocation table as soon as reasonably practicable after it is compiled and of an updated allocation table as soon as reasonably practicable after it is updated.

(2) The UK ETS authority must publish the allocation table for the 2021-2025 allocation period as soon as reasonably practicable after it is compiled and in any event before 30th June 2021.

(3) The UK ETS authority must publish the allocation table for the 2026-2030 allocation period as soon as reasonably practicable after it is compiled and in any event before 1st January 2026.

(4) The UK ETS authority must publish an updated allocation table as soon as reasonably practicable after the allocation table is updated.

(5) Paragraphs (2) to (4) are subject to article 75C (national security).

Allocation of allowances

34E.—(1) The registry administrator must allocate allowances in respect of an installation in accordance with the allocation table by transferring allowances to the operator holding account for the installation.

(2) Allowances—

(a) for the 2021 scheme year must be allocated as soon as reasonably practicable after the allocation table for the 2021-2025 allocation period is published;

(b) for any other scheme year must be allocated on or before 28th February in that year.

(3) Where, after allowances for a scheme year have been allocated in respect of an installation in accordance with paragraph (2), an update to the allocation table results in an increase in the final annual number of allowances to be allocated in respect of the installation for the scheme year, the increased number of allowances must be allocated as soon as reasonably practicable.

(4) This article is subject to—

(a) article 34F (no allocation unless monitoring methodology plan approved);

(b) article 34G(2) (new entrants' reserve);

(c) article 34W (notice to withhold allowances).

No allocation unless monitoring methodology plan approved

34F.—(1) Where a monitoring methodology plan has not been approved in relation to an installation under Article 8 of the Free Allocation Regulation, the regulator may, by notice to the registry administrator, require the registry administrator to withhold allowances that would otherwise have been allocated in respect of the installation under article 34E.

(2) Where a notice under paragraph (1) is given, no allowances may be allocated in respect of the installation set out in the notice until the regulator gives a further notice to the registry administrator, which must be given as soon as reasonably practicable after a monitoring methodology plan is approved.

New entrants' reserve

34G.—(1) The new entrants' reserve is a reserve of 30,249,066 allowances for the trading period.

(2) The number of allowances set out in column B of an allocation table must be allocated from the new entrants' reserve until the new entrants' reserve is exhausted, after which no allocation may be made for a scheme year in respect of allowances set out in that column.

(3) Where an allocation table or an updated allocation table requires an allocation to be made from the new entrants' reserve in respect of more than one installation, allowances must be allocated in accordance with paragraphs (4) and (5) (until the new entrants' reserve is exhausted).

(4) Allowances must first be allocated in respect of sub-installations of installations in respect of which the historical activity level of the sub-installation has been determined under Article 17(1) of the Free Allocation Regulation or Article 3a(2) of the Activity Level Changes Regulation, in chronological order of the date (and, where relevant, time) on which the operator submitted sufficient information to enable the historical activity level of the sub-installation to be determined.

(5) Allowances must next be allocated in respect of sub-installations of installations in respect of which the historical activity level of the sub-installation has not been so determined, in chronological order of the date (and, where relevant, time) on which the operator submitted sufficient information to enable the activity level of the sub-installation to be determined for the purposes of Article 18(2) of the Free Allocation Regulation or under Article 3a(3) of the Activity Level Changes Regulation.

(6) Where allowances to which a person is not entitled (see article 34S) are allocated from the new entrants' reserve, for the purposes of this article, those allowances must be treated as not having been allocated from the new entrants' reserve, to the extent that an equal number of allowances are transferred or returned in accordance with a notice under article 34U or 34V.

(7) For the purposes of this article, each regulator must—

(a) keep such records as the regulator considers appropriate to enable the chronological order referred to in paragraph (4) or (5) to be determined;

(b) provide any information required by the UK ETS authority or the registry administrator to enable allowances to be allocated in accordance with this article.

(8) In this article, "historical activity level" and "sub-installation" have the same meanings as in the Free Allocation Regulation.

Installations: errors in applications for free allocation, etc.

34H.—(1) This article applies where the regulator considers that, as a result of a relevant error—

(a) the final annual number of allowances set out in an allocation table to be allocated in respect of an installation for a scheme year; or

(b) the number of allowances allocated in accordance with an allocation table under article 34E in respect of an installation for a scheme year,

is materially greater, or materially less, than the number that would otherwise have been set out in the table but for the relevant error.

(2) In this article, "relevant error" means—

(a) an error in an application for free allocation made in respect of an installation under Article 4 or 5 of the Free Allocation Regulation (including a deemed application for free allocation in the 2021-2025 allocation period as defined in Article 2(19) of that Regulation);

(b) an error in an activity level report submitted by the operator of an installation under the Activity Level Changes Regulation;

(c) an error of the regulator or the UK ETS authority in the exercise of functions under this Order (including under this article), the Free Allocation Regulation or the Activity Level Changes Regulation.

(3) The regulator may do any of the following—

(a) determine the historical activity level of a sub-installation of the installation that the regulator considers would have been determined for the purposes of the UK ETS but for the relevant error;

(b) calculate the preliminary annual number of allowances to be allocated in respect of a sub-installation of the installation for the scheme year that the regulator considers would have been calculated for the purposes of the UK ETS but for the relevant error;

(c) calculate the final annual number of allowances to be allocated in respect of a sub-installation of the installation for the scheme year that the regulator considers would have been calculated for the purposes of the UK ETS but for the relevant error.

(4) For the purposes of paragraph (3), the regulator may make a conservative estimate of the value of any relevant parameter; and if the regulator does so, the regulator must give notice of the value to the operator.

(5) Where the regulator does any of the things referred to in paragraph (3), the regulator must send to the UK ETS authority—

(a) details of the relevant error;

(b) any determination or calculation referred to in paragraph (3);

(c) the regulator's recalculation of the final annual number of allowances to be allocated in respect of the installation of which the sub-installation is part for the scheme year, taking account of the determination or calculation referred to in paragraph (3).

(6) If the UK ETS authority considers that, as a result of the relevant error, the final annual number of allowances set out in an allocation table to be allocated in respect of an installation for a scheme year, or the number of allowances allocated in accordance with an allocation table under article 34E in respect of an installation for a scheme year, is materially greater, or materially less, than the number that would otherwise have been set out in the table but for the relevant error, the UK ETS authority must—

(a) approve the final annual number of allowances to be allocated in respect of the installation for the scheme year, making any corrections to the historical activity level, preliminary annual number of allowances or final annual number of allowances determined or calculated by the regulator that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

(7) The regulator must give notice to the operator of the installation—

(a) of the relevant error;

(b) of the final annual number of allowances approved;

(c) where the relevant error was the error of including an entry for the installation in an allocation table for an allocation period, that the installation is not an FA installation for the allocation period.

(8) In this article, "historical activity level" and "sub-installation" have the same meanings as in the Free Allocation Regulation.

CHAPTER 2

Aviation

Interpretation

34I.—(1) In this Chapter—

"Annex 1 activities" means activities listed under "Aviation" in Annex 1 to the Directive;

"attributable" must be construed in accordance with article 34J(4);

"aviation free allocation entitlement" must be construed in accordance with article 34K;

"business reorganisation" must be construed in accordance with paragraph (2);

"historical aviation activity level" has the meaning given in article 34J;

"special reserve application" means an application for a free allocation of allowances under the EU ETS from the special reserve referred to in Article 3f of the Directive;

"tonne-kilometre" has the meaning given in Article 3(3) of the Monitoring and Reporting Regulation 2018;

"transferor", "transferee" and "relevant transferee" must be construed in accordance with paragraph (2).

(2) For the purposes of this Chapter—

(a) where a part of a person's business responsible for performing an aviation activity has been transferred to another person, the person has been subject to a "business reorganisation" that affects the aviation activity; and, in relation to the aviation activity, the first person is the "transferor" and the second person is a "transferee";

(b) where there has been a business reorganisation affecting an aviation activity, a transferee is the "relevant transferee" in relation to that aviation activity where the transferee has not been subject to a further business reorganisation affecting the aviation activity.

Meaning of historical aviation activity level and attributable

34J.—(1) A person's historical aviation activity level is—

(a) the number of tonne-kilometres of aviation activity performed by the person in 2010;

(b) in the case of a person who fell within Article 3f(1)(a) of the Directive and made a successful special reserve application, the number of tonne-kilometres of aviation activity performed by the person in 2014; or

(c) in the case of a person who fell within Article 3f(1)(b) of the Directive and made a successful special reserve application, the sum of—

(i) the number of tonne-kilometres of aviation activity performed by the person in 2010; and

(ii) the person's aviation activity ratio multiplied by the difference between the person's 2010 to 2014 growth in Annex 1 activities and the person's threshold figure.

(2) In this article, a person's—

"2010 to 2014 growth in Annex 1 activities" means the difference between the number of tonne-kilometres of Annex 1 activities performed by the person in 2010 and the number of tonne-kilometres of Annex 1 activities performed by the person in 2014;

"2010 to 2014 growth in aviation activity" means—

(a) if the number of tonne-kilometres of aviation activity performed by the person in 2014 is greater than the number of tonne-kilometres of aviation activity performed by the person in 2010, the difference;

(b) if the number of tonne-kilometres of aviation activity performed by the person in 2014 is less than or equal to the number of tonne-kilometres of aviation activity performed by the person in 2010, zero;

"aviation activity ratio" means the person's 2010 to 2014 growth in aviation activity divided by the person's 2010 to 2014 growth in Annex 1 activities;

"threshold figure" means the number of tonne-kilometres of Annex 1 activities performed by the person in 2010 multiplied by 1.93877776.

(3) A tonne-kilometre of aviation activity or Annex 1 activities performed by a person in 2014 is not to be counted in a total for the purposes of this article if it would have been excluded by the words following point (b) in Article 3f(1) of the Directive (exclusion where activity a continuation of activity performed by another) from forming the basis of an application for free allocation of allowances under the EU ETS.

(4) A person's historical aviation activity level is "attributable" to a person ("A") for the purposes of this Chapter if and to the extent that—

(a) there has been no business reorganisation affecting aviation activity relevant to the historical aviation activity level and A is the person who performed that aviation activity; or

(b) there has been a business reorganisation affecting aviation activity relevant to the historical aviation activity level and in relation to that aviation activity A is the relevant transferee.

Aviation: entitlement to free allocation in 2021-2025 allocation period

34K. A person is only entitled to a free allocation of allowances under this Chapter for scheme years—

(a) in the 2021-2025 allocation period; and

(b) in relation to which the person is an aircraft operator,

and references in this Chapter to a person's "aviation free allocation entitlement" must be construed accordingly.

Application for aviation free allocation entitlement

34L.—(1) A person (the "applicant") may apply for an aviation free allocation entitlement in reliance on the historical aviation activity level of one or more persons being attributable to the applicant immediately before 1st January 2021.

(2) Where an applicant can rely on a person's historical aviation activity level within article 34J(1)(a) or (c), the applicant may choose which to rely on but may not rely on both.

(3) An application under paragraph (1) must include—

(a) for each person on whose historical aviation activity level the applicant relies, a statement as to whether it is the person's historical aviation activity level within article 34J(1)(a), (b) or (c);

(b) verified tonne-kilometre data as follows—

(i) where the applicant relies on a person's historical aviation activity level within article 34J(1)(a), verified tonne-kilometre data for the person's Annex 1 activities performed in 2010;

(ii) where the applicant relies on a person's historical aviation activity level within article 34J(1)(b), verified tonne-kilometre data for the person's Annex 1 activities performed in 2014;

(iii) where the applicant relies on a person's historical aviation activity level within article 34J(1)(c), verified tonne-kilometre data for the person's Annex 1 activities performed in 2010 and 2014;

(c) if there has been no business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, a statement of that fact;

(d) if there has been a business reorganisation affecting an aviation activity included in the verified tonne-kilometre data, evidence of that business reorganisation;

(e) where the application relies on a person's historical aviation activity level within article 34J(1)(b) or (c), the other information that was included in the person's special reserve application and evidence that the application was successful.

(4) In this article, "verified tonne-kilometre data" means—

(a) a tonne-kilometre data report containing the information set out in section 3 of Annex 10 to Commission Regulation (EU) 2018/2066 (as it has effect in EU law), together with a verification report in relation to it containing the information set out in Article 27 of Commission Implementing Regulation (EU) 2018/2067 (as it has effect in EU law); or

(b) where paragraph (5) applies, the items submitted to the regulator under that paragraph.

(5) This paragraph applies where—

(a) the applicant submits to the regulator the same items as the applicant submitted for the purpose of an application for free allocation of allowances under the EU ETS;

(b) the previously submitted data included in the items referred to in sub-paragraph (a) was produced and verified in accordance with whichever of the following applied in relation to that previous submission—

(i) Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**a**);

(ii) the Monitoring and Reporting Regulation 2012 and the Verification Regulation 2012; and

(c) the applicant submits to the regulator a statement from the competent authority to which the data was submitted for the purpose of the application referred to in sub-paragraph (a) confirming that the data was not altered before the free allocation was calculated.

(6) An application under this article must be submitted to the regulator on or before 31st March 2021.

Processing of applications and calculation of aviation free allocation entitlement

34M.—(1) Where an application is made in accordance with article 34L, the regulator must submit to the UK ETS authority—

(a) the application and any related information the regulator holds; and

(b) a calculation of the applicant's aviation free allocation entitlement for each scheme year in the 2021-2025 allocation period, applying paragraphs (2) to (6).

(2) The number of allowances that make up an applicant's aviation free allocation entitlement for each scheme year in the 2021-2025 allocation period is 0.000642186914222035 multiplied by the applicant's historical aviation activity figure multiplied by the reduction factor for the scheme year.

(**a**) OJ No L 229, 31.8.2007, p. 1; this act was repealed by the Monitoring and Reporting Regulation 2012 (Article 76) so has no effect in relation to monitoring and reporting for years from 2013 onwards but the version as last amended by Commission Decision 2009/339/EC was applicable in relation to the submission of tonne-kilometre data from 2010.

(3) The applicant's "historical aviation activity figure" is the sum of all persons' historical aviation activity levels that are—

(a) attributable to the applicant immediately before 1st January 2021; and

(b) relied on for the purposes of the application.

(4) In determining whether and to what extent a person's historical aviation activity level is attributable to the applicant, it is permissible to have regard to whether the person's historical aviation activity level is relied on for the purposes of any other application under article 34L and, if so, to the information included in that application.

(5) For the purpose of this article, the reduction factor for a scheme year set out in column 1 of table B1 is the value set out in the corresponding entry in column 2.

Table B1

Column 1 *Scheme year*	*Column 2* *Reduction factor*
2021	0.978
2022	0.956
2023	0.934
2024	0.912
2025	0.89

(6) The result of each calculation referred to in paragraph (2) must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.

(7) The UK ETS authority must—

(a) approve the applicant's aviation free allocation entitlement, making any corrections to the calculation referred to in paragraph (1)(b) that the UK ETS authority considers appropriate;

(b) inform the regulator accordingly.

Aviation allocation table for 2021-2025 allocation period

34N.—(1) The UK ETS authority must compile an aviation allocation table for the 2021-2025 allocation period as soon as reasonably practicable after 31st March 2021.

(2) The aviation allocation table must contain an entry for each person with an aviation free allocation entitlement, as approved by the UK ETS authority under article 34M.

(3) The person's entry must set out—

(a) the person's full name and Eurocontrol Central Route Charges Office identification number;

(b) the person's aviation free allocation entitlement for each scheme year in the 2021-2025 allocation period.

(4) The UK ETS authority must update the aviation allocation table to take account of any approval of the UK ETS authority under article 34Q (transfers of allocations) or article 34R (errors in aviation allocation table).

(5) To avoid doubt, the UK ETS authority may update the aviation allocation table under paragraph (4) so as to increase or reduce the number of allowances to be allocated to a person for a scheme year after allowances have already been allocated to the person for the scheme year under article 34O. (See article 34T in relation to the return of allowances where the number of allowances to be allocated to a person for a scheme year is reduced after allowances for the scheme year have been allocated.)

(6) The UK ETS authority must notify the registry administrator of the aviation allocation table as soon as reasonably practicable after it is compiled and of an updated aviation allocation table as soon as reasonably practicable after it is updated.

(7) The UK ETS authority must publish the aviation allocation table as soon as reasonably practicable after it is compiled and must publish an updated aviation allocation table as soon as reasonably practicable after it is updated.

(8) Paragraph (7) is subject to article 75C (national security).

Aviation: allocation of allowances for 2021-2025 allocation period

34O.—(1) The registry administrator must allocate allowances in accordance with this article.

(2) Subject to paragraphs (3) to (8), allowances must be allocated in accordance with the aviation allocation table—

(a) for the 2021 scheme year, as soon as reasonably practicable after the aviation allocation table is published;

(b) for any other scheme year, on or before 28th February in that year.

(3) Allowances must not be allocated to a person unless and until the person has an aircraft operator holding account; they must be allocated by transferring them to that account.

(4) The regulator may, by notice to the registry administrator, require the registry administrator to withhold allowances that would otherwise have been allocated to a person for the 2022 scheme year or a subsequent scheme year if, in relation to the year before, the person was not an aircraft operator.

(5) If allowances for a scheme year are withheld from a person in accordance with paragraph (4) but the person becomes an aircraft operator in relation to that scheme year—

(a) the regulator must as soon as reasonably practicable, by further notice to the registry administrator, withdraw the notice under paragraph (4); and

(b) the allowances must be allocated as soon as reasonably practicable after the registry administrator receives the further notice.

(6) Where, after allowances for a scheme year have been allocated to a person, an update to the aviation allocation table results in an increase in the number of allowances to be allocated to the person for the scheme year, the increased number of allowances must be allocated as soon as reasonably practicable.

(7) Where a number of allowances ("N") has been allocated in accordance with this article for a scheme year in relation to which the person to whom they were allocated was not an aircraft operator, the regulator may give notice to the registry administrator requiring the registry administrator to deduct allowances from any allocation to be made to the person under this article until the sum of—

(a) the allowances so deducted; and

(b) allowances allocated for that scheme year that have been returned in accordance with a notice given under article 34U or 34V because the person was not an aircraft operator in relation to that scheme year,

is equal to N.

(8) Allowances may also be withheld under article 34W (notice to withhold allowances).

Permanent cessation of aviation activity

34P.—(1) This paragraph applies if the regulator is satisfied that—

(a) a person has ceased to perform aviation activity; and

(b) there is no realistic prospect that the person will resume aviation activity.

(2) Where paragraph (1) applies—

(a) the regulator must inform the UK ETS authority; and

(b) the UK ETS authority must update the aviation allocation table to record that the person has permanently ceased to perform aviation activity.

Transfers of aviation free allocation entitlement

34Q.—(1) This article applies where a person with an aviation free allocation entitlement has been subject to a business reorganisation affecting aviation activity that was relevant to the approval of the UK ETS authority under article 34M.

(2) The relevant transferee in relation to the aviation activity may apply to the regulator for a transfer of some or all the transferor's aviation free allocation entitlement.

(3) An application under paragraph (2) must—

(a) include evidence of the business reorganisation;

(b) identify what part of the aviation free allocation entitlement (expressed as a whole number of allowances) should be transferred to the applicant, justified by reference to the business reorganisation;

(c) include confirmation that each person who is a transferor or transferee in relation to aviation activity affected by the business reorganisation is aware of the application.

(4) Where an application is made in accordance with paragraph (3), the regulator must submit to the UK ETS authority—

(a) the application and any related information the regulator holds; and

(b) a calculation as to what part of the entitlement to free allocation (expressed as a whole number of allowances) should be transferred to the applicant, applying paragraphs (5) and (6).

(5) The aviation free allocation entitlement to be transferred is what would have been the transferee's aviation free allocation entitlement under article 34M in respect of aviation activity affected by the business reorganisation had the business reorganisation taken place before 1st January 2021, except that—

(a) for each complete scheme year before the business reorganisation took place, the aviation free allocation entitlement to be transferred is zero;

(b) for the scheme year in which the business reorganisation took place, what would have been the transferee's aviation free allocation entitlement is to be calculated as if article 34M(6) did not apply, then adjusted on a pro rata basis according to when the business reorganisation took place, with the result expressed as the nearest integer, taking 0.5 as nearest to the previous integer.

(6) In determining what part of the entitlement to free allocation should be transferred to the applicant, it is permissible to have regard to any application under this article and any representations made by a person who, in relation to aviation activity affected by the business reorganisation, is a transferor or transferee.

(7) The UK ETS authority must—

(a) approve the transfer of some or all of the transferor's free allocation entitlement to the transferee with effect from a specified date, making any corrections to the calculation referred to in paragraph (4)(b) that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

(8) The regulator must give notice to the applicant, and any person who has made representations for the purposes of paragraph (6), of the outcome of the application.

Errors in aviation allocation table

34R.—(1) This article applies where the regulator considers that, but for a relevant error, the number of allowances set out in the aviation allocation table as a person's aviation free allocation entitlement for a scheme year would be materially greater or materially less.

(2) In this article, "relevant error" means—

(a) an error in an application under article 34L or 34Q;

(b) an error of the regulator or the UK ETS authority in the exercise of functions under this Order (including under this article).

(3) The regulator must calculate the number of allowances that, in the regulator's opinion, make up the person's correct aviation free allocation entitlement for the scheme year.

(4) The regulator must send to the UK ETS authority—

(a) details of the relevant error;

(b) the calculation referred to in paragraph (3).

(5) If the UK ETS authority considers that but for the relevant error, the number of allowances set out in the aviation allocation table as the person's aviation free allocation entitlement for the scheme year would be materially greater or materially less, the UK ETS authority must—

(a) approve the person's aviation free allocation entitlement for the scheme year, making any corrections to the calculation referred to in paragraph (3) that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

(6) The regulator must give notice to the person of—

(a) the relevant error;

(b) the person's aviation free allocation entitlement for the scheme year as approved by the UK ETS authority under paragraph (5).

CHAPTER 3

Common provisions

Return of allowances: installations

34S.—(1) This article applies where—

(a) allowances are allocated under article 34E to a person in respect of an installation for a scheme year in accordance with an allocation table; and

(b) the final annual number of allowances set out in the allocation table to be allocated in respect of the installation for the scheme year is subsequently reduced in consequence of an update to the allocation table to take account of any approval of the UK ETS authority under a provision referred to in article 34C(1)(b) to (f).

(2) The regulator may give a notice under article 34U or 34V (or both).

(3) For the purposes of this Chapter, the person to whom the allowances are allocated is "not entitled" to any allowances which would not have been allocated in respect of the installation if the allocation table had been updated before the allocation of allowances referred to in paragraph (1)(a).

Return of allowances: aviation

34T.—(1) This article applies where—

(a) allowances are allocated under article 34O to a person for a scheme year in accordance with the aviation allocation table; and

(b) either—

(i) the number of allowances set out in the aviation allocation table to be allocated to that person for the scheme year is subsequently reduced in consequence of an update to the aviation allocation table; or

(ii) the person was not an aircraft operator in relation to the scheme year.

(2) The regulator may give a notice under article 34U or 34V (or both).

(3) For the purposes of this Chapter, the person to whom the allowances are allocated is "not entitled" to any allowances which—

(a) would not have been allocated if the aviation allocation table had been updated before the allocation of allowances referred to in paragraph (1)(a); or

(b) are allocated for a scheme year in relation to which the person is not an aircraft operator.

Return of allowances: notice to registry administrator

34U.—(1) A notice under this article is a notice to the registry administrator requiring the registry administrator to transfer allowances equal to the number of allowances to which a person is not entitled from the person's operator holding account or aircraft operator holding account to a central account.

(2) The notice must set out—

(a) the number of allowances to which the person is not entitled;

(b) the reason why the person is not entitled to the allowances;

(c) the operator and installation from whose operator holding account, or the person from whose aircraft operator holding account, the transfer must be made.

(3) The registry administrator—

(a) must comply with the notice to the extent that there are sufficient allowances in the person's account;

(b) may suspend other transfers from the account until the notice is complied with.

(4) Paragraph (3)(a) does not apply until the period for bringing an appeal against the notice under article 70 has expired or, if an appeal is brought, until the appeal is determined or withdrawn.

(5) Where the regulator gives a notice under this article to the registry administrator, the regulator must also give a copy of the notice to the person who is not entitled to the allowances.

Return of allowances: notice to operator, etc.

34V.—(1) A notice under this article is a notice to a person requiring the person to return allowances equal to the number of allowances to which the person is not entitled.

(2) The notice must set out—

(a) the number of allowances to which the person is not entitled;

(b) the reason why the person is not entitled to the allowances;

(c) the process by which the allowances must be returned;

(d) the date by which the allowances must be returned.

(3) The person to whom the notice is given must comply with the notice.

(4) Where a notice is given under this article to a transferring operator in respect of allowances to which the transferring operator is not entitled that were allocated before the transfer of a greenhouse gas emissions permit under paragraph 9 of Schedule 6 takes effect, the notice may provide for the transferring operator to transfer allowances to the new operator and for the process by which the allowances must be returned by the new operator;

and in such a case the notice must be given to the new operator as well as the transferring operator and both must comply with the notice.

(5) In paragraph (4), "new operator" and "transferring operator" have the meanings given in paragraph 7(5) of Schedule 6.

Notice to withhold allowances

34W.—(1) The regulator may, by notice (a "notice to withhold") to the registry administrator, require the registry administrator to withhold allowances that would otherwise have been allocated in respect of an installation under article 34E or to a person with an entry in the aviation allocation table under article 34O in any of the following circumstances—

(a) if the regulator is investigating whether the installation has ceased operation;

(b) if the operator of the installation has applied to surrender the installation's permit under paragraph 11 of Schedule 6 but the application has not yet been determined;

(c) if a surrender notice under that paragraph or a revocation notice under paragraph 12 of that Schedule has been given to the operator of the installation but the surrender or revocation of the permit has not yet taken effect;

(d) if an appeal against a revocation notice given to the operator of the installation has been made and has not been determined or withdrawn;

(e) if the regulator is assessing a renunciation notice given by the operator of the installation under Article 24 of the Free Allocation Regulation;

(f) if, following an application for the transfer of the installation's permit under paragraph 7 of Schedule 6, the regulator—

(i) considers that, if the application is granted, there may be a merger or split (as defined in Article 2(17) and (18) of the Free Allocation Regulation); or

(ii) is assessing the reports referred to in Article 25(3) of that Regulation;

(g) in a case where allowances have not already been allocated in respect of the installation for a scheme year, if the regulator is investigating whether, as a result of a relevant error (as defined in article 34H), the final annual number of allowances set out in the allocation table to be allocated in respect of the installation for the scheme year exceeds the number that would otherwise have been set out in the table but for the relevant error;

(h) if the regulator is investigating whether the person with an entry in the aviation allocation table has permanently ceased to perform aviation activity under article 34P;

(i) if the regulator is assessing an application under article 34Q for the transfer of some or all of the aviation free allocation entitlement of the person with an entry in the aviation allocation table;

(j) in a case where allowances have not already been allocated to a person for a scheme year under article 34O, if the regulator is investigating whether, but for a relevant error (as defined in article 34R), the number of allowances set out in the aviation allocation table as the person's aviation free allocation entitlement for the scheme year would be materially less.

(2) The notice to withhold must set out the installation referred to in paragraph (1)(a) to (g) or the person referred to in paragraph (1)(h) to (j).

(3) Where a notice to withhold is given, no allowances may be allocated in respect of the installation set out in the notice, or to the person set out in the notice, until a further notice under paragraph (4) is given.

(4) The regulator may by further notice to the registry administrator withdraw the notice to withhold at any time, and must do so as soon as reasonably practicable after the

circumstances for giving the notice to withhold no longer apply and, where relevant, the UK ETS authority has updated the allocation table in consequence of those circumstances.

(5) Where the regulator gives a notice to withhold, the regulator must also give notice to the operator of the installation set out in the notice to withhold, or to the person set out in the notice to withhold, setting out the reasons for giving the notice.

(6) Where the regulator gives a further notice under paragraph (4), the regulator must also give notice to the operator of the installation set out in the notice to withhold, or to the person set out in the notice to withhold, setting out any explanation that the regulator considers appropriate.".

Article 35 amended (charges)

19.—(1) Article 35 is amended as follows.

(2) In paragraph (1) after "regulator" in both places insert "or the registry administrator".

(3) In paragraph (2) after sub-paragraph (h) insert—

"(i) estimating the value of a parameter under article 34H(4) of this Order or Article 3(4) of the Activity Level Changes Regulation;

(j) administering an account in the registry.".

(4) In paragraph (4) after "regulator" insert "or the registry administrator".

(5) In paragraph (5) after "regulator" in both places insert "or, as the case may be, the registry administrator".

(6) In paragraph (6) after "regulator" insert "or the registry administrator".

(7) In paragraph (7) after "regulator" insert "or the registry administrator".

(8) In paragraph (8) for "The regulator is not" substitute "Neither the regulator nor the registry administrator is".

(9) After paragraph (8) insert—

"(9) In this article, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation.".

Article 36 substituted and article 36A inserted

20. For article 36 substitute—

"Charging scheme: regulators

36.—(1) The regulator must publish a document (a "charging scheme") setting out the charges payable in accordance with article 35(1) or how they will be calculated.

(2) Before publishing a charging scheme, the regulator must—

(a) bring the proposals to the attention of persons likely to be affected by them;

(b) specify the period within which representations or objections to the proposals may be made.

(3) A charging scheme may not be published unless it has been approved by the appropriate national authority.

(4) Where a proposed charging scheme is submitted for approval under paragraph (3), the appropriate national authority—

(a) must consider any representations or objections made under paragraph (2)(b);

(b) may make such modifications to the proposals as the appropriate national authority considers appropriate.

(5) If the regulator proposes to revise a charging scheme in a material way, paragraphs (2) to (4) apply to the revised charging scheme.

(6) Paragraphs (2) to (5) do not apply in relation to a charging scheme published by the Secretary of State.

(7) In this article, "appropriate national authority" means—

(a) where the regulator is the Environment Agency, the Secretary of State;

(b) where the regulator is the chief inspector, the Department of Agriculture, Environment and Rural Affairs.

(c) where the regulator is SEPA, the Scottish Ministers;

(d) where the regulator is NRW, the Welsh Ministers.

Charging scheme: registry administrator

36A.—(1) The registry administrator must publish a document (a "charging scheme") setting out the charges payable in accordance with article 35(1) or how they will be calculated.

(2) Before publishing a charging scheme, the registry administrator must—

(a) bring the proposals to the attention of persons likely to be affected by them;

(b) specify the period within which representations or objections to the proposals may be made.

(3) A charging scheme may not be published unless it has been approved by the UK ETS authority.

(4) Where a proposed charging scheme is submitted for approval under paragraph (3), the UK ETS authority—

(a) must consider any representations or objections made under paragraph (2)(b);

(b) may make such modifications to the proposals as the UK ETS authority considers appropriate.

(5) If the registry administrator proposes to revise a charging scheme in a material way, paragraphs (2) to (4) apply to the revised charging scheme.".

Article 37 substituted

21. For article 37 substitute—

"Remittance of charges

37.—(1) The regulator must pay any charge received in accordance with a charging scheme under article 36 to the appropriate national authority (as defined in paragraph (7) of that article).

(2) Paragraph (1) does not apply to a charge received by the Secretary of State.

(3) The registry administrator must pay any charge received in accordance with a charging scheme under article 36A to the UK ETS authority.".

Article 39 amended (inspections)

22.—(1) Article 39 is amended as follows.

(2) In paragraph (1) after "this Order" insert ", the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation".

Article 40 amended (powers of entry, etc.)

23.—(1) Article 40 is amended as follows.

(2) In paragraph (1)(d)(i) after "this Order" insert ", the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation".

(3) In paragraph (2) after "this Order" insert ", the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation or the Activity Level Changes Regulation".

Article 44 amended (enforcement notices)

24.—(1) Article 44 is amended as follows.

(2) In paragraph (2)(a)—

(a) in paragraph (i) after "this Order" insert ", except for Schedule 5A";

(b) after paragraph (ii) insert—

"(iii) the Verification Regulation 2018;

(iv) the Free Allocation Regulation;

(v) the Activity Level Changes Regulation.".

(3) After paragraph (2) insert—

"(2A) Where the registry administrator considers that a person has contravened, is contravening or is likely to contravene a requirement imposed on the person by or under Schedule 5A, the registry administrator may give notice (an "enforcement notice") to the person.".

(4) In paragraph (3)(a) after "regulator" insert ", or the requirement imposed by or under Schedule 5A that the registry administrator,".

(5) In paragraph (5) after "regulator" insert "or the registry administrator".

Article 49 amended (regulator must publish names of persons subject to civil penalty under article 52)

25.—(1) Article 49 is amended as follows.

(2) After paragraph (2) insert—

"(3) This article is subject to article 75C (national security).".

Article 65 amended (failure to comply with enforcement notice)

26.—(1) Article 65 is amended as follows.

(2) In the heading omit "given by regulator".

(3) In paragraph (1) omit "by the regulator".

Article 70 amended (right of appeal)

27.—(1) Article 70 is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) after "regulator" insert "or the registry administrator";

(b) for sub-paragraph (b) substitute—

"(b) a person who is aggrieved by a notice given—

(i) to the person under a provision referred to in paragraph (2);

(ii) to the registry administrator—

(aa) under article 34U in respect of the transfer of allowances from the person's operator holding account or aircraft operator holding account;

(bb) under article 34W(1) in respect of the withholding of allowances that would otherwise have been allocated in respect of an installation of which the person is the operator under article 34E or to the person under article 34O.".

(3) In paragraph (2)—

(a) after sub-paragraph (b) insert—

"(ba) article 34H(4) (notice of regulator's estimate of value of parameter);

(bb) article 34V (return of allowances: notice to operator, etc.);";

(b) in sub-paragraph (c) for "article 44(1)" substitute "article 44(1) or (2A)";

(c) after sub-paragraph (g) insert—

"(ga) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);

(gb) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);

(gc) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);

(gd) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);

(ge) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);

(gf) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);

(gg) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);

(gh) paragraph 19(2) of Schedule 5A (notice removing authorised representative);

(gi) paragraph 25(3) of Schedule 5A (notice suspending account);

(gj) paragraph 29(4) of Schedule 5A (notice closing trading account);";

(d) after sub-paragraph (m) insert—

"(n) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan);

(o) Article 3(5) of the Activity Level Changes Regulation (notice of regulator's estimate of value of parameter in activity level report).".

(4) For paragraph (4) substitute—

"(4) To avoid doubt, no appeal may be brought under paragraph (1)(a) in respect of—

(a) a calculation of the regulator under article 34M(1)(b) or 34Q(5)(b);

(b) a preliminary assessment of the regulator under paragraph 5(3) of Schedule 7 or paragraph 3(3) of Schedule 8.".

Article 71 amended (appeal body)

28.—(1) Article 71 is amended as follows.

(2) After paragraph (3) insert—

"(4) For the purposes of determining the appeal body to which an appeal against a decision or notice of the registry administrator must be made, the decision or notice must be treated as the decision or notice of the person (or if more than one, any one of them) exercising the functions of the registry administrator in accordance with article 8A(2) to make the decision or give the notice, as set out in the decision or notice.".

Article 72 amended (effect of appeals)

29.—(1) Article 72 is amended as follows.

(2) In paragraph (1) for "paragraphs (2) to (4)" substitute "paragraphs (2) to (6)".

(3) In paragraph (2)(c)—

(a) after paragraph (i) insert—

"(ia) article 34W(1) (notice to withhold allowances);";

(b) in paragraph (ii) for "article 44(1)" substitute "article 44(1) or (2A)";

(c) after paragraph (ii) insert—

"(iia) paragraph 11(5) of Schedule 5A (notice suspending operator holding account);

(iib) paragraph 12(4) of Schedule 5A (notice suspending operator holding account on transfer);

(iic) paragraph 13(4) of Schedule 5A (notice suspending aircraft operator holding account);

(iid) paragraph 14(4)(b) of Schedule 5A (notice refusing to open trading account);

(iie) paragraph 16(7)(b) of Schedule 5A (notice refusing to appoint authorised representative);

(iif) paragraph 17(4)(b) of Schedule 5A (notice refusing to change account permission);

(iig) paragraph 18(2) of Schedule 5A (notice suspending access to registry of authorised representative);

(iih) paragraph 19(2) of Schedule 5A (notice removing authorised representative);

(iii) paragraph 25(3) of Schedule 5A (notice suspending account);

(iij) paragraph 29(4) of Schedule 5A (notice closing trading account);";

(d) after paragraph (v) insert—

"(vi) Article 8(6)(b) of the Free Allocation Regulation (notice rejecting monitoring methodology plan).".

(4) After paragraph (5) insert—

"(6) The bringing of an appeal against a notice under article 34U (return of allowances: notice to registry administrator) does not affect the registry administrator's power under paragraph (3)(b) of that article (power to suspend transfers from account).".

Article 73 amended (determination of appeals)

30.—(1) Article 73 is amended as follows.

(2) In paragraph (1)(d) after "regulator's" insert "or the registry administrator's".

Article 75 amended (information notices)

31.—(1) Article 75 is amended as follows.

(2) In paragraph (1)—

(a) for "or a regulator" substitute ", a regulator or the registry administrator";

(b) after sub-paragraph (c) insert—

"(d) the Free Allocation Regulation;

(e) the Activity Level Changes Regulation.".

Articles 75A to 75C inserted

32. After article 75 insert—

"National authority may require regulator, etc. to provide information

75A.—(1) The UK ETS authority or the relevant national authority may, by notice to a regulator or the registry administrator, require the regulator or registry administrator to provide any information that the UK ETS authority or relevant national authority considers necessary or expedient for the exercise of the authority's functions.

(2) The regulator or the registry administrator must comply with a notice under paragraph (1) so far as reasonably practicable.

Restriction on disclosing information

75B.—(1) This article applies to the following persons—

(a) the UK ETS authority;

(b) a national authority;

(c) a regulator;

(d) the registry administrator.

(2) A person to whom this article applies must not disclose information held or obtained under UK ETS legislation to another person.

(3) But paragraph (2) does not apply to the disclosure of information by the person in any of the following circumstances—

(a) if the disclosure is required by law;

(b) if the disclosure is necessary or expedient—

(i) for the exercise of the person's functions under UK ETS legislation;

(ii) for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

(iii) in the case of a disclosure by a national authority—

(aa) for the purpose of monitoring and evaluating the effectiveness of the UK ETS;

(bb) for the purpose of preparing and publishing national energy and emissions statistics or the national inventory referred to in Article 4(1)(a) of the United Nations Framework Convention on Climate Change(**a**);

(iv) in the case of a disclosure by the Environment Agency, for the exercise of the Environment Agency's functions under the Emissions Performance Standard Regulations 2015(**b**);

(v) in the case of a disclosure by the chief inspector, for the exercise of the chief inspector's functions under the Emissions Performance Standard Monitoring and Enforcement Regulations (Northern Ireland) 2016(**c**);

(vi) in the case of a disclosure by NRW, for the exercise of NRW's functions under the Emissions Performance Standard (Enforcement) (Wales) Regulations 2015(**d**);

(**a**) Cm 2833. The Convention entered into force on 21st March 1994.
(**b**) S.I. 2015/933, amended by S.I. 2016/1108.
(**c**) S.R. 2016 No. 28, amended by S.R. 2018 No. 200.
(**d**) S.I. 2015/1388 (W. 137).

(c) if the disclosure is made with the consent of the person from or on behalf of whom the information was obtained;

(d) if the disclosure is to another person to whom this article applies.

(4) In this article, "UK ETS legislation" means any of the following—

(a) this Order;

(b) the Monitoring and Reporting Regulation 2018;

(c) the Verification Regulation 2018;

(d) the Free Allocation Regulation;

(e) the Activity Level Changes Regulation.

National security

75C.—(1) The UK ETS authority may not publish any information under article 34D (allocation tables: publication, etc.) or 34N (aviation allocation table) if the publication of the information would be contrary to the interests of national security.

(2) The regulator may not publish any information under article 49 (publication of names of persons subject to civil penalty under article 52) if the publication of the information would be contrary to the interests of national security.

(3) The UK ETS authority and the regulator must exercise functions under this article, and the registry administrator must exercise functions under a relevant provision, in accordance with a direction given by the Secretary of State under section 52 of CCA 2008 as to what is or is not contrary to the interests of national security.

(4) Except where the regulator is the Secretary of State, the regulator must notify the Secretary of State of any information excluded from publication under paragraph (2).

(5) The registry administrator must notify the Secretary of State of any matter excluded from a notice under a relevant provision on the grounds that its inclusion in the notice would be contrary to the interests of national security.

(6) In this article, "relevant provision" means any of the following provisions of Schedule 5A—

(a) paragraph 11(6) (operator holding accounts);

(b) paragraph 12(5) (transfer of operator holding accounts);

(c) paragraph 13(5) (aircraft operator holding accounts);

(d) paragraph 14(5) (trading accounts);

(e) paragraph 16(8) (appointment of authorised representatives);

(f) paragraph 17(5) (change in account permission of authorised representatives);

(g) paragraph 18(3) (suspension of access to registry of authorised representatives);

(h) paragraph 19(3) (removal of authorised representatives);

(i) paragraph 25(4) (suspension of accounts);

(j) paragraph 29(5) (closure of trading accounts).".

Article 77 amended (transitional provisions)

33.—(1) Article 77 is amended as follows.

(2) After paragraph (3) insert—

"(4) The Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018 are to be read as if references, however expressed, to a report submitted or information obtained under Commission Implementing Regulation 2018/2067 in relation to a year or other period before 2021 were to a report submitted or other information obtained under that Regulation as it had effect in EU law or under the Verification Regulation 2012.

(5) A person referred to in paragraph (6) may—

(a) use information held or obtained for the purposes of the EU ETS in the exercise of the person's functions under UK ETS legislation;

(b) disclose such information in the exercise of the person's functions under UK ETS legislation—

(i) to another person referred to in paragraph (6);

(ii) to any other person, if the disclosure is necessary or expedient for the exercise of the person's functions under UK ETS legislation.

(6) The persons are—

(a) the Secretary of State;

(b) the Environment Agency;

(c) the chief inspector;

(d) SEPA;

(e) NRW.

(7) In this article, "UK ETS legislation" means any of the following—

(a) this Order;

(b) the Monitoring and Reporting Regulation 2018;

(c) the Verification Regulation 2018;

(d) the Free Allocation Regulation;

(e) the Activity Level Changes Regulation.".

Schedule 3 amended (applications, notices, etc.)

34.—(1) Schedule 3 is amended as follows.

Paragraph 1 amended (submission of applications, notices, etc. to regulators)

(2) In paragraph 1—

(a) after sub-paragraph (1)(a) insert—

"(aa) the Monitoring and Reporting Regulation 2018;

(ab) the Verification Regulation 2018;

(ac) the Free Allocation Regulation;

(ad) the Activity Level Changes Regulation;";

(b) in sub-paragraph (5) after "previous application made to the regulator" insert "(including an application under GGETSR 2012)";

(c) in sub-paragraph (11) for "as the regulator may require" substitute "as may be required".

Paragraph 2 amended (determination of applications by regulators)

(3) In paragraph 2(5), before sub-paragraph (a) insert—

"(za) article 34L (application for aviation free allocation entitlement);

(zb) article 34Q (application for transfer of aviation free allocation entitlement);".

Heading to Part 2 amended

(4) In the heading to Part 2 for "or UK ETS authority" substitute ", UK ETS authority or registry administrator".

Paragraph 3 amended (service of notices, etc.)

(5) In paragraph 3—

(a) after sub-paragraph (1)(c) insert—

"(d) the registry administrator.";

(b) in sub-paragraph (3)(b) after "service of notices or directions" insert "(including an address provided under GGETSR 2012)";

(c) after sub-paragraph (3) insert—

"(3A) A notice may be given by the registry administrator to a person who holds an account—

(a) in any of the ways set out in paragraph (3);

(b) by sending it by electronic means in the registry.";

(d) after sub-paragraph (6) insert—

"(7) In this paragraph and paragraph 4, a reference to this Order includes a reference to the Monitoring and Reporting Regulation 2018, the Verification Regulation 2018, the Free Allocation Regulation and the Activity Level Changes Regulation.".

Schedule 4 amended (modifications to Monitoring and Reporting Regulation 2018)

35.—(1) Schedule 4 is amended as follows.

(2) In the heading for "Commission Regulation (EU) 2018/2066" substitute "Monitoring and Reporting Regulation 2018".

(3) In paragraph 1—

(a) for "Commission Implementing Regulation (EU) 2018/2066" substitute "The Monitoring and Reporting Regulation 2018";

(b) after paragraph (a) insert—

"(aa) for "greenhouse gas emissions permit" in each place there were substituted "permit";".

(4) For paragraph 4(e) substitute—

"(e) after point (5), there were inserted—

"(5a) 'Implementing Regulation (EU) 2018/2067' or 'Commission Implementing Regulation (EU) 2018/2067' means the Verification Regulation 2018 (as defined in the 2020 Order);

(5b) 'monitoring plan' in relation to an aircraft operator, except in Articles 11 to 13 of this Regulation, means the aircraft operator's emissions monitoring plan as defined in article 4 of the 2020 Order;";".

(5) In paragraph 11 before sub-paragraph (a) insert—

"(za) for paragraph 1 there were substituted—

"**1.** The operator or aircraft operator must notify the regulator of:

(a) any significant modification (within the meaning of paragraph 3) of the monitoring plan at least 14 days before making the modification or, where this is not possible, as soon as reasonably practicable; and

(b) any other modification of the monitoring plan on or before 31 December in the year in which the modification is made.";".

(6) After paragraph 31 insert—

"**31A.** Article 72(1) is to be read as if for the first subparagraph there were substituted—

"Total annual emissions of each of the greenhouse gases CO_2, N_2O and PFCs shall be reported as rounded tonnes of CO_2 or $CO_{2(e)}$. The total annual emissions of the installation shall be calculated as the sum of these three rounded values.".".

(7) Omit paragraph 33(c).

(8) After paragraph 38(a) insert—

"(aa) in section 8, in subsection B, in calculation method B (overvoltage method) for "F_{CF2F6}" in both places there were substituted "F_{C2F6}";".

Schedule 5 substituted

36. For Schedule 5 substitute—

"SCHEDULE 5 Article 25

Modifications to Verification Regulation 2018

1. The Verification Regulation 2018 is to be read as if—

(a) for "…/…" in each place there were substituted "2019/331";

(b) for "competent authority" in each place there were substituted "regulator";

(c) Articles 56, 65 to 68, 74, 75, 78 and 79 were omitted;

(d) the words "This Regulation shall be binding in its entirety and directly applicable in all Member States", immediately following Article 79, were omitted,

and subject to the following additional modifications.

2. Article 1 is to be read as if—

(a) in the first subparagraph for "Directive 2003/87/EC" there were substituted "the 2020 Order, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842";

(b) the second subparagraph were omitted.

3. Article 2 is to be read as if for "2019, reported pursuant to Article 14 of Directive 2003/87/EC" there were substituted "2021, reported pursuant to the 2020 Order and permits issued in accordance with it".

4. Article 3 is to be read as if—

(a) for the words before point (1) there were substituted—

"In this Regulation, references to Implementing Regulation (EU) 2018/2066 are to that Regulation as modified by the Greenhouse Gas Emissions Trading Scheme Order 2020 ("the modified MRR") and expressions used in both the modified MRR and this Regulation have the same meaning in this Regulation as they do in the modified MRR; in addition the following definitions apply for the purposes of this Regulation:";

(b) in point (2)—

(i) for "a national" there were substituted "the national";

(ii) for "harmonised standards, within the meaning of point 9 of Article 2 of Regulation (EC) No 765/2008," there were substituted "EN ISO 14065:2013(**a**)";

(c) in point (3)—

(i) for "a national" there were substituted "the national";

(ii) the words "or a natural person otherwise authorised, without prejudice to Article 5(2) of that Regulation," were omitted;

(d) after point (3) there were inserted—

(**a**) ISO 14065:2013 specifies principles and requirements for bodies that undertake validation or verification of greenhouse gas (GHG) assertions. It can be accessed at https://www.iso.org/standard/60168.html. A copy may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

"(3a) 'national accreditation body' means the national accreditation body of the United Kingdom appointed in accordance with Article 4(1) of Regulation (EC) 765/2008(**a**);";

(e) after point (4) there were inserted—

"(4a) 'Delegated Regulation (EU) 2019/331' means the Free Allocation Regulation (as defined in the 2020 Order);

(4b) 'Implementing Regulation (EU) 2019/1842' means the Activity Level Changes Regulation (as defined in the 2020 Order);";

(f) after point (6) there were inserted—

"(6a) 'annual activity level report' means a report submitted by an operator pursuant to Article 3(3) of Implementing Regulation (EU) 2019/1842;";

(g) for point (7) there were substituted—

"(7) 'operator's or aircraft operator's report' means the annual emission report to be submitted by the operator or aircraft operator pursuant to a permit issued in accordance with Schedule 6 or 7 to the 2020 Order or pursuant to article 33 of the 2020 Order, the baseline data report submitted by the operator pursuant to Article 4(2) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(5) of that Regulation or the annual activity level report;";

(h) in point (13)—

(i) in paragraph (a) "greenhouse gas emissions" were omitted;

(ii) for paragraph (c) there were substituted—

"(c) for the purposes of verifying the baseline data report submitted by the operator pursuant to Article 4(2)(a) of Delegated Regulation (EU) 2019/331, the new entrant data report submitted by the operator pursuant to Article 5(5) of that Regulation or the annual activity level report, any act or omission of an act by the operator that is contrary to the requirements in the monitoring methodology plan;";

(i) in points (22) and (23) for "EU" in each place there were substituted "UK";

(j) in point (22) for "an" in the first place it occurs there were substituted "a";

(k) in point (26) for "a" in the second place it occurs there were substituted "the";

(l) after point (27) there were inserted—

"(27a) 'monitoring methodology plan' has the same meaning as in Delegated Regulation (EU) 2019/331;";

(m) after point (28) there were inserted—

"(28a) 'baseline period' has the same meaning as in Delegated Regulation (EU) 2019/331;";

(n) after point (29) there were inserted—

"(30) 'activity level reporting period' means the applicable period preceding the submission of the annual activity level report pursuant to Article 3(1) of Implementing Regulation (EU) 2019/1842.".

5. Article 4 is to be read as if—

(a) for the words from "the relevant harmonised standards" to "*European Union*" there were substituted "EN ISO 14065:2013";

(b) for "the applicable harmonised standards" there were substituted "those standards".

(**a**) Regulation (EC) 765/2008 is amended prospectively by S.I. 2019/696 with effect from IP completion day.

6. Article 5 is to be read as if for "bodies" there were substituted "body".

7. Article 6 is to be read as if for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report".

8. Article 7 is to be read as if—

(a) in paragraph 3 for "competent authorities responsible for Directive 2003/87/EC" there were substituted "regulator";

(b) in paragraph 4—

(i) in point (a) for the words from "or in Annex IV" to the end there were substituted ", in Annex IV to Delegated Regulation (EU) 2019/331 or in Article 3(2) of Implementing Regulation (EU) 2019/1842, as appropriate;";

(ii) in point (b) "greenhouse gas emissions" were omitted;

(iii) in point (c) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(c) in paragraph 5 for the words from "or with" to "that irregularity" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842, that irregularity";

(d) in paragraph 6 for the second subparagraph there were substituted—

"If the monitoring methodology plan has not been approved by the regulator pursuant to Article 8 of Delegated Regulation (EU) 2019/331 or is incomplete, or if significant modifications referred to in Article 9(5) of that Regulation have been made which have not been approved by the regulator, the verifier must advise the operator to obtain the necessary approval from the regulator.".

9. Article 10(1) is to be read as if—

(a) in point (a) "greenhouse gas emissions" were omitted;

(b) in point (h) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(c) in point (i) for the words from "and annual" to the end there were substituted "under Directive 2003/87/EC and any previous allocation periods under the UK ETS, together with annual activity level reports of the previous years submitted to the competent authority for the purposes of Implementing Regulation (EU) 2019/1842";

(d) after point (k) there were inserted—

"(ka) if the monitoring methodology plan was modified, a record of all modifications in accordance with Article 9 of Delegated Regulation (EU) 2019/331;";

(e) in point (l) for "report referred to in Article 69(4)" there were substituted "reports referred to in Article 69(1) and (4)";

(f) after point (l) there were inserted—

"(la) where applicable, information on how the operator has corrected nonconformities or addressed recommendations of improvements that were reported in the verification report concerning an annual activity level report from the previous year or a relevant baseline data report;";

(g) in point (n) after "methodology plan" there were inserted "as well as corrections of reported data";

(h) in point (p)—

(i) for "Directive 2009/31/EC" there were substituted "the CCS licensing regime";

(ii) for "required by that Directive and the reports required by Article 14 of that Directive" there were substituted "and reports required by that regime".

10. Article 11(4) is to be read as if—

(a) in point (b) the words from "or" to the end were omitted;

(b) after point (b) there were inserted—

"(ba) whether there have been any modifications to the monitoring methodology plan during the baseline period or the activity level reporting period, as appropriate;";

(c) in point (c) for the words from "notified" to the end there were substituted "notified to and, if required, approved by the regulator pursuant to Part 4 of or Schedule 6 to the 2020 Order";

(d) in point (d) for the words from "point (b)" to the end there were substituted "point (ba) have been notified to and, if required, approved by the regulator pursuant to Schedule 6 to the 2020 Order".

11. Article 13(1)(c) is to be read as if for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report".

12. Article 16(2) is to be read as if—

(a) in point (b) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(b) in point (c) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(c) in point (d) "listed in Annex I to Directive 2003/87/EC" were omitted;

(d) after point (f) there were inserted—

"(fa)for the purposes of verifying an annual activity level report, the accuracy of the parameters listed in Article 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 as well as data required under paragraphs 1, 2 and 4 of Article 6 of Implementing Regulation (EU) 2019/1842;".

13. Article 17 is to be read as if—

(a) in paragraph 3—

(i) in the words before point (a) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(ii) in point (d) for "delegated acts adopted pursuant to Article 10b(5) of Directive 2003/87/EC" there were substituted "Commission Delegated Decision (EU) 2019/708";

(iii) at the end there were inserted—

"(e) whether the energy consumption has been correctly attributed to each sub-installation where applicable;

(f) whether the value of the parameters listed in Articles 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 is based on a correct application of that Regulation;

(g) for the purposes of verifying an annual activity level report and a new entrant data report, the date of start of normal operation as referred to in Article 5(5) of Delegated Regulation (EU) 2019/331;

(h) for the purposes of verifying an annual activity level report whether the parameters listed in points 2.3 to 2.7 of Annex IV to Delegated Regulation (EU) 2019/331, as appropriate to the installation, have been monitored and reported in the correct way in accordance with the monitoring methodology plan.";

(b) in paragraph 4 after "is not counted" there were inserted "as emitted";

(c) paragraph 5 were omitted.

14. Article 18 is to be read as if for paragraph 3 there were substituted—

"**3.** Where data gaps in baseline data reports, new entrant data reports or annual activity level reports have occurred, the verifier shall check whether methods are laid down in the monitoring methodology plan to deal with data gaps pursuant to Article 12 of Delegated Regulation (EU) 2019/331, whether those methods were appropriate for the specific situation and whether they have been applied correctly.

Where no applicable data gap method is laid down in the monitoring methodology plan, the verifier shall check whether the approach used by the operator to compensate for the missing data is based on reasonable evidence and ensures that the data required by Annex IV to Delegated Regulation (EU) 2019/331 or Article 3(2) of Implementing Regulation (EU) 2019/1842 are not underestimated or overestimated."
.

15. Article 21 is to be read as if—

(a) in paragraph 4 for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(b) in paragraph 5 for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report".

16. Article 22 is to be read as if—

(a) in paragraph 1—

(i) in the first subparagraph for the words from "or Delegated" to "as appropriate" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 as appropriate";

(ii) in the third subparagraph for the words from "or Delegated" to "has been identified" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 has been identified";

(b) in paragraph 2 for the words from "or Delegated" to "that have" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 that have";

(c) in paragraph 3 in the fourth subparagraph for the words from "or Delegated" to "in accordance" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 in accordance".

17. Article 23(4) is to be read as if in the words before point (a) for "or new entrant data reports" there were substituted ", new entrant data reports or annual activity level reports".

18. Article 27 is to be read as if—

(a) in paragraph 1 in the words before point (a) for "or new entrant data report" there were substituted ", new entrant data report or annual activity level report";

(b) in paragraph 3—

(i) for point (f) there were substituted—

"(f) in the case of verification of a baseline data report or new entrant data report, unless the monitoring methodology plan has already been approved by the regulator, the verifier's confirmation that the monitoring methodology plan, so far as it is used as a basis for the report, is compliant with Delegated Regulation (EU) 2019/331;";

(ii) in point (g) for "per activity referred to in Annex 1 to Directive 2003/87/EC and per installation or aircraft operator" there were substituted "per regulated activity and per installation or per aviation activity and per aircraft operator";

(iii) after point (h) there were inserted—

"(ha) where it concerns the verification of the annual activity level report, aggregated annual verified data for each year in the activity level reporting period for each sub-installation for its annual activity level;";

(iv) in point (i) for "or baseline period" there were substituted ", baseline period or activity level reporting period";

(v) for point (o) there were substituted—

"(o) any issues of non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 which have become apparent during the verification;";

(vi) point (r) were omitted;

(vii) after point (s) there were inserted—

"(sa) where the verifier has observed relevant changes to the parameters listed in Article 16(5), 19, 20, 21 or 22 of Delegated Regulation (EU) 2019/331 or changes in the energy efficiency pursuant to paragraphs 1, 2 and 3 of Article 6 of Implementing Regulation 2019/1842, a description of those changes and related remarks;

(sb) where applicable, confirmation that the date of start of normal operation as referred to in Article 5(5) of Delegated Regulation (EU) 2019/331 has been checked;";

(viii) in point (t) for "EU" in both places there were substituted "UK";

(c) in paragraph 4—

(i) in the words before point (a), for "or Delegated" to "in sufficient detail" there were substituted ", Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 in sufficient detail";

(ii) for point (a) there were substituted—

"(a) the size and nature of the misstatement, non-conformity or non-compliance with Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842;";

(iii) for point (d) there were substituted—

"(d) to which Article in Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842 the non-compliance relates.";

(d) paragraph 5 were omitted.

19. Article 28 is to be read as if point (e) were omitted.

20. Article 29 is to be read as if after paragraph 1 there were inserted—

"**1A.** For the purposes of the verification of the annual activity level report, the verifier shall assess whether the operator has corrected the non-conformities indicated in the verification report related to the corresponding baseline data report, the new entrant data report or the annual activity level report from the previous activity level reporting period.

If the operator has not corrected those non-conformities, the verifier shall consider whether the omission increases or may increase the risk of misstatements.

The verifier shall report in the verification report whether those non-conformities have been resolved by the operator.".

21. Article 30(1)(e) is to be read as if for "and new entrant reports" there were substituted ", new entrant data reports and annual activity level reports".

22. Article 31 is to be read as if—

(a) in paragraph 1—

(i) for "a" in the first place it occurs there were substituted "the";

(ii) in point (c) after "paragraph 3" there were inserted ", read with paragraph 3b,";

(b) in paragraph 3—

(i) in point (a) after "emission report" there were inserted "or annual activity level report";

(ii) in point (b) at the beginning there were inserted "for the purposes of verifying the operator's emission report,";

(iii) after point (b) there were inserted—

"(ba) for the purposes of verifying the operator's annual activity level report, if a verifier has not carried out a site visit during the verification of an annual activity level report or a baseline data report in the two activity level reporting periods immediately preceding the current activity level reporting period;";

(iv) after point (c) there were inserted—

"(ca) if, during the activity level reporting period, there have been significant changes to the installation or its sub-installations which require significant modifications to the monitoring methodology plan, including those changes referred to in Article 9(5) of Delegated Regulation (EU) 2019/331;";

(c) after paragraph 3 there were inserted—

"**3A.** The reference in point (b) of paragraph 3 to reporting periods immediately preceding the current reporting period includes reporting periods for the purposes of Directive 2003/87/EC.

3B. In respect of installations within Article 32(5), points (b) and (ba) of paragraph 3 apply as if, in each of those points, for "two" there were substituted "four".";

(d) for paragraph 4 there were substituted—

"**4.** Points (c) and (ca) of paragraph 3 are not applicable where, during the reporting period, there have been only modifications of the default value as referred to in Article 15(3)(h) of Implementing Regulation (EU) 2018/2066 or Article 9(5)(c) of Delegated Regulation (EU) 2019/331.".

23. Article 32 is to be read as if—

(a) in point (1) after "verification" there were inserted "of an operator's emission report";

(b) in point (2) after "verification" there were inserted "of an operator's emission report";

(c) in point (3) after "verification" there were inserted "of an operator's emission report";

(d) after point (3) there were inserted—

"(3a) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

(a) that installation's only sub-installation is one to which a product benchmark pursuant to Article 10(2) of Delegated Regulation (EU) 2019/331 is applicable; and

(b) the production data relevant for the product benchmark has been evaluated as part of an audit for financial accounting purposes and the operator provides evidence of that;

(3b) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

(a) the installation has no more than two sub-installations;

(b) if the installation has two sub-installations, one contributes less than 5% to the installation's total final allocation of allowances; and

(c) the verifier has sufficient data available to assess the split of sub-installations if relevant;

(3c) the verification of an operator's annual activity level report concerns a category A installation referred to in Article 19(2)(a) of Implementing Regulation (EU) 2018/2066, a category B installation referred to in Article 19(2)(b) of that Implementing Regulation or an installation with low emissions as referred to in Article 47(2) of that Implementing Regulation and:

(a) the installation has only heat benchmark or district heating sub-installations; and

(b) the verifier has sufficient data available to assess the split of sub-installations if relevant;";

(e) in point (4)—

(i) in the words before point (a) after "verification" there were inserted "of the operator's emission report or annual activity level report";

(ii) in paragraph (c) after "2018/2066" there were inserted "or Article 11 of Delegated Regulation (EU) 2019/331";

(f) in point (5)—

(i) in the words before point (a) after "verification" there were inserted "of the operator's emission report or annual activity level report";

(ii) in paragraph (b) after "2018/2066" there were inserted "or Article 11 of Delegated Regulation (EU) 2019/331";

(g) at the end there were inserted—

"Point (3b) may not be applied if the sub-installation contributing 95% or more to the installation's total final allocation of allowances is a sub-installation to which a product benchmark pursuant to Article 10(2) of Delegated Regulation (EU) 2019/331 is applicable, unless the production data relevant for the product benchmark has been evaluated as part of an audit for financial accounting purposes and the operator provides evidence of that.".

24. The Verification Regulation 2018 is to be read as if after Article 34 there were inserted—

"Article 34a

Virtual site visits because of force majeure

Where serious, extraordinary and unforeseeable circumstances, outside the control of the operator or aircraft operator, prevent the verifier from carrying out a physical site visit in accordance with Article 21(1) and where these circumstances cannot, after using all reasonable efforts, be overcome, the verifier may decide, subject to the approval of the regulator in accordance with the second and third subparagraph of this Article, to carry out a virtual site visit. The verifier shall take measures to reduce the verification risk to an acceptable level and carry out a physical visit to the site of

the installation or aircraft operator without undue delay. The decision to carry out a virtual site visit shall be based on the outcome of the risk analysis and after determining that the conditions for carrying out a virtual site visit are met. The verifier shall inform the operator or aircraft operator thereof without undue delay.

The operator or the aircraft operator shall submit an application to the regulator requesting the regulator to approve the verifier's decision to carry out a virtual site visit.

On an application submitted by the operator or aircraft operator concerned, the regulator shall decide whether to approve the verifier's decision to carry out a virtual site visit, taking into consideration all of the following elements:

(a) evidence that it is not possible to carry out a physical site visit because of the force majeure circumstances;

(b) the information provided by the verifier on the outcome of the risk analysis;

(c) information on how the virtual site visit will be carried out;

(d) evidence that measures are taken to reduce the verification risk to an acceptable level.".

25. Article 36 is to be read as if—

(a) in paragraphs 2(b) and 6 for "EU" in each place there were substituted "UK";

(b) in paragraph 6 for "an" there were substituted "a".

26. Article 37 is to be read as if—

(a) in paragraph 2 for "an" there were substituted "a";

(b) in paragraphs 2 and 6 for "EU" in each place there were substituted "UK";

(c) in paragraph 5—

(i) in the first subparagraph the second sentence were omitted;

(ii) in the second subparagraph for "and new entrant data reports" there were substituted ", new entrant data reports or annual activity level reports".

27. Article 38 is to be read as if—

(a) for "EU ETS" in each place (including the heading) there were substituted "UK ETS";

(b) in paragraph 1 in the words before point (a), for "An" there were substituted "A";

(c) for paragraph 1(a) there were substituted—

"(a) knowledge of the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation (EU) 2019/1842 in the case of verification of the baseline data report, new entrant data report or annual activity level report, this Regulation, relevant standards, and other relevant legislation and applicable guidelines;";

(d) in paragraph 2—

(i) for "An" there were substituted "A";

(ii) for "an" there were substituted "a".

28. Article 39(2) is to be read as if for "an EU" there were substituted "a UK".

29. Article 40 is to be read as if for "EU" in each place there were substituted "UK".

30. Article 41 is to be read as if "harmonised" were omitted in both places.

31. Article 42 is to be read as if "harmonised" were omitted in both places.

32. Article 43 is to be read as if—

(a) in paragraph 1 at the end there were inserted "or under the trading scheme established by the 2020 Order";

(b) in paragraphs 2, 5 and 6 "harmonised" were omitted in each place;

(c) after paragraph 6 there were inserted—

"**6A.** When verifying the same operator or aircraft operator as in the previous year, the verifier shall consider the risk to impartiality and take measures to reduce the risk to impartiality.";

(d) in paragraph 7 for "EU" in both places there were substituted "UK";

(e) at the end there were inserted—

"**8.** If the UK ETS lead auditor undertakes verifications of emissions or allocation data for an installation in respect of five consecutive years beginning with 2021 or a subsequent year, then the UK ETS lead auditor may not undertake such verifications for that installation in respect of any of the next three years.".

33. Article 45 is to be read as if, in the words before point (a), for "each" there were substituted "the".

34. Article 46(1) is to be read as if "harmonised" were omitted.

35. Article 47 is to be read as if—

(a) in paragraph 1 for "each" there were substituted "the";

(b) in paragraph 2 "harmonised" were omitted.

36. Article 48 is to be read as if in each of paragraphs 1 and 2 "harmonised" were omitted.

37. Article 49 is to be read as if "harmonised" were omitted in both places.

38. Article 50 is to be read as if—

(a) in paragraph 3 "harmonised" were omitted;

(b) paragraph 5 were omitted.

39. Article 51(2) is to be read as if "harmonised" were omitted.

40. Article 52(2) is to be read as if "harmonised" were omitted.

41. Article 54(4) is to be read as if for "Member States" there were substituted "The national accreditation body".

42. Article 55 is to be read as if—

(a) in paragraph 1 for the words from "national accreditation bodies" to the end there were substituted "national accreditation body";

(b) paragraphs 2 to 5 were omitted;

(c) in paragraph 6 "harmonised" were omitted.

43. Article 57(4) is to be read as if "harmonised" were omitted.

44. Article 59(1) is to be read as if—

(a) in point (a) for "harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "standard";

(b) in point (b) for the words from "Directive 2003/87/EC" to "where" there were substituted "the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation 2019/1842 where".

45. Article 60(2)(a) is to be read as if for the words from "Directive 2003/87/EC" to "where" there were substituted "the 2020 Order, Implementing Regulation (EU) 2018/2066, Delegated Regulation (EU) 2019/331 and Implementing Regulation 2019/1842 where".

46. Article 63(2) is to be read as if for "harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "standard".

47. Article 69 is to be read as if—

(a) in paragraph 1—

(i) for "Member States" there were substituted "The regulator";

(ii) the words from "in accordance with Article 74(1)" to the end were omitted;

(b) in paragraph 2 "in accordance with Article 74(2) of Implementing Regulation (EU) 2018/2066" were omitted.

48. Article 70 is to be read as if—

(a) in paragraph 1—

(i) for "Member State" there were substituted "UK ETS authority";

(ii) for "their" there were substituted "the";

(iii) ", or where applicable, the national authority entrusted with the certification of verifiers," were omitted;

(b) in paragraph 2—

(i) for the words from "Where" to "competent authorities" there were substituted "The Environment Agency or such other regulator as may be designated by the UK ETS authority from time to time is";

(ii) after "information" there were inserted "for the purposes of this Chapter".

49. Article 71 is to be read as if—

(a) in paragraph 1 in the words before point (a)—

(i) "of each Member State" were omitted;

(ii) for "that" in the first place it occurs there were substituted "the";

(iii) for "those Member States" there were substituted "the United Kingdom";

(b) paragraph (1)(d) were omitted;

(c) in paragraph 3—

(i) in the words before point (a), for "that" in the second place it occurs there were substituted "the";

(ii) in point (a) for "that" in the second place it occurs there were substituted "the".

50. Article 72 is to be read as if—

(a) for "a national" there were substituted "the national";

(b) for the words from "following parties" to the end there were substituted "regulator".

51. Article 73(1) is to be read as if—

(a) for "of the Member State where the verifier is carrying out the verification" there were substituted "of the operator of an installation or of an aircraft operator whose data is verified by a verifier";

(b) "which has accredited that verifier" were omitted.

52. Article 76 is to be read as if—

(a) in paragraph 1—

(i) for "National accreditation bodies, or where applicable national authorities referred to in Article 55(2)," there were substituted "The national accreditation body";

(ii) "other national accreditation bodies," were omitted;

(iii) for "competent authorities" there were substituted "regulators";

(iv) the second subparagraph were omitted;

(b) in paragraph 2(a) for "that" there were substituted "the";

(c) paragraph 2(b) were omitted.

53. Article 77(1)(b) is to be read as if for "or new entrant data reports" there were substituted ", new entrant data reports or annual activity level reports".

54. Annex 1 is to be read as if—

(a) in the words before the table the words from "pursuant to Annex I" to the end were omitted;

(b) in the table—

(i) in the entry for group 10 for "Directive 2003/87/EC" there were substituted "the 2020 Order";

(ii) in the entries for groups 10 and 11 for "Directive 2009/31/EC" in each place there were substituted "the CCS licensing regime";

(iii) in the entry for group 98 for "Article 10a of Directive 2003/87/EC" there were substituted "Part 4A of the 2020 Order, Delegated Regulation (EU) 2019/331 or Implementing Regulation (EU) 2019/1842";

(iv) the entry for group 99 were omitted.

55. Annex 2 is to be read as if for "the harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "EN ISO 14065:2013".

56. Annex 3 is to be read as if for "the harmonised standard pursuant to Regulation (EC) No 765/2008" there were substituted "EN ISO/IEC 17011:2017(**a**)".".

Schedule 5A inserted

37. After Schedule 5 insert—

"SCHEDULE 5A

Article 25A

Registry

PART 1

Preliminary

Interpretation

1. In this Schedule—

"account permission" has the meaning given in paragraph 16(4);

(**a**) ISO/IEC 17011:2017 specifies requirements for the competence, consistent operation and impartiality of accreditation bodies assessing and accrediting conformity assessment bodies. It can be accessed at: https://www.iso.org/standard/67198.html. A copy may be inspected at the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

"Auctioning Regulations" means regulations under section 96 of the Finance Act 2020(**a**);

"authorised representative" means an authorised representative appointed for an account under paragraph 16;

"operational authorised representative" has the meaning given in paragraph 16(11);

"serious offence" means—

(a) an offence specified, or falling within a description specified, in Schedule 1 to the Serious Crime Act 2007(**b**);

(b) an offence under the law of a country or territory outside the United Kingdom which, if committed in or as regards any part of the United Kingdom, would be an offence referred to in paragraph (a);

(c) conduct which facilitates the commission by another person of an offence referred to in paragraph (a) or (b), whether the conduct takes place in the United Kingdom or elsewhere;

"working day" means any day other than—

(a) Saturday, Sunday, Good Friday or Christmas Day;

(b) a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971(**c**).

Submission of applications, etc. to registry administrator

2.—(1) An application, notice, instruction or request to the registry administrator under this Order must be in writing and must be given to the registry administrator in any of the following ways—

(a) by sending it to a postal or email address provided by the registry administrator for that purpose;

(b) by sending it by electronic means in the registry;

(c) by any other means permitted by the registry administrator.

(2) A charge that is required to be paid to the registry administrator must be paid by making payment to a postal address or an account provided by the registry administrator for that purpose.

Account holders: fit and proper person

3. When assessing for the purposes of this Schedule whether an account holder or prospective account holder is a fit and proper person to hold an account of a particular type, the registry administrator may take account of any information or factors that the registry administrator considers relevant, including in particular—

(a) where the account holder or prospective account holder is an individual, whether the account holder or prospective account holder is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;

(**a**) 2020 c. 14.

(**b**) 2007 c. 27. Schedule 1 to that Act has been amended by Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23); paragraph 101 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8); paragraph 14 of Schedule 1 to the Bribery Act 2010 (c. 23); paragraph 142 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9); paragraph 7 of Schedule 4, and Schedule 5, to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2); section 47 of, and paragraph 31 of Schedule 1 and paragraph 81 of Schedule 4 to, the Serious Crime Act 2015 (c. 9); paragraph 7 of Schedule 5 to the Modern Slavery Act 2015 (c. 30); paragraph 8 of Schedule 5 to the Psychoactive Substances Act 2016 (c. 2); section 151 of the Policing and Crime Act 2017 (c. 3); section 51 of the Criminal Finances Act 2017 (c. 22); paragraph 5 of Schedule 3 to the Sanctions and Anti-Money Laundering Act 2018 (c. 13); section 14 of the Counter-Terrorism and Border Security Act 2019 (c. 3); and regulation 3 of S.I. 2019/1354.

(**c**) 1971 c. 80. Schedule 1 to that Act has been amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).

(b) where the account holder or prospective account holder is a body corporate, whether a person with significant control of the body corporate is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;

(c) whether the registry administrator considers that the account may be used in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom.

Authorised representatives: fit and proper person

4. When assessing for the purposes of this Schedule whether an individual is a fit and proper person to be an authorised representative, the registry administrator may take account of any information or factors that the registry administrator considers relevant, including in particular—

(a) whether the individual is under investigation for, or has been convicted in the preceding 5 years of, a serious offence;

(b) whether the registry administrator considers that the individual may use the account in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom;

(c) whether the appointment of the individual as an authorised representative would create a conflict of interest.

PART 2

Establishment and operation of registry

Registry

5.—(1) The UK ETS authority must establish an electronic system (the "registry") for the purposes of the UK ETS, in particular, to keep track of—

(a) operators of installations and aircraft operators participating in the UK ETS;

(b) allowances held by persons and the allocation and transfer of allowances;

(c) reportable emissions of installations and aviation emissions of aircraft operators;

(d) the surrender of allowances by operators and aircraft operators in accordance with articles 27 and 34.

(2) The UK ETS authority must ensure that the registry is established so as to allow for—

(a) the following types of account in which allowances may be held—

(i) central accounts (see paragraph 9);

(ii) an auction delivery account (see paragraph 10);

(iii) operator holding accounts for installations (see paragraph 11);

(iv) aircraft operator holding accounts (see paragraph 13);

(v) trading accounts (see paragraph 14);

(b) individuals to be appointed as authorised representatives for accounts with access to the registry to perform actions in relation to accounts on behalf of account holders.

Operation of registry

6.—(1) The registry administrator must operate the registry and for that purpose may, in particular—

(a) establish administrative arrangements and rules for the operation of the registry;

(b) take such actions the registry administrator considers necessary to ensure the proper functioning and good administration of the registry;

(c) perform actions in relation to accounts in accordance with instructions from account holders.

(2) In the operation of the registry, the registry administrator must, as soon as reasonably practicable and to the extent possible, comply with a notice or instruction given under this Order by the UK ETS authority or a regulator.

Suspension of registry due to security concerns

7.—(1) The UK ETS authority or the registry administrator may suspend access to the registry if the UK ETS authority or the registry administrator considers that—

(a) a security breach has occurred; or

(b) there is a significant risk that a security breach will occur.

(2) Where access to the registry is suspended, the UK ETS authority or, as the case may be, the registry administrator must, as soon as reasonably practicable after the suspension takes effect, inform—

(a) each regulator;

(b) if the UK ETS authority suspends access to the registry, the registry administrator;

(c) if the registry administrator suspends access to the registry, the UK ETS authority.

(3) The UK ETS authority must, as soon as reasonably practicable and in any event within 2 working days beginning with the day (the "relevant day") on which the UK ETS authority suspends access to the registry or is informed of a suspension under sub-paragraph (2)(c) or, if the relevant day is not a working day, within 2 working days beginning with the first working day after the relevant day consider whether the suspension should remain in place and—

(a) if the UK ETS authority considers the suspension should remain in place, inform each regulator and the registry administrator that the suspension will remain in place; or

(b) if the UK ETS authority considers the suspension should be lifted—

(i) lift the suspension or instruct the registry administrator to lift the suspension;

(ii) inform each regulator and, where the UK ETS authority lifts the suspension, the registry administrator that the suspension has been lifted.

(4) Where the suspension remains in place in accordance with sub-paragraph (3)(a), the UK ETS authority must, as soon as reasonably practicable after the UK ETS authority considers that the circumstances giving rise to the suspension no longer exist—

(a) lift the suspension or instruct the registry administrator to lift the suspension;

(b) inform each regulator and, where the UK ETS authority lifts the suspension, the registry administrator that the suspension has been lifted.

Suspension of registry for technical reasons

8.—(1) The UK ETS authority may suspend access to the registry for technical reasons.

(2) Where the suspension is unscheduled (for example, because a technical issue needs to be addressed immediately), the UK ETS authority must inform each regulator and the registry administrator as soon as reasonably practicable after the suspension takes effect.

(3) Where the suspension is scheduled, the UK ETS authority must inform each regulator and the registry administrator as soon as reasonably practicable and in any event at least 2 working days before the suspension takes effect.

(4) Where, after a suspension, the UK ETS authority considers that the reason for the suspension no longer exists, the UK ETS authority must as soon as reasonably practicable—

(a) lift the suspension;

(b) inform each regulator and the registry administrator that the suspension has been lifted.

PART 3

Accounts

CHAPTER 1

Opening accounts

Central accounts

9.—(1) The UK ETS authority may open accounts in the name of the UK ETS authority for the purposes of the UK ETS, in particular—

(a) a total quantity account (for the creation of allowances under article 18);

(b) an allocation account (to hold allowances to be allocated under Part 4A);

(c) a new entrants' reserve account (to keep track of the new entrants' reserve referred to in article 34G);

(d) an auction account (to hold allowances to be auctioned under the Auctioning Regulations);

(e) a market stability mechanism account (to hold excess allowances unsold at auctions under the Auctioning Regulations);

(f) a deletion account (to hold allowances deleted under paragraph 23);

(g) a surrender account (to hold allowances surrendered under paragraph 24);

(h) one or more general holding accounts (to hold allowances transferred from accounts before closure under paragraph 30).

(2) An account held by the UK ETS authority is a "central account".

Auction delivery account

10.—(1) Where a recognised auction platform is appointed to auction allowances under the Auctioning Regulations, the UK ETS authority must, as soon as reasonably practicable, instruct the registry administrator to open an auction delivery account in the name of the recognised auction platform.

(2) The recognised auction platform must as soon as reasonably practicable after appointment under the Auctioning Regulations submit to the registry administrator—

(a) the charge for opening the account set out in the charging scheme published under article 36A;

(b) applications under paragraph 16 to appoint at least 2 individuals as operational authorised representatives for the account with account permissions such that they are together able to propose and approve all types of action in relation to the account.

(3) The registry administrator may, by notice to the UK ETS authority or the recognised auction platform, require the UK ETS authority or the recognised auction platform to provide, in the form specified in the notice, such information as the registry administrator considers necessary to open the account.

(4) As soon as reasonably practicable after receiving the charge required under sub-paragraph (2)(a) and any information required under sub-paragraph (3) and at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have been appointed for the account, the registry administrator must open the account.

(5) In this paragraph, "recognised auction platform" means a recognised investment exchange in relation to which a recognition order under the Recognised Auction Platform Regulations 2011(**a**) is in force.

(6) In sub-paragraph (5), "recognised investment exchange" means an investment exchange in relation to which a recognition order under section 290 of the Financial Services and Markets Act 2000(**b**) is in force.

Operator holding accounts

11.—(1) This paragraph applies where the regulator—

(a) issues a greenhouse gas emissions permit for an installation under paragraph 3 of Schedule 6;

(b) grants an application for the partial transfer of a greenhouse gas emissions permit under paragraph 9 of Schedule 6;

(c) converts an installation's hospital or small emitter permit into a greenhouse gas emissions permit under paragraph 24(2) or 26(3) of Schedule 7; or

(d) converts an installation's permit (within the meaning of GGETSR 2012) into a greenhouse gas emissions permit under paragraph 1(4)(a) of Schedule 11.

(2) The regulator must, as soon as reasonably practicable—

(a) instruct the registry administrator to open an operator holding account for the installation in the name of the operator of the installation or, where sub-paragraph (1)(b) applies, for the installation consisting of the transferred units (as defined in paragraph 8(1) of Schedule 6) in the name of the new operator (as defined in paragraph 7(1) of that Schedule); or

(b) inform the registry administrator that a new operator holding account is not required.

(3) Where sub-paragraph (2)(a) applies, the registry administrator may, by notice to the operator or the regulator, require the operator or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—

(a) open the account; and

(b) assess whether the operator is a fit and proper person to hold an operator holding account.

(4) As soon as reasonably practicable after receiving an instruction under sub-paragraph (2)(a) and any information required under sub-paragraph (3), the registry administrator must assess whether the operator is a fit and proper person to hold an operator holding account and—

(a) if the registry administrator considers that the operator is a fit and proper person to hold an operator holding account, open the account; or

(b) if the registry administrator does not consider that the operator is a fit and proper person to hold an operator holding account, open, and immediately suspend, the account, imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).

(**a**) S.I. 2011/2699, amended by S.I. 2012/1906, 2013/429, 2013/642, 2013/3115, 2016/680 and 2017/1064.

(**b**) 2000 c. 8. Section 290 has been amended by paragraph 6 of Schedule 8 to the Financial Services Act 2012 (c. 21) and S.I. 2007/126, 2013/504, 2017/701 and 2017/1064 and is amended prospectively by S.I. 2019/662 with effect from IP completion day.

(5) The registry administrator must give notice to the operator and the regulator of a decision to open and suspend an account under sub-paragraph (4)(b).

(6) A notice under sub-paragraph (5) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(7) Where, after a suspension under sub-paragraph (4)(b), the registry administrator subsequently considers that the operator is a fit and proper person to hold an operator holding account, the registry administrator must, as soon as reasonably practicable—

(a) lift the suspension;

(b) give notice to the operator and the regulator that the suspension has been lifted.

Transfer of operator holding accounts

12.—(1) Where the regulator grants an application for the transfer (other than a partial transfer) of an installation's greenhouse gas emissions permit under paragraph 9 of Schedule 6, the regulator must, as soon as reasonably practicable—

(a) instruct the registry administrator to transfer the operator holding account for the installation held in the name of the transferring operator (as defined in paragraph 7(1) of Schedule 6) to the new operator (as defined in that sub-paragraph);

(b) instruct the registry administrator to—

(i) open an operator holding account for the installation in the name of the new operator; and

(ii) close the operator holding account held in the name of the transferring operator; or

(c) inform the registry administrator that no action under paragraph (a) or (b) is required.

(2) Where paragraph (1)(a) or (b) applies, the registry administrator may, by notice to the new operator or the regulator, require the new operator or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—

(a) transfer or, as the case may be, open the account; and

(b) assess whether the new operator is a fit and proper person to hold an operator holding account.

(3) As soon as reasonably practicable after receiving an instruction under sub-paragraph (1)(a) or (b) and any information required under sub-paragraph (2), the registry administrator must assess whether the new operator is a fit and proper person to hold an operator holding account and—

(a) if the registry administrator considers that the new operator is a fit and proper person to hold an operator holding account, transfer or, as the case may be, open the account; or

(b) if the registry administrator does not consider that the new operator is a fit and proper person to hold an operator holding account—

(i) transfer or, as the case may be, open the account; and

(ii) immediately suspend the account, imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).

(4) The registry administrator must give notice to the new operator and the regulator of a decision to transfer or, as the case may be, open and suspend an account under sub-paragraph (3)(b).

(5) A notice under sub-paragraph (4) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(6) Where, after a suspension under sub-paragraph (3)(b), the registry administrator subsequently considers that the new operator is a fit and proper person to hold an operator holding account, the registry administrator must, as soon as reasonably practicable—

(a) lift the suspension;

(b) give notice to the new operator and the regulator that the suspension has been lifted.

(7) Where the registry administrator receives an instruction to transfer an operator holding account under sub-paragraph (1)(a), no action may be performed in relation to the account until the registry administrator complies with sub-paragraph (3).

Aircraft operator holding accounts

13.—(1) Where the regulator issues an emissions monitoring plan to a person under article 29, the regulator must, as soon as reasonably practicable, instruct the registry administrator to open an aircraft operator holding account in the name of the person.

(2) The registry administrator may, by notice to the person or the regulator, require the person or the regulator to provide, in the form specified in the notice, such information as the registry administrator considers necessary to—

(a) open the account; and

(b) assess whether the person is a fit and proper person to hold an aircraft operator holding account.

(3) As soon as reasonably practicable after receiving an instruction under sub-paragraph (1) and any information required under sub-paragraph (2), the registry administrator must assess whether the person is a fit and proper person to hold an aircraft operator holding account and—

(a) if the registry administrator considers that the person is a fit and proper person to hold an aircraft operator holding account, open the account; or

(b) if the registry administrator does not consider that the person is a fit and proper person to hold an aircraft operator holding account, open, and immediately suspend, the account imposing the restriction set out in paragraph 25(2)(b) or (c) (or both).

(4) The registry administrator must give notice to the person and the regulator of a decision to open and suspend an account under sub-paragraph (3)(b).

(5) A notice under sub-paragraph (4) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(6) Where, after a suspension under sub-paragraph (3)(b), the registry administrator subsequently considers that the person is a fit and proper person to hold an aircraft operator holding account, the registry administrator must, as soon as reasonably practicable—

(a) lift the suspension;

(b) give notice to the person and the regulator that the suspension has been lifted.

Trading accounts

14.—(1) Any person may apply to the registry administrator to open a trading account on terms agreed by the registry administrator.

(2) An application must be accompanied by—

(a) the charge for the application set out in the charging scheme published under article 36A;

(b) applications under paragraph 16 to appoint at least 2 individuals as operational authorised representatives for the account with account permissions such that they are together able to propose and approve all types of action in relation to the account.

(3) After receiving an application, the registry administrator may, by notice to the applicant, require the applicant to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.

(4) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (3), the registry administrator must assess whether the applicant is a fit and proper person to hold a trading account and—

(a) if the registry administrator considers that the applicant is a fit and proper person to hold a trading account and at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have been appointed for the account, open the account; or

(b) if either—

(i) the registry administrator does not consider that the applicant is a fit and proper person to hold a trading account; or

(ii) at least 2 operational authorised representatives with the account permissions referred to in sub-paragraph (2)(b) have not been appointed for the account,

give notice to the applicant that the application to open the account is refused.

(5) A notice under sub-paragraph (4)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

CHAPTER 2

Account representatives

Primary contacts and alternative primary contacts

15.—(1) An account holder must give details to the registry administrator of an individual whom the account holder appoints as a person authorised to give instructions to the registry administrator on the account holder's behalf in relation to the account.

(2) An individual appointed under sub-paragraph (1) is the "primary contact" for the account.

(3) An account holder who is an individual may appoint the account holder as the primary contact for the account.

(4) An account holder who has appointed a primary contact may give details to the registry administrator of a second individual whom the account holder appoints as a person authorised to give instructions to the registry administrator on the account holder's behalf in relation the account.

(5) An individual appointed under sub-paragraph (4) is the "alternative primary contact" for the account.

(6) The primary contact and any alternative primary contact must be at least 18 years of age.

(7) An account holder may, at any time by notice to the registry administrator—

(a) replace the primary contact;

(b) replace or remove the alternative primary contact.

Appointment of authorised representatives

16.—(1) An account holder or a prospective account holder may apply to the registry administrator for one or more individuals (up to a maximum number of 8) to be appointed as authorised representatives for the account with access to the registry to perform actions in relation to the account on behalf of the account holder.

(2) An account holder who is an individual may apply for the account holder to be appointed as an authorised representative for the account.

(3) An authorised representative must be at least 18 years of age.

(4) An authorised representative may have one of the following permissions (an "account permission")—

(a) permission to propose actions in relation to the account;

(b) permission to approve actions in relation to the account;

(c) permission to propose actions, and approve actions proposed by another operational authorised representative, in relation to the account;

(d) permission to review account information only.

(5) An application for an individual to be appointed as an authorised representative must—

(a) specify which account permission the individual is to have;

(b) be accompanied by the charge for the application set out in the charging scheme published under article 36A.

(6) After receiving an application, the registry administrator may, by notice to the applicant, require the applicant to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.

(7) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (6), the registry administrator must assess whether the individual is a fit and proper person to be an authorised representative and—

(a) if the registry administrator considers that the individual is a fit and proper person to be an authorised representative, appoint the individual as an authorised representative with the account permission in respect of which the application is made and give notice to the applicant of the appointment; or

(b) if the registry administrator considers that the individual is not a fit and proper person to be an authorised representative, give notice to the applicant that the application is refused.

(8) A notice under sub-paragraph (7)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(9) The registry administrator may, in administrative rules made under paragraph 6(1)(a), provide for whether actions of a particular type require the approval of a second operational authorised representative in addition to the operational authorised representative proposing the action.

(10) The appointment of an authorised representative for an account does not preclude the account holder from instructing the registry administrator to perform actions in relation to the account on behalf of the account holder.

(11) In this Schedule, "operational authorised representative" means an authorised representative who has an account permission referred to in sub-paragraph (4)(a), (b) or (c).

Change in account permission of authorised representatives

17.—(1) An account holder may apply to the registry administrator to change the account permission of an individual appointed as an authorised representative.

(2) An application must—

(a) specify which account permission the individual is to have;

(b) be accompanied by the charge for the application set out in the charging scheme published under article 36A.

(3) After receiving an application, the registry administrator may, by notice to the account holder, require the account holder to provide, in the form specified in the notice, such information as the registry administrator considers necessary to determine the application.

(4) As soon as reasonably practicable after receiving the application and any information required under sub-paragraph (3), the registry administrator must assess whether the individual is still a fit and proper person to be an authorised representative and—

(a) if the registry administrator considers that the individual is still a fit and proper person to be an authorised representative, change the individual's account permission to the account permission in respect of which the application is made and give notice to the account holder of the change; or

(b) if the registry administrator considers that the individual has ceased to be a fit and proper person to be an authorised representative, give notice to the account holder that the application is refused.

(5) A notice under sub-paragraph (4)(b) must include the reason for the refusal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

Suspension of access to registry of authorised representatives

18.—(1) The registry administrator may suspend an authorised representative's access to the registry in either of the following circumstances—

(a) if the registry administrator considers that the suspension is necessary to ensure that the registry is secure and protected from misuse;

(b) if the registry administrator considers that the authorised representative has ceased to be a fit and proper person to be an authorised representative.

(2) Where the registry administrator suspends an authorised representative's access to the registry, the registry administrator must give notice of the suspension to the account holder as soon as reasonably practicable.

(3) A notice under sub-paragraph (2) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

(4) Where, after a suspension under sub-paragraph (2), the registry administrator subsequently considers that the circumstances giving rise to the suspension no longer exist, the registry administrator must as soon as reasonably practicable—

(a) lift the suspension;

(b) give notice to the account holder that the suspension has been lifted.

Removal of authorised representatives

19.—(1) The registry administrator may remove an individual as an authorised representative for an account—

(a) if the account holder requests the registry administrator to remove the individual as authorised representative;

(b) if the individual requests the registry administrator to remove the individual as authorised representative;

(c) if the registry administrator considers that the individual has ceased to be a fit and proper person to be an authorised representative; or

(d) where the individual's access to the registry has been suspended, if the registry administrator considers that the circumstances giving rise to the suspension still exist and are unlikely to be resolved within a reasonable period of time.

(2) The registry administrator must give notice to the account holder of a removal under sub-paragraph (1)(b), (c) or (d).

(3) A notice following a removal under sub-paragraph (1)(c) or (d) must include the reason for the removal unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

CHAPTER 3

Transfers of allowances

Transfers between accounts

20.—(1) An allowance may be transferred from one account to another.

(2) Sub-paragraph (1) is subject to—

(a) paragraph 11(4)(b) (operator holding accounts);

(b) paragraph 12(3)(b) or (7) (transfer of operator holding accounts);

(c) paragraph 13(3)(b) (aircraft operator holding accounts);

(d) paragraph 25 (suspension of accounts).

Transfer cancellations

21. The transfer of an allowance between accounts may be cancelled by the account holder of the transferring account at any time before the transfer has completed.

Transfer reversals

22.—(1) A transfer of an allowance that has completed may not be reversed except as set out in this paragraph.

(2) The registry administrator must reverse the transfer of an allowance to the deletion account if, within 14 days beginning with the day on which the transfer completes, the account holder requests the registry administrator to reverse the transfer.

(3) The registry administrator must reverse the transfer of an allowance to the surrender account if, within 14 days beginning with the day on which the transfer completes, the account holder requests the registry administrator to reverse the transfer.

(4) Sub-paragraph (3) is subject to paragraph 24 (surrender of allowances).

(5) Where the account from which the allowance was transferred has been closed since the transfer completed (and the transfer cannot therefore be reversed), the account holder who requests the reversal of a transfer must give notice to the registry administrator of an alternative account to which the allowance is to be transferred.

Deletion of allowances

23.—(1) An account holder may delete an allowance by transferring the allowance from the account holder's account to the deletion account.

(2) An allowance transferred to the deletion account may not be transferred from the deletion account and ceases to be available for any other purpose unless the transfer is reversed under paragraph 22 (transfer reversals).

Surrender of allowances

24.—(1) The operator of an installation or a person who is an aircraft operator in relation to a scheme year may surrender an allowance by transferring the allowance from the operator's operator holding account for the installation or the aircraft operator's aircraft operator holding account to the surrender account.

(2) An allowance that has been transferred to the surrender account may not be transferred from the surrender account and ceases to be available for any other purpose.

(3) But the transfer of an allowance to the surrender account may be reversed under paragraph 22(3) if—

(a) the person requesting the reversal has complied with—

(i) where the person requesting the reversal is the operator of an installation, the person's obligations to surrender allowances under article 27 in respect of the installation;

(ii) where the person requesting the reversal is an aircraft operator in relation to a scheme year, the person's obligations to surrender allowances under article 34; and

(b) the reversal of the transfer would not result in the person being in breach of those obligations.

CHAPTER 4

Suspension and closure of accounts

Suspension of accounts

25.—(1) The registry administrator may suspend an account other than a central account in any of the following circumstances—

(a) if, on the death or dissolution of the account holder or the occurrence of an insolvency event in relation to the account holder, either—

(i) it is not clear who has the right to deal with the assets of the account holder; or

(ii) the registry administrator has not received instructions about the operation of the account from the person who has the right to deal with the assets of the account holder;

(b) if the registry administrator does not consider that the account holder is a fit and proper person to hold the account;

(c) if the registry administrator considers that the account has been, is being or may be used in relation to the commission of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom.

(2) A suspended account may be subject to one or more of the following restrictions—

(a) no allowances may be transferred to the account except from the allocation account;

(b) no authorised representative may perform an action in relation to the account by accessing the registry;

(c) no allowances may be transferred from the account except to a central account.

(3) Where the registry administrator suspends an account, the registry administrator must give notice of the suspension to the account holder as soon as reasonably practicable.

(4) A notice under sub-paragraph (3) must include the reason for the suspension unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security .

(5) Where, after a suspension under sub-paragraph (1), the registry administrator subsequently considers that the circumstances giving rise to the suspension no longer exist, the registry administrator must as soon as reasonably practicable—

(a) lift the suspension;

(b) give notice to the account holder that the suspension has been lifted.

(6) For the purposes of this paragraph an "insolvency event" occurs in relation to an account holder if—

(a) an order for the winding-up of the account holder is made;

(b) a resolution for the voluntary winding-up of the account holder is passed;

(c) the account holder enters into administration;

(d) a bankruptcy order is made in relation to the account holder or, in Scotland, an award of sequestration is made against the account holder;

(e) a provisional liquidator is appointed for the account holder under section 135 of the Insolvency Act 1986(**a**); or

(f) an event (an "overseas insolvency event") occurs in a country or territory outside the United Kingdom in relation to the account holder that the registry administrator considers corresponds to an event (a "UK insolvency event") referred to in paragraphs (a) to (e).

(7) For the purpose of considering under sub-paragraph (6)(f) whether an overseas insolvency event corresponds to a UK insolvency event, where, in consequence of the UK insolvency event, a person is appointed to an office (for example, liquidator or trustee in bankruptcy) to deal with the assets of the account holder, it is immaterial whether or not there is a corresponding appointment in consequence of the overseas insolvency event.

Closure of central accounts and auction delivery account

26. The UK ETS authority may close—

(a) a central account;

(b) the auction delivery account.

Closure of operator holding accounts

27.—(1) This paragraph applies where—

(a) (i) an installation's greenhouse gas emissions permit is cancelled under paragraph 9(5)(b) of Schedule 6;

(**a**) 1986 c. 45.

(ii) after giving a surrender notice under paragraph 11(3) of that Schedule in respect of a greenhouse gas emissions permit for an installation, the regulator certifies under paragraph 11(6)(b) of that Schedule that the conditions of the permit and the requirements of the surrender notice have been complied with or that there is no reasonable prospect of their being complied with;

(iii) after giving a revocation notice under paragraph 12(4) of that Schedule in respect of a greenhouse gas emissions permit for an installation, the regulator certifies under paragraph 12(7)(b) of that Schedule that the conditions of the permit and the requirements of the revocation notice have been complied with or that there is no reasonable prospect of their being complied with; or

(iv) after the regulator converts an installation's greenhouse gas emissions permit into a hospital or small emitter permit under paragraph 10 of Schedule 7, the obligations of the operator under the permit in respect of specified emissions before 1st January 2026 are complied with; and

(b) where relevant, any notice given under article 34V (return of allowances: notice to operator, etc.) to the operator of the installation or to a transferring operator (as defined in paragraph 7(1) of Schedule 6) has been complied with or the regulator considers that there is no reasonable prospect of the notice being complied with.

(2) The regulator must instruct the registry administrator to close the operator holding account for the installation.

(3) The registry administrator must give notice to the operator of the installation as soon as reasonably practicable after the account is closed.

Closure of aircraft operator holding accounts

28.—(1) This paragraph applies where—

(a) the regulator is satisfied under article 34P that a person has ceased to perform aviation activity and there is no realistic prospect that the person will resume aviation activity;

(b) the person has complied with the requirements of article 34(1) or the regulator considers that there is no reasonable prospect of the requirements being complied with; and

(c) where relevant, any notice given under article 34V (return of allowances: notice to operator, etc.) to the person has been complied with or the regulator considers that there is no reasonable prospect of the notice being complied with.

(2) The regulator must instruct the registry administrator to close the aircraft operator holding account.

(3) The registry administrator must give notice to the person as soon as reasonably practicable after the account is closed.

Closure of trading accounts

29.—(1) Where the account holder of a trading account instructs the registry administrator to close the account, the registry administrator must close the account—

(a) within 14 days after receiving the instruction; or

(b) if there are allowances in the account at the date on which the instruction is received, as soon as reasonably practicable after the allowances are transferred to another account.

(2) Where a trading account has been suspended, the registry administrator may close the account if the registry administrator considers that the circumstances giving rise to the suspension still exist and are unlikely to be resolved within a reasonable period of time.

(3) Where no transfers have been made to or from a trading account for a period of at least 1 year, the registry administrator may give notice to the account holder that the trading

account will be closed; and if the account holder does not object in writing to the closure within 60 days after the date on which the notice is given, the registry administrator may close the account.

(4) The registry administrator must give notice to the account holder as soon as reasonably practicable after the account is closed under sub-paragraph (2) or (3).

(5) A notice following the closure of an account under sub-paragraph (2) must include the reason for the closure unless the registry administrator considers that its inclusion might prejudice the investigation or prosecution of an offence under the law of any part of the United Kingdom or a country or territory outside the United Kingdom or would be contrary to the interests of national security.

Balance in accounts to be closed

30.—(1) This paragraph applies where there are allowances in an account that is to be closed under paragraph 27, 28 or 29(2) or (3).

(2) Subject to sub-paragraph (3), the registry administrator must give notice to the account holder, requiring the account holder to transfer the allowances to another account on or before a date set out in the notice; and if the account holder does not comply with the notice, the registry administrator must transfer the allowances to a general holding account before closing the account.

(3) If the account to be closed has been suspended, the registry administrator must transfer the allowances to a general holding account before closing the account.".

Schedule 6 amended (permits)

38.—(1) Schedule 6 is amended as follows.

Paragraph 4 amended (greenhouse gas emissions permits: content of permit)

(2) In paragraph 4—

(a) after sub-paragraph (1)(h) insert—

"(ha) the free allocation conditions (see sub-paragraph (6));

(hb) where a monitoring methodology plan has been approved in relation to the installation under Article 8 of the Free Allocation Regulation, the monitoring methodology plan;";

(b) in sub-paragraph (2)(b)—

(i) after "verified" insert "as satisfactory";

(ii) after "submit the report" insert "(and the verification report)";

(c) after sub-paragraph (5) insert—

"(6) The free allocation conditions are the following conditions, which must be expressed to apply while the installation is an FA installation—

(a) a condition requiring the operator to monitor the activity level of the installation in accordance with—

(i) the Free Allocation Regulation; and

(ii) the monitoring methodology plan approved under Article 8 of the Free Allocation Regulation (including the written documentation of the procedures referred to in Article 8(3) of that Regulation);

(b) a condition requiring the operator, in accordance with the Activity Level Changes Regulation, to prepare an activity level report that is verified as satisfactory in accordance with the Verification Regulation 2018 and to submit the report (and the verification report) to the regulator on or before 30th June in the 2021 scheme year and on or before 31st March in each subsequent scheme year;

(c) a condition requiring the operator, if the installation has ceased operation, to notify the regulator on or before 31st December in the scheme year in which the cessation occurs or within 1 month of the cessation, whichever is later;

(d) any further conditions that the regulator considers necessary to give proper effect to the Free Allocation Regulation or the Activity Level Changes Regulation.

(7) Where, after the date of issue of, or conversion of a permit into, a greenhouse gas emissions permit, a monitoring methodology plan is approved in relation to an installation under Article 8 of the Free Allocation Regulation, the regulator must vary the permit under paragraph 6 so that it contains the monitoring methodology plan.".

Paragraph 6 amended (variation of permits)

(3) In paragraph 6—

(a) after sub-paragraph (2)(c) insert—

"(d) a failure by the operator to implement—

(i) a recommendation for improvement of the monitoring methodology plan as required by Article 9(2)(e) of the Free Allocation Regulation; or

(ii) a modification of the monitoring methodology plan requested by the regulator under Article 9(5)(d) of that Regulation.";

(b) in sub-paragraph (3) before paragraph (a) insert—

"(za) paragraph 4(7) (adding monitoring methodology plan);".

Paragraph 7 amended (transfer of permits: application)

(4) In paragraph 7(5) for "8(a)" in both places substitute "8(1)(a)".

Paragraph 8 amended (transfer of permits: contents of application)

(5) In paragraph 8 renumber the existing text as sub-paragraph (1) and insert after that sub-paragraph—

"(2) Where the application is for the transfer or partial transfer of a greenhouse gas emissions permit for an installation that is an FA installation, the application must also contain—

(a) either—

(i) the new operator's monitoring methodology plan in accordance with Article 8 of the Free Allocation Regulation; or

(ii) the new operator's specification of the parts of the existing monitoring methodology plan that it is proposed be varied;

(b) in the case of an application for the partial transfer of the permit, the transferring operator's specification of the parts of the existing monitoring methodology plan that it is proposed be varied.

(3) But sub-paragraph (2) does not apply if the application contains a statement by the new operator that the new operator renounces free allocation in respect of the transferred units.".

Paragraph 9 amended (transfer of permits: grant of application)

(6) In paragraph 9—

(a) in sub-paragraph (1)—

(i) in paragraph (a) omit the final "and";

(ii) in paragraph (b) for "paragraph)." substitute "paragraph); and";

(iii) after paragraph (b) insert—

"(c) where the application is for the transfer or partial transfer of a greenhouse gas emissions permit of an installation that is an FA installation, will be capable of complying with the free allocation conditions of the permit (including as varied under this paragraph).";

(b) after sub-paragraph (1) insert—

"(1A) But sub-paragraph (1)(c) does not apply if the application contains a statement by the new operator that the new operator renounces free allocation in respect of the transferred units.";

(c) after sub-paragraph (5) insert—

"(5A) Where a permit is cancelled under sub-paragraph (5)(b), the regulator must give notice to the registry administrator as soon as reasonably practicable.".

Paragraph 11 amended (surrender of permits)

(7) In paragraph 11(6)(b) after "complied with" insert "or that there is no reasonable prospect of their being complied with".

Paragraph 12 amended (revocation of permits)

(8) In paragraph 12—

(a) after sub-paragraph (3)(a)(i)(cc) insert—

"(dd) the Free Allocation Regulation;

(ee) the Activity Level Changes Regulation.";

(b) in sub-paragraph (7)(b) after "complied with" insert "or that there is no reasonable prospect of their being complied with".

Schedule 7 amended (hospitals and small emitters)

39.—(1) Schedule 7 is amended as follows.

Paragraph 5 amended (obtaining hospital or small emitter status for 2026-2030 allocation period)

(2) In paragraph 5(6)(a) after "verified" insert "as satisfactory".

Paragraph 11 amended (hospital or small emitter permits: content of permit)

(3) In paragraph 11(2)(b)—

(a) in sub-paragraph (i) after "verified" insert "as satisfactory";

(b) in the words after sub-paragraph (ii) for "(and any declaration)" substitute "and the verification report (where sub-paragraph (i) applies) or declaration (where sub-paragraph (ii) applies)".

Paragraph 13 amended (hospital and small emitters: modifications to Monitoring and Reporting Regulation 2018)

(4) In paragraph 13—

(a) omit sub-paragraph (2);

(b) in sub-paragraph (6) for "verified in accordance" substitute "verified as satisfactory in accordance".

Paragraph 16 amended (emissions targets for 2021-2025 allocation period)

(5) In paragraph 16(8)—

(a) in paragraph (a) after "verified" insert "as satisfactory";

(b) after paragraph (a) insert—

"(aa) determined under regulation 44 of GGETSR 2012 or article 45 of this Order; or".

Paragraph 17 amended (emissions targets for 2026-2030 allocation period)

(6) In paragraph 17(8)—

(a) in paragraph (a)—

(i) after "verified" insert "as satisfactory";

(ii) omit the final "or";

(b) after paragraph (a) insert—

"(aa) determined under article 45; or".

Schedule 8 amended (ultra-small emitters)

40.—(1) Schedule 8 is amended as follows.

Paragraph 3 amended (obtaining ultra-small emitter status for 2026-2030 allocation period)

(2) In paragraph 3(7)(a) after "verified" insert "as satisfactory".

Paragraph 4 amended (obtaining ultra-small emitter status for 2026-2030 allocation period: modifications to Verification Regulation 2018 for ultra-small emitters in 2021-2025 allocation period)

(3) In paragraph 4—

(a) omit sub-paragraph (3);

(b) for sub-paragraph (5)(a)(i) substitute—

"(i) in point (a) the words from "and meets the requirements" to the end were omitted;";

(c) in sub-paragraph (6)(c) after "points" insert "(c) and";

(d) in sub-paragraph (14)(a)—

(i) in sub-paragraph (i) for "the Verification Regulation 2018" substitute "Commission Implementing Regulation (EU) 2018/2067 (as it had effect in EU law)";

(ii) in sub-paragraph (ii) for "2021-2026" substitute "2021-2025".

Schedule 9 amended (appeals to Scottish Land Court)

41.—(1) Schedule 9 is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1)—

(i) in the words before paragraph (a) after "regulator" insert "or the registry administrator (in either case, the "respondent")";

(ii) in paragraph (b) for "regulator" substitute "respondent";

(b) in sub-paragraph (2)(d) for "regulator" substitute "respondent".

(3) In paragraph 4 for "regulator" in each place substitute "respondent".

Schedule 10 amended (appeals to Planning Appeals Commission (Northern Ireland))

42.—(1) Schedule 10 is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1) after "regulator" insert "or the registry administrator (in either case, the "respondent")";

(b) in sub-paragraph (3) for "regulator" substitute "respondent".

(3) In paragraph 2 for "regulator" substitute "respondent".

(4) In paragraph 3(2) for "regulator" substitute "respondent".

Schedule 11 amended (transitional provisions: installations)

43.—(1) Schedule 11 is amended as follows.

Paragraph 1 amended (permits under GGETSR 2012)

(2) In paragraph 1(7) for "the Verification Regulation 2018" substitute "Commission Implementing Regulation (EU) 2018/2067 (as it had effect in EU law)".

Paragraph 2 amended (applications for permits, etc. under GGETSR 2012)

(3) After paragraph 2(3) insert—

"(4) This sub-paragraph applies where—

(a) a permit for an installation is converted into a greenhouse gas emissions permit under paragraph 1(4);

(b) the monitoring methodology plan approved in respect of the installation under Article 8 of the Free Allocation Regulation is contained in the permit by virtue of paragraph 4(1)(hb) or (7) of Schedule 6; and

(b) a significant modification of the monitoring methodology plan is notified for approval under Article 9 of the Free Allocation Regulation on or before 31st December 2020, but not approved before that date.

(5) Where sub-paragraph (4) applies, the notification of the significant modification must be treated as an application to vary the permit under paragraph 6 of Schedule 6 to make the significant modification.".

PART 3

Amendments to other legislation

Climate Change Agreements (Amendment of Agreements) (EU Exit) Regulations 2018 amended

44.—(1) The Climate Change Agreements (Amendment of Agreements) (EU Exit) Regulations 2018(**a**) are amended as follows.

(2) In regulation 2(1)(d) after "the Greenhouse Gas Emissions Trading Scheme Regulations 2012" insert "or the Greenhouse Gas Emissions Trading Scheme Order 2020".

Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019 amended

45.—(1) The Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019(**b**) are amended as follows.

(2) Omit regulation 62 (revocation of Commission Delegated Regulation (EU) 2019/331).

Free Allocation Regulation amended

46. Schedule 1 (which amends Commission Delegated Regulation (EU) 2019/331 for the purposes of the United Kingdom Emissions Trading Scheme) has effect.

Activity Level Changes Regulation amended

47. Schedule 2 (which amends Commission Implementing Regulation (EU) 2019/1842 for the purposes of the United Kingdom Emissions Trading Scheme) has effect.

Richard Tilbrook
Clerk of the Privy Council

(**a**) S.I. 2018/1205.
(**b**) S.I. 2019/916.

SCHEDULE 1

Article 46

Free Allocation Regulation amended

Free Allocation Regulation amended

1. Commission Delegated Regulation (EU) 2019/331 is amended in accordance with this Schedule.

"Regulator" substituted for "competent authority"

2. For "competent authority" in each place substitute "regulator".

Article 1 amended (scope)

3.—(1) Article 1 is amended as follows.

(2) For the words from "emission allowances under Chapter III" to the end substitute "allowances to installations under the UK ETS".

Article 2 amended (definitions)

4.—(1) Article 2 is amended as follows.

(2) Renumber the existing text as paragraph 1.

(3) In paragraph 1—

(a) for point (1) substitute—

"(1) 'incumbent installation' means an installation in respect of which a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2026-2030 allocation period under Article 4 is made;";

(b) in point (3) (heat benchmark sub-installation) after "EU ETS" in both places insert "or UK ETS";

(c) in point (4) (district heating) after "EU ETS" insert "or UK ETS";

(d) in point (5) (district heating sub-installation) after "EU ETS" insert "or UK ETS";

(e) in point (10) (process emissions sub-installation) for "greenhouse gas emissions listed in Annex I to Directive 2003/87/EC" substitute "emissions of greenhouse gases set out in column 2 of table C in Schedule 2 to the UK ETS Order";

(f) in point (11) (waste gas) for "Article 3(50) of Regulation (EU) No 601/2012" substitute "Article 3(52) of the Monitoring and Reporting Regulation 2018";

(g) for point (14) substitute—

"(14) 'baseline period' means:

(a) in relation to a deemed application for free allocation in the 2021-2025 allocation period or an incumbent installation in respect of which such an application is made, the 5-year period beginning on 1 January 2014;

(b) in relation to an application for free allocation in the 2026-2030 allocation period under Article 4 or an incumbent installation in respect of which such an application is made, the 5-year period beginning on 1 January 2019;";

(h) omit point (15);

(i) after point (18) insert—

"(19) 'deemed application for free allocation in the 2021-2025 allocation period' must be construed in accordance with Article 3a;

(20) 'electricity generator' means an installation:

(a) that, on or after 1 January 2005, produced electricity for sale to third parties; and

(b) at which no regulated activity other than the regulated activity referred to in column 1 of the first entry in table C in Schedule 2 to the UK ETS Order (combustion of fuels) is carried out;

(21) 'emission allowance' means an allowance (as defined in the UK ETS Order);

(22) 'new entrant' means an installation in respect of which an application for free allocation under Article 5 is made;

(23) 'UK ETS Order' means the Greenhouse Gas Emissions Trading Scheme Order 2020. ".

(4) After paragraph 1 insert—

"2. Expressions used in this Regulation that are defined for the purposes of the Climate Change Act 2008 or the UK ETS Order have the meanings given in that Act or Order.

3. A reference in this Regulation to a "non-ETS" entity, installation or process is a reference to an entity, installation or process that is not covered by either the EU ETS or the UK ETS.".

Article 2a inserted

5. After Article 2 insert—

"Article 2a

Eligibility for free allocation

1. An application for free allocation of allowances may not be made under this Regulation in respect of:

(a) an installation used for any of the following:

(i) the capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site;

(ii) the transport of greenhouse gases by pipelines for geological storage in a storage site;

(iii) the geological storage of greenhouse gases in a storage site;

(b) an electricity generator, except in relation to measurable heat:

(i) produced by an electricity generator that produced measurable heat by means of high-efficiency cogeneration (as defined in Article 2(34) of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012(**a**)) in the relevant period, calculated over the relevant period as a whole; or

(ii) exported for the purposes of district heating.

2. For the purposes of paragraph 1(b)(i):

(a) the "relevant period" is:

(i) in the case of a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2026-2030 allocation period under Article 4, the baseline period;

(ii) in the case of an application for free allocation under Article 5, the period from the start of normal operation until the end of the year before the year in which the application is made;

(b) Directive 2012/27/EU has effect as if in Annex 2 in point (a) in the first indent after "heat and electricity" there were inserted "; and for the purposes of this indent, cogeneration production from cogeneration units certified under the standard applying from time to time for the purposes of the Combined Heat and Power Quality Assurance

(**a**) OJ No L 315, 14.11.2012, p. 1.

Programme(**a**) that provides primary energy savings during the period of certification must be treated as providing primary energy savings of at least 10% during that period".".

Article 3 omitted

6. Article 3 is omitted.

Article 3a inserted

7. After Article 2 and the cross-heading to Chapter 2 (application, data reporting and monitoring rules) insert—

"Article 3a

Applications for free allocation under EU ETS to be treated as applications for free allocation in 2021-2025 allocation period by operators of incumbent installations

1. This Article applies where before 1 January 2021, the operator of an installation made an application (an "EU ETS application") under Article 4 for free allocation of emission allowances under the EU ETS in respect of the allocation period in the EU ETS beginning on 1 January 2021.

2. For the purposes of this Regulation:

(a) the EU ETS application must be treated as an application (a "deemed application for free allocation in the 2021-2025 allocation period") by the operator of the installation for free allocation of allowances under the UK ETS in the 2021-2025 allocation period;

(b) the determination of historical activity levels under Article 15, and anything else done in connection with the EU ETS application under this Regulation, before IP completion day must be treated as done in connection with the deemed application for free allocation in the 2021-2025 allocation period.

3. Without limiting paragraph 2, in this Regulation—

(a) a reference to a monitoring methodology plan includes a monitoring methodology plan approved for the purposes of the EU ETS application;

(b) a reference to a baseline data report or a verification report includes a baseline data report or a verification report submitted for the purposes of the EU ETS application.".

Article 4 amended (application for free allocation in 2026-2030 allocation period by operators of incumbent installations)

8.—(1) Article 4 is amended as follows.

(2) In the heading after "allocation" insert "in 2026-2030 allocation period".

(3) For paragraph 1 substitute—

"1. The operator of any of the following installations may apply to the regulator for free allocation in the 2026-2030 allocation period:

(a) an installation for which a permit is issued on or before 30 June 2024;

(b) an installation that is an ultra-small emitter for the 2024 scheme year;

(c) an installation for which an application for a permit has been made but not yet determined.

(**a**) Details of the Combined Heat and Power Quality Assurance Programme are available at https://www.gov.uk/guidance/combined-heat-power-quality-assurance-programme. The current and previous standards can be accessed at https://www.gov.uk/government/publications/chpqa-standard. Copies may be inspected at the Department for Business, Energy and Industrial Strategy,1 Victoria Street, London SW1H 0ET.

1A. An application:

(a) may not be made before 1 April 2024;

(b) must be made on or before 30 June 2024.".

(4) In paragraph 2—

(a) in point (a)—

(i) for "verified as satisfactory in accordance with measures adopted pursuant to Article 15 of Directive 2003/87/EC" substitute "verified in accordance with the Verification Regulation 2018";

(ii) omit "relating to the allocation period to which the application relates";

(b) in point (b)—

(i) at the beginning insert "except where a monitoring methodology plan has already been approved in relation to the installation under Article 8,";

(ii) after "in accordance with" insert "Article 8 and";

(c) for point (c) substitute—

"(c) the verification report on the baseline data report, which (unless the monitoring methodology plan has already been approved by the regulator) must contain the confirmation relating to the plan referred to in Article 27(3)(f) of the Verification Regulation 2018.".

(5) After paragraph 2 insert—

"3. Where an application is made in respect of an installation referred to in paragraph 1(c), the application must be treated as never having been made unless the permit is issued on or before 30 June 2024.

4. An application may be made under this Article and under either of the following at the same time:

(a) paragraph 5 of Schedule 7 to the UK ETS Order (obtaining hospital or small emitter status for 2026-2030 allocation period);

(b) paragraph 3 of Schedule 8 to that Order (obtaining ultra-small emitter status for 2026-2030 allocation period).".

Article 5 substituted

9. For Article 5 substitute—

"Article 5

Application for free allocation by new entrants

1. The operator of an installation at which a regulated activity is carried out and for which a greenhouse gas emissions permit (including a greenhouse gas emissions permit within the meaning of GGETSR 2012) issued for the first time is in force may apply to the regulator:

(a) for free allocation in the 2021-2025 allocation period, if the permit is issued in the period beginning on 1 July 2019 and ending on 30 June 2024;

(b) for free allocation in the 2026-2030 allocation period, if the permit is issued in the period beginning on 1 July 2024 and ending on 30 June 2029.

2. An application may be made at any time after the end of the year in which the start of normal operation occurs.

3. But where an installation has not been operating for a full calendar year after the start of normal operation, an application may not be made unless:

(a) in the case of an application under paragraph 1(a), the start of normal operation is on or after 1 January 2021;

(b) in the case of an application under paragraph 1(b), the start of normal operation is on or after 1 January 2026.

4. For the purposes of the application, the operator must divide the installation into sub-installations in accordance with Article 10.

5. The application must set out the start of normal operation and be accompanied by:

(a) a new entrant data report, verified in accordance with the Verification Regulation 2018, containing each parameter set out in sections 1 and 2 of Annex 4 for each sub-installation separately from the start of normal operation until the end of the year before the year in which the application is made;

(b) a monitoring methodology plan in accordance with Article 8 and Annex 6;

(c) the verification report on the new entrant data report, which must contain the confirmation relating to the monitoring methodology plan referred to in Article 27(3)(f) of the Verification Regulation 2018.

6. The regulator:

(a) must assess the new entrant data report and the verification report to ensure conformity with the requirements of this Regulation;

(b) where appropriate, may request corrections by the operator of any non-conformity or error that impacts on the determination of activity levels;

(c) must not determine historical activity levels under Article 17, activity levels for the purpose of Article 18(2) or calculate the preliminary or final annual number of allowances under Article 18 or 18a unless:

(i) the regulator considers that the date set out in the application as the start of normal operation, or such other date proposed by the operator, is accurate;

(ii) the data relating to the installation has been verified as satisfactory or, where it has not been verified as satisfactory, the regulator considers that any data gaps referred to in the verifier's opinion are due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised; and

(iii) any corrections requested under point (b) have been made.".

Article 6 amended (general obligation to monitor)

10.—(1) Article 6 is amended as follows.

(2) Omit "pursuant to Article 10a of Directive 2003/87/EC".

(3) For "by 31 December 2020" substitute "under Article 8".

Article 7 amended (monitoring principles)

11.—(1) Article 7 is amended as follows.

(2) In paragraph 3 after "application for free allocation" insert "(including a deemed application for free allocation in the 2021-2025 allocation period)".

Article 8 amended (content and submission of the monitoring methodology plan)

12.—(1) Article 8 is amended as follows.

(2) In paragraph 1 for "Articles 4(2)b and 5(2) shall draw up" substitute "Article 4 or 5 must, except where a monitoring methodology plan has already been approved in relation to the installation under this Article, draw up".

(3) In paragraph 3 omit "and for the purposes of Article 12(3) of Regulation (EU) No 601/2012,".

(4) Omit paragraphs 4 and 5.

(5) After paragraph 3 insert—

"6. Where the operator has submitted a monitoring methodology plan to the regulator, the regulator must, by notice to the operator:

(a) if the plan is in accordance with this Regulation, approve it; or

(b) reject it.

7. A notice under paragraph 6 must be given:

(a) where the monitoring methodology plan is submitted with an application for free allocation in the 2026-2030 allocation period under Article 4, on or before 31 December 2025;

(b) where the monitoring methodology plan is submitted with an application for free allocation under Article 5, as soon as reasonably practicable after the application is made."

Article 9 amended (changes to the monitoring methodology plan)

13.—(1) Article 9 is amended as follows.

(2) For paragraph 3 substitute—

"3. The operator must notify the regulator of:

(a) any significant modification (within the meaning of paragraph 5) of the monitoring methodology plan at least 14 days before making the modification or, where this is not possible, as soon as reasonably practicable; and

(b) any other modification on or before 31 December in the year in which the modification is made.".

Article 10 amended (division into sub-installations)

14.—(1) Article 10 is amended as follows.

(2) In paragraph 1—

(a) after "data reporting and of monitoring" insert "under this Regulation and the Activity Level Changes Regulation";

(b) omit "eligible for the free allocation of emission allowances under Article 10a of Directive 2003/87/EC".

(3) In paragraph 3—

(a) in the first subparagraph for "deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC" in both places substitute "set out in the Annex to Commission Delegated Decision (EU) 2019/708";

(b) in the second subparagraph—

(i) for "deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC" substitute "set out in the Annex to Commission Delegated Decision (EU) 2019/708";

(ii) for "not deemed to be exposed to a significant risk of carbon leakage" substitute "other than those set out in the Annex to Commission Delegated Decision (EU) 2019/708".

(4) In paragraph 4 in the first subparagraph—

(a) for "installation included in the EU ETS" substitute "installation";

(b) after "not included in the EU ETS" insert "or the UK ETS";

(c) for "deemed to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC" in both places substitute "set out in the Annex to Commission Delegated Decision (EU) 2019/708".

(5) In paragraph 5—

(a) in point (b)—

(i) after "Regulation (EU) No 601/2012" insert "or the Monitoring and Reporting Regulation 2018";

(ii) after "EU ETS" insert "or UK ETS";

(b) in point (d)—

(i) after "EU ETS" insert "or UK ETS";

(ii) for "non-EU ETS" substitute "non-ETS".

Article 12 amended (data gaps)

15.—(1) Article 12 is amended as follows.

(2) In paragraph 3 for "Article 5(2)" substitute "Article 5(5)(a)".

Articles 13 and 14 omitted

16. Articles 13 and 14 are omitted.

Article 15 amended (historical activity level for incumbent installations)

17.—(1) Article 15 is amended as follows.

(2) In paragraph 1 for "Member States" substitute "The regulator".

(3) In paragraph 2—

(a) for "Member States" in the first place where that expression occurs substitute "the regulator";

(b) for the words "Member States may" to the end substitute—

"But the regulator must not determine historical activity levels for an installation unless:

(a) the data relating to an installation has been verified as satisfactory or, where it has not been verified as satisfactory, the regulator considers that any data gaps referred to in the verifier's opinion are due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised; and

(b) any corrections requested under paragraph 1 have been made.".

(4) In paragraph 4 after "EU ETS" in each place insert "or UK ETS".

(5) In paragraph 7 in the third subparagraph—

(a) for "calendar year" in both places substitute "full calendar year";

(b) after "submitted" insert—

"(see Article 3a of the Activity Level Changes Regulation); and in Articles 16 to 16b:

(a) "sub-installation" does not include such a sub-installation;

(b) a reference to an installation must be treated as a reference to the installation excluding such a sub-installation or, where the installation consists entirely of such sub-installations, as excluding the installation.".

(6) In paragraph 8 for "Member States" substitute "the regulator".

Article 15a inserted

18. After Article 15 insert—

"Article 15a

Assessment of applications for free allocation by operators of incumbent installations

1. This Article applies where:

(a) a deemed application for free allocation in the 2021-2025 allocation period has been made by the operator of an incumbent installation; or

(b) an application under Article 4 for free allocation in the 2026-2030 allocation period has been made by the operator of an incumbent installation.

2. The regulator must send the information set out in paragraph 3 to the UK ETS authority:

(a) where paragraph 1(a) applies, as soon as reasonably practicable after IP completion day;

(b) where paragraph 1(b) applies, on or before 30 September 2024.

3. The information is:

(a) details of the installation, including details of any permit in force;

(b) the information contained in the baseline data report submitted with the application;

(c) the historical activity levels (if any) of the installation and each sub-installation determined under Article 15 or, if the regulator has not determined historical activity levels by virtue of Article 15(2), the regulator's explanation.

4. The UK ETS authority must as soon as reasonably practicable:

(a) assess the application for free allocation and, where relevant, the regulator's explanation under paragraph 3(c); and

(b) inform the regulator whether or not the application is valid, making any corrections to the historical activity levels that the UK ETS authority considers appropriate.

5. Where the application is not valid, the regulator must give notice to the operator of the installation of that fact and the reasons for it.

6. For the purposes of this Article, an application for free allocation is valid if:

(a) the application is one that may be made under this Regulation (see Article 2a); and

(b) the application is otherwise in accordance with this Regulation.".

Article 16 amended (preliminary allocation at installation level for incumbent installations)

19.—(1) Article 16 is amended as follows.

(2) In the heading for "Allocation" substitute "Preliminary allocation".

(3) For paragraph 1 substitute—

"1. Where the UK ETS authority informs the regulator under Article 15a(4)(b) that:

(a) a deemed application for free allocation in the 2021-2025 allocation period is valid, the regulator must calculate the preliminary annual number of allowances to be allocated in respect of the installation for each scheme year in the 2021-2025 allocation period;

(b) an application for free allocation in the 2026-2030 allocation period under Article 4 is valid, the regulator must calculate the preliminary annual number of allowances to be allocated in respect of the installation for each scheme year in the 2026-2030 allocation period.".

(4) In paragraph 2—

(a) in the first subparagraph—

(i) in the words before point (a) for "Member States" substitute "the regulator";

(ii) in point (d) for "five-year" substitute "allocation";

(b) omit the second subparagraph.

(5) In paragraph 3—

(a) for "For the purpose of Article 10b(4) of Directive 2003/87/EC, the" substitute "The";

(b) for "deemed not to be exposed to a significant risk of carbon leakage as determined in accordance with Article 10b(5) of Directive 2003/87/EC" substitute "other than those set out in the Annex to Commission Delegated Decision (EU) 2019/708".

(6) In paragraph 4 for "as determined in accordance with Article 10b(5) of Directive 2003/87/EC" substitute "set out in the Annex to Commission Delegated Decision (EU) 2019/708".

(7) In paragraph 5 for "From 2026" substitute "In the case of an application for free allocation in the 2026-2030 allocation period under Article 4"

(8) In paragraph 7 for "Member States and operators" substitute "the regulator".

(9) Omit paragraph 8.

(10) In paragraph 9—

(a) for "8" substitute "7";

(b) after "integer" insert ", taking 0.5 as nearest to the previous integer".

(11) After paragraph 9 insert—

"10. The regulator must send the preliminary annual number of allowances calculated in respect of each installation and each sub-installation of each installation to the UK ETS authority as soon as reasonably practicable after the benchmarks for the relevant allocation period referred to in paragraphs 2 and 5 have been adopted.

11. The regulator must make any corrections to the calculation required by the UK ETS authority.

12. In this Article and in Articles 19 to 22, "relevant allocation period" means, in relation to a benchmark adopted in accordance with Article 10a(2) of Directive 2003/87/EC:

(a) in the case of a deemed application for free allocation in the 2021-2025 allocation period or an application for free allocation in the 2021-2025 allocation period under Article 5(1)(a), the allocation period in the EU ETS beginning on 1 January 2021;

(b) in the case of an application for free allocation in the 2026-2030 allocation period under Article 4 or an application for free allocation in the 2026-2030 allocation period under Article 5(1)(b), the allocation period in the EU ETS beginning on 1 January 2026.".

Articles 16a and 16b inserted

20. After Article 16 insert—

"Article 16a

Cross-sectoral correction factors

1. This Article applies where, for a scheme year (the "relevant scheme year") in an allocation period:

(a) the sum ("PFA") of the preliminary annual number of allowances to be allocated in respect of all installations in the relevant scheme year calculated under Article 16 (including any corrections required under Article 16(11)) is greater than the industry cap ("IC") for the relevant scheme year; and

(b) the amount by which PFA exceeds IC is greater than the previous unallocated amount.

2. The previous unallocated amount is TIC + FS - TFA, where:

(a) TIC is the sum of the industry cap for each scheme year in the trading period preceding the relevant scheme year;

(b) FS is 40,984,970 allowances (the flexible share);

(c) TFA is the sum of the final allocation for each scheme year in the trading period preceding the relevant scheme year.

3. The final allocation for a scheme year is the sum of—

(a) the total preliminary annual number of allowances calculated under Article 16 to be allocated in the scheme year in respect of all installations other than electricity generators multiplied by the cross-sectoral correction factor (if any) for the scheme year determined under this Article; and

(b) the total preliminary annual number of allowances calculated under Article 16 to be allocated in the scheme year in respect of all electricity generators multiplied by the cross-sectoral correction factor (if any) for the scheme year determined under this Article or, if there is no cross-sectoral correction factor for the scheme year, the reduction factor for the scheme year.

4. The UK ETS authority must determine the cross-sectoral correction factor for the relevant scheme year, that is to say the factor that reduces PFA by such amount that TIC + IC + FS = TFA + the final allocation for the relevant scheme year.

5. The UK ETS authority must, as soon as reasonably practicable, publish for each allocation period:

(a) the cross-sectoral correction factors for scheme years in the allocation period determined under paragraph 4; or

(b) if there is no cross-sectoral correction factor for any scheme year in the allocation period, a statement to that effect.

6. For the purposes of this Article:

(a) the industry cap for a scheme year set out in column 1 of table A is the number of allowances set out in the corresponding entry in column 2;

(b) the reduction factor for a scheme year set out in column 1 of table A is the value set out in the corresponding entry in column 3.

Table A

Column 1 *Scheme year*	*Column 2* *Industry cap*	*Column 3* *Reduction factor*
2021	57,856,572	0.8562
2022	56,273,432	0.8342
2023	54,690,292	0.8122
2024	53,107,152	0.7902
2025	51,524,012	0.7682
2026	49,940,872	0.7462
2027	48,357,732	0.7242
2028	46,774,592	0.7022
2029	45,191,452	0.6802
2030	43,608,312	0.6582

7. In this Article and Article 16b, "installation" does not include an installation if:

(a) a deemed application for free allocation in the 2021-2025 allocation period was made in respect of the installation and the installation is included in the hospital and small emitter list for 2021-2025 or the ultra-small emitter list for 2021-2025; or

(b) an application for free allocation in the 2026-2030 allocation period is made in respect of the installation under Article 4 and the installation is included in the hospital and small emitter list for 2026-2030 or the ultra-small emitter list for 2026-2030.

8. Accordingly, the matters referred to in paragraph 5 must not, in relation to the 2026-2030 allocation period, be published before the publication of the hospital and small emitter list for 2026-2030 and the ultra-small emitter list for 2026-2030 under the UK ETS Order (see paragraph 5(5) of Schedule 7, and paragraph 3(6) of Schedule 8, to that Order).

Article 16b

Final allocation at installation level for incumbent installations

1. Where the preliminary annual number of allowances to be allocated in respect of an installation has been calculated under Article 16, the regulator must, as soon as reasonably practicable after the publication of the matters referred to in Article 16a(5):

(a) calculate the final annual number of allowances to be allocated in respect of each installation and each sub-installation of each installation:

(i) in the case of a deemed application for free allocation in the 2021-2025 allocation period, for each scheme year in the 2021-2025 allocation period;

(ii) in the case of an application for free allocation in the 2026-2030 allocation period under Article 4, for each scheme year in the 2026-2030 allocation period; and

(b) send the calculation to the UK ETS authority.

2. The final annual number of allowances to be allocated for a scheme year in respect of a sub-installation is the preliminary annual number of allowances calculated under Article 16 (including any corrections required under Article 16(11)) multiplied by:

(a) in the case of sub-installation of an installation other than an electricity generator, the cross-sectoral correction factor for the scheme year (if any) determined under Article 16a;

(b) in the case of a sub-installation of an electricity generator, the cross-sectoral correction factor for the scheme year determined under Article 16a or, if there is no cross-sectoral correction factor for the scheme year, the reduction factor for the scheme year (see Article 16a(6)).

3. The final annual number of allowances to be allocated in respect of an installation for a scheme year is the sum of the final annual number of allowances to be allocated in respect of all sub-installations of the installation.

4. The UK ETS authority must:

(a) approve the final annual number allowances, making any corrections to the calculation that the UK ETS authority considers appropriate;

(b) inform the regulator accordingly.

5. For the purpose of the calculation referred to in paragraphs 2 and 3, the number of allowances for sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.".

Article 17 amended (historical activity level for new entrants)

21.—(1) Article 17 is amended as follows.

(2) Renumber the existing text as paragraph 1.

(3) In paragraph 1—

(a) in the words before point (a) for "Member States" substitute "Where an application for free allocation is made under Article 5, the regulator";

(b) in point (a) omit "or pursuant to Article 24 of Directive 2003/87/EC";

(c) in point (b) after "EU ETS" in both places insert "or UK ETS";

(d) in point (c) after "EU ETS" insert "or UK ETS";

(4) After paragraph 1 insert—

"2. But if a sub-installation has not been operating for a full calendar year after the start of normal operation, the historical activity level must be determined when the activity level report after the first full calendar year of operation is submitted (see Article 3a of the Activity Level Changes Regulation).".

Article 18 amended (preliminary allocation to new entrants)

22.—(1) Article 18 is amended as follows.

(2) In the heading for "Allocation" substitute "Preliminary allocation".

(3) Before paragraph 1 insert—

"A1. The regulator must calculate the preliminary annual number of allowances to be allocated free of charge in respect of a new entrant for scheme years in the relevant allocation period in accordance with this Article.

A2. Where the start of normal operation of a new entrant is before the date on which the permit (including a permit within the meaning of GGETSR 2012) for the installation comes into force, for the purposes of this Article and Article 18a:

(a) the start of normal operation must be treated as the date on which the permit comes into force; and

(b) the activity level of the year in which the start of normal operation occurs must be treated as the activity level of that year excluding any days before the date on which the permit comes into force.".

(4) In paragraph 1—

(a) in the first subparagraph—

(i) in the words before point (a) for the words "For the purposes of the free allocation" to "each sub-installation separately," substitute "Where the historical activity level of a sub-installation of the new entrant has been determined under Article 17, the preliminary annual number of allowances to be allocated free of charge in respect of the sub-installation for the first scheme year in the relevant allocation period after the year in which the start of normal operation occurs and for each subsequent scheme year in the relevant allocation period is";

(ii) in point (a) after "relevant historical activity level" insert "; and in this point "benchmark for the relevant period" means the benchmark for the relevant allocation period (as defined in Article 16(12)) adopted in accordance with Article 10a(2) of Directive 2003/87/EC";

(b) in the second subparagraph for "to new entrants" substitute "in respect of new entrants under this paragraph and paragraph 2".

(5) In paragraph 2—

(a) for "The preliminary" substitute "Where the start of normal operation of a sub-installation of a new entrant occurs in a scheme year in the relevant allocation period, the preliminary";

(b) for "calendar year where the start of normal operation occurs" substitute "scheme year".

(6) After paragraph 2 insert—

"2A. Paragraph 2 applies whether or not the historical activity level of the sub-installation has been determined under Article 17.".

(7) Omit paragraphs 4 and 5.

(8) In paragraph 6—

(a) for "1 to 5" substitute "1 to 3";

(b) after "integer" insert ", taking 0.5 as nearest to the previous integer".

(9) After paragraph 6 insert—

"7. In this Article (except as provided in paragraph 1(a)) and Article 18b, "relevant allocation period" means:

(a) in relation to an application for free allocation made under Article 5(1)(a), the 2021-2025 allocation period;

(b) in relation to an application for free allocation made under Article 5(1)(b), the 2026-2030 allocation period.".

Article 18a inserted

23. After Article 18 insert—

"Article 18a

Assessment of applications and final allocation at installation level for new entrants

1. Where an application for free allocation is made by a new entrant under Article 5, the regulator must send the information set out in paragraph 2 to the UK ETS authority as soon as reasonably practicable.

2. The information is:

(a) details of the installation, including details of the greenhouse gas emissions permit in force;

(b) the information contained in the new entrant data report submitted with the application under Article 5;

(c) the historical activity levels (if any) determined under Article 17;

(d) the preliminary annual number of allowances to be allocated in respect of the installation and of each sub-installation separately, as calculated under Article 18;

(e) where the regulator has not, by virtue of Article 5(6)(c), determined historical activity levels or the preliminary annual number of allowances, the regulator's explanation;

(f) except where point (e) applies, the final annual number of allowances to be allocated in respect of each sub-installation of the installation:

(i) for the scheme year in the relevant allocation period in which the start of normal operation of the sub-installation occurs; and

(ii) where the historical activity level of the sub-installation has been determined under Article 17, for each subsequent scheme year in the relevant allocation period;

(g) except where point (e) applies, the final annual number of allowances to be allocated in respect of the installation for each scheme year in the relevant allocation period;

(h) whether or not a monitoring methodology plan has been approved in relation to the installation under Article 8.

3. The final annual number of allowances to be allocated in respect of a sub-installation for a scheme year is the preliminary annual number of allowances calculated under Article 18 multiplied by the reduction factor for the scheme year.

4. The final annual number of allowances to be allocated in respect of an installation for a scheme year is the sum of the final annual number of allowances to be allocated in respect of all sub-installations of the installation for the scheme year.

5. The UK ETS authority must as soon as reasonably practicable:

(a) assess the application for free allocation and, where relevant, the regulator's explanation under paragraph 2(e); and

(b) inform the regulator whether or not the application is valid.

6. Where the application is valid, the UK ETS authority must also:

(a) approve the final annual number of allowances, making any corrections to the historical activity levels, preliminary annual number of allowances and final annual number of allowances that the UK ETS authority considers appropriate; and

(b) inform the regulator of the matters referred to in point (a).

7. But where a monitoring methodology plan has not been approved in relation to the installation at the date on which the information set out in paragraph 2 is sent to the UK ETS authority, paragraph 6 applies only after the regulator informs the UK ETS authority that the monitoring methodology plan submitted to the regulator for approval has been approved and does not apply if the regulator informs the UK ETS authority that the monitoring methodology plan has been rejected.

8. The regulator must give notice to the operator of the installation of the following:

(a) whether or not the application is valid;

(b) if the application is not valid, the reasons why it is not valid.

9. Where the application is valid, the regulator must also give notice to the operator:

(a) of the final annual number of allowances approved under paragraph 6; or

(b) that a final annual number of allowances has not been approved because the monitoring methodology plan submitted to the regulator for approval has been rejected.

10. For the purpose of the calculations referred to in paragraphs 3 and 4, the number of allowances for sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.

11. For the purposes of this Article, the reduction factor for a scheme year set out in column 1 of table B is the value set out in the corresponding entry in column 2.

Table B

Column 1 *Scheme year*	*Column 2* *Reduction factor*
2021, 2026	1
2022, 2027	0.978
2023, 2028	0.956
2024, 2029	0.934
2025, 2030	0.912

12. For the purposes of this Article, an application for free allocation is valid if:

(a) the application is one which may be made under this Regulation (see Article 2a); and

(b) the application is otherwise in accordance with this Regulation.".

Article 19 amended (allocation in respect of steam cracking)

24.—(1) Article 19 is amended as follows.

(2) For "Article 17(a)" in both places substitute "Article 17(1)(a)".

Article 20 amended (allocation in respect of vinyl chloride monomer)

25.—(1) Article 20 is amended as follows.

(2) For "Article 17(a)" in both places substitute "Article 17(1)(a)".

Article 21 amended (heat flows between installations)

26.—(1) Article 21 is amended as follows.

(2) After "EU ETS" in both places insert "or UK ETS".

Article 22 amended (exchangeability of fuel and electricity)

27.—(1) Article 22 is amended as follows.

(2) For "Article 17(a)" in each place substitute "Article 17(1)(a)".

(3) In paragraph 2 after "EU ETS" insert "or UK ETS".

Article 23 omitted

28. Article 23 is omitted.

Article 24 substituted

29. For Article 24 substitute—

"Article 24

Renunciation of free allocation of allowances

1. Where an installation is an FA installation for the 2021-2025 allocation period, the operator of the installation may by giving notice (a "renunciation notice") to the regulator renounce free allocation in respect of the remaining scheme years in the 2021-2025 allocation period beginning with the scheme year after the year in which the notice is given.

2. Where an installation is an FA installation for the 2026-2030 allocation period, the operator of the installation may by giving notice (a "renunciation notice") to the regulator renounce free allocation in respect of the remaining scheme years in the 2026-2030 allocation period beginning with the scheme year after the year in which the notice is given.

3. The renunciation notice must set out:

(a) whether the renunciation is made in respect of:

(i) the installation as a whole; or

(ii) one or more sub-installations of the installation (but not all of them); and

(b) where point (a)(ii) applies, the sub-installation or sub-installations in respect of which the renunciation is made.

4. Where a renunciation notice is given, the regulator must:

(a) recalculate the final annual number of allowances to be allocated in respect of the installation for each of the remaining scheme years of the allocation period, to take account of the renunciation notice;

(b) send the calculation to the UK ETS authority.

5. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of the installation, making any corrections that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

6. The regulator must inform the operator of the final annual number of allowances approved.

7. Where an application under paragraph 7 of Schedule 6 to the UK ETS Order for the transfer of a greenhouse gas emissions permit containing a statement by the new operator (as defined in paragraph 7 of that Schedule) that the new operator renounces free allocation

in respect of the transferred units (as defined in that paragraph) is granted under paragraph 9 of that Schedule:

(a) for the purposes of this Article, the new operator must be treated as giving a renunciation notice in respect of the transferred units; and

(b) in the case of a transfer other than a partial transfer, for the purposes of article 4A(3)(b) and (5)(b) of the UK ETS Order, the renunciation notice must be treated as having been given by the new operator in respect of the installation as a whole.".

Article 25 substituted

30. For Article 25 substitute—

"Article 25

Mergers and splits

1. This Article applies where an application for the transfer of a greenhouse gas emissions permit of an installation that is an FA installation at the transfer date is granted under paragraph 9 of Schedule 6 to the UK ETS Order.

2. But this Article does not apply if the application contains a statement by the new operator (as defined in paragraph 7 of that Schedule) that the new operator renounces free allocation in respect of the transferred units (as defined in that paragraph).

3. The operators of installations ("new installations") resulting from a merger or split must submit the following to the regulator:

(a) the relevant report or reports (see paragraphs 4 and 5);

(b) a report on the activity level of each sub-installation of each new installation in the calendar year preceding the transfer date containing the information referred to in Article 3(2) of the Activity Level Changes Regulation, as if the merger or split had taken place at the beginning of that year;

(c) a verification report on the reports referred to in points (a) and (b) in accordance with the Verification Regulation 2018.

4. In the case of a merger, the relevant report is:

(a) if at least one of the installations before the merger was an incumbent installation whose start of normal operation occurred before the end of the baseline period, a report verified in accordance with the Verification Regulation 2018 containing the data referred to in Article 4(2)(a) covering the baseline period for the new installation and its sub-installations, as if the merger had taken place at the beginning of the baseline period;

(b) in any other case, a report verified in accordance with the Verification Regulation 2018 on the activity level of the first calendar year after the start of normal operation of the following installations before the merger and their sub-installations:

(i) the installation with the earliest start of normal operation; and

(ii) any other installation whose start of normal operation occurred in the same year as the installation with the earliest start of normal operation.

5. In the case of a split, the relevant reports are:

(a) if the installation before the split was an incumbent installation whose start of normal operation occurred before the end of the baseline period, a report verified in accordance with the Verification Regulation 2018 containing the data referred to in Article 4(2)(a) covering the baseline period for each new installation and its sub-installations, as if the split had taken place at the beginning of the baseline period;

(b) in any other case, a report verified in accordance with the Verification Regulation 2018 on the activity level of the installation in the first calendar year after the start of normal

operation for each new installation and its sub-installations, as if the split had taken place at the beginning of that year.

6. After assessing the reports referred to in paragraph 3, the regulator must:

(a) determine the historical activity level of each sub-installation of each new installation:

(i) where paragraph 4(a) or 5(a) applies, in accordance with Article 15;

(ii) where paragraph 4(b) or 5(b) applies in accordance with Article 17;

(b) based on the historical activity levels, calculate the preliminary and final annual number of allowances to be allocated in respect of each new installation and of each sub-installation of each new installation for each scheme year in the relevant allocation period beginning with the scheme year after the year in which the transfer date occurs:

(i) where paragraph 4(a) or 5(a) applies, in accordance with Articles 16 and 16b;

(ii) where paragraph 4(b) or 5(b) applies, in accordance with Article 18 and 18a;

(c) send the information contained in the relevant report or reports referred to in paragraph 3(a), the determination referred to in point (a) and the calculation referred to in point (b) to the UK ETS authority.

7. For the purposes of paragraph 6:

(a) where a sub-installation of an installation before a split is split into 2 or more sub-installations, the historical activity level and allocation in respect of the sub-installation of the new installation must be based on the historical activity level of the respective stationary technical units of the installation before the split;

(b) the final annual number of allowances to be allocated in respect of the new installation or installations for a scheme year must correspond to the final annual number of allowances to be allocated in respect of the installation or installations before the merger or split for the scheme year.

8. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of each new installation for each scheme year in the relevant allocation period beginning with the scheme year after the year in which the transfer date occurs, making any corrections that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

9. The regulator must give notice to the operator of each new installation:

(a) of the final annual number of allowances approved; and

(b) where the final annual number of allowances to be allocated in respect of a new installation for each scheme year in the relevant allocation period after the scheme year in which the transfer date occurs is zero, that the installation is not an FA installation for the relevant allocation period.

10. In this Article:

(a) "relevant allocation period" means:

(i) where any installation before the split or merger is an FA installation for the 2021-2025 allocation period, the 2021-2025 allocation period;

(ii) where any installation before the split or merger is an FA installation for the 2026-2030 allocation period, the 2026-2030 allocation period;

(b) "transfer date", in relation to the transfer referred to in paragraph 1, has the meaning given in paragraph 9 of Schedule 6 to the UK ETS Order.".

Articles 26 substituted

31. For Article 26 substitute—

"Article 26

Cessation of operations of an installation

1. This Article applies where:

(a) an installation that is an FA installation has ceased operation; or

(b) the greenhouse gas emissions permit of such an installation is surrendered under paragraph 11(2) of Schedule 6 to the UK ETS Order or revoked under paragraph 12(3) of that Schedule.

2. No allowances may be allocated in respect of the installation for the scheme year after the year in which the installation ceased operation or, where paragraph 1(b) applies, the surrender or revocation of the permit takes effect and for all subsequent scheme years.

3. The regulator must:

(a) recalculate the final annual number of allowances to be allocated in respect of the installation for those scheme years as zero; and

(b) send the calculation to the UK ETS authority.

4. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of the installation; and

(b) inform the regulator accordingly.

5. The regulator must give notice to the operator of the installation of the UK ETS authority's approval.".

Final text omitted

32. Omit "This Regulation shall be binding in its entirety and directly applicable in all Member States." (which follows Article 28).

Annex 3 amended (historical activity level for specific benchmarks referred to in Articles 15(8) and 17(1)(f))

33.—(1) Annex 3 is amended as follows.

(2) In the heading for "17(f)" substitute "17(1)(f)".

Annex 4 amended (parameters for baseline data collection)

34.—(1) Annex 4 is amended as follows.

(2) In the first paragraph for "relevant baseline period" substitute "baseline period beginning on 1 January 2019".

(3) In section 1—

(a) in section 1.1—

(i) in point (b) for "Union Registry" substitute "registry";

(ii) omit point (c);

(iii) in point (d) omit "GHG";

(b) in section 1.3—

(i) in point (a) for "activities pursuant to Annex I to Directive 2003/87/EC" substitute "regulated activities";

(ii) for point (c) substitute—

"(c) Whether the installation meets condition A, B or C referred to in paragraph 6 of Schedule 7 to the UK ETS Order or the relevant condition referred to in paragraph 3 of Schedule 8 to that Order.";

(c) in section 1.4—

(i) in point (a) omit "pursuant to Article 3(u) of Directive 2003/87/EC";

(ii) for point (b) substitute—

"(b) Whether the installation is used for any of the following:

(i) the capture of greenhouse gases from other installations for the purpose of transport and geological storage in a storage site;

(ii) the transport of greenhouse gases by pipelines for geological storage in a storage site;

(iii) the geological storage of greenhouse gases in a storage site;";

(d) in section 1.6—

(i) in the heading after "EU ETS" insert "or UK ETS";

(ii) in point (c)—

(aa) after "EU ETS" insert "or UK ETS";

(bb) for "Registry" substitute "Union Registry or registry".

(4) In section 2—

(a) in section 2.1—

(i) in the first subparagraph—

(aa) in point (b) for "GHG" substitute "greenhouse gas";

(bb) in point (c) for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018";

(ii) in the second subparagraph for "Member States may choose to allow operators to report" substitute "The report may include".

(b) in section 2.3—

(i) in point (c) after "EU ETS" insert "or UK ETS";

(ii) in point (d) after "EU ETS" insert "or UK ETS";

(iii) in point (i) after "EU ETS" insert "or UK ETS";

(iv) in point (j) after "EU ETS" insert "or UK ETS";

(v) in point (m) after "EU ETS" insert "or UK ETS";

(vi) in point (n) after "EU ETS" insert "or UK ETS";

(vii) in point (p)—

(aa) omit "carbon leakage and non-carbon leakage";

(bb) after "district heating sub-installations" insert "that serve and do not serve sectors or subsectors set out in the Annex to Commission Delegated Decision (EU) 2019/708";

(c) in section 2.6—

(i) in point (a) for "non-EU ETS" substitute "non-ETS";

(ii) in point (b) for "delegated acts adopted pursuant to Article 10b(5) of Directive 2003/87/EC" substitute "Commission Delegated Decision (EU) 2019/708";

(iii) in point (c)—

(aa) for "the carbon leakage heat benchmark sub-installation" substitute "a heat benchmark sub-installation that serves a sector or subsector set out in the Annex to Commission Delegated Decision (EU) 2019/708";

(bb) after "EU ETS" insert "or UK ETS";

(d) in section 2.7 in point (b) for "delegated acts adopted pursuant to Article 10b(5) of Directive 2003/87/EC" substitute "Commission Delegated Decision (EU) 2019/708".

Annex 5 amended (factors applicable for reducing free allocation)

35.—(1) Annex 5 is amended as follows.

(2) In the heading omit "pursuant to Article 10b(4) of Directive 2003/87/EC".

Annex 6 amended (minimum content of the monitoring methodology plan)

36.—(1) Annex 6 is amended as follows.

(2) In section 1—

(a) in point (a) for "Union Registry" substitute "registry";

(b) in point (e)—

(i) after "EU ETS" insert "or "UK ETS";

(ii) after "Union Registry" insert "or the registry".

(3) In section 4 in the first subparagraph in point (a) for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018".

Annex 7 amended (data monitoring methods)

37.—(1) Annex 7 is amended as follows.

(2) In section 1—

(a) after "pursuant to Regulation (EU) No 601/2012" insert "or the Monitoring and Reporting Regulation 2018";

(b) for "in accordance with Regulation (EU) No 601/2012" substitute "in accordance with either Regulation".

(3) In section 2—

(a) in the definition of "data set" in point (b) for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018";

(b) in the final subparagraph for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018".

(4) In section 3.1 for "Article 6" substitute "Article 8".

(5) In section 4—

(a) in section 4.2—

(i) in the second subparagraph for "EUR 20" substitute "£20";

(ii) in the fourth subparagraph—

(aa) for "EUR 2 000" substitute "£2,000";

(bb) for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018";

(cc) for "EUR 500" substitute "£500".

(b) in section 4.4 in the first subparagraph—

(i) in point (a) after "Regulation (EU) No 601/2012" insert "or the Monitoring and Reporting Regulation 2018";

(ii) in point (b) for "subject to national legal metrological control or measuring instruments compliant with the requirements of Directive 2014/31/EU of the European Parliament and of the Council or Directive 2014/32/EU of the European Parliament and of the Council" substitute "that comply with the Non-automatic

Weighing Instruments Regulations 2016(**a**) or the Measuring Instruments Regulations 2016(**b**)";

(c) in section 4.5 in the first subparagraph in point (a) for "subject to national legal metrological control or measuring instruments compliant with the requirements of the Directive 2014/31/EU or Directive 2014/32/EU" substitute "that comply with the Non-automatic Weighing Instruments Regulations 2016 or the Measuring Instruments Regulations 2016";

(d) in section 4.6 in the first subparagraph—

(i) in point (a) after "Regulation (EU) No 601/2012" insert "or the Monitoring and Reporting Regulation 2018";

(ii) in point (d) in the first indent for "Member State" substitute "United Kingdom";

(iii) in point (e) in the first indent for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2018".

(6) In section 6.1 for "Regulation (EU) No 601/2012" in both places substitute "the Monitoring and Reporting Regulation 2018".

(7) In section 7.3—

(a) in the heading after "EU ETS" insert "or UK ETS";

(b) in the first subparagraph—

(i) after "EU ETS" insert "or UK ETS";

(ii) for "non-EU ETS" substitute "non-ETS";

(c) in the second subparagraph—

(i) after "EU ETS" insert "or UK ETS";

(ii) for "non-EU ETS" substitute "non-ETS".

(8) In section 10.1—

(a) in section 10.1.1 in point 1 for "Regulation (EU) No 601/2012" substitute "the Monitoring and Reporting Regulation 2012 or, where relevant, the Monitoring and Reporting Regulation 2018";

(b) in section 10.1.2 in point 4 after "EU ETS" in both places insert "or UK ETS".

SCHEDULE 2

Article 47

Activity Level Changes Regulation amended

Activity Level Changes Regulation amended

1. Commission Implementing Regulation (EU) 2019/1842 is amended in accordance with this Schedule.

Article 1 amended (scope)

2.—(1) Article 1 is amended as follows.

(2) For the words from "pursuant to Article 10a" to the end substitute "to installations under the UK ETS".

(**a**) S.I. 2016/1152.
(**b**) S.I. 2016/1153.

Article 2 amended (definitions)

3.—(1) Article 2 is amended as follows.

(2) Renumber the existing text as paragraph 1.

(3) In paragraph 1—

(a) omit points (5) and (6);

(b) after point (4) insert—

"(7) 'Delegated Regulation (EU) 2019/331' means the Free Allocation Regulation (as defined in the UK ETS Order);

(8) 'emission allowance' means an allowance (as defined in the UK ETS Order);

(9) 'Implementing Regulation (EU) 2018/2067' means the Verification Regulation 2018 (as defined in the UK ETS Order);

(10) 'UK ETS Order' means the Greenhouse Gas Emissions Trading Scheme Order 2020. ".

(4) After paragraph 1 insert—

"2. Expressions used in this Regulation that are defined for the purposes of the UK ETS Order or the Free Allocation Regulation have the meaning given in that Order or Regulation.

3. For the purposes of this Regulation, a sub-installation has ceased operation if:

(a) the sub-installation is no longer operating; and

(b) it is technically impossible to resume operation.

4. For the purpose of this Regulation, the number of allowances to be allocated in respect of sub-installations and installations must be expressed as the nearest integer, taking 0.5 as nearest to the previous integer.".

Article 3 amended (reporting requirements)

4.—(1) Article 3 is amended as follows.

(2) In paragraph 1—

(a) in the first subparagraph—

(i) for "to which free allocation has been given, in accordance with Article 10a of Directive 2003/87/EC, for the trading period from 2021 until 2030" substitute "that are FA installations";

(ii) after "its submission." insert "In 2026 this report must include data for the 2 years preceding its submission if the operator is not required under this Article to submit in 2025 a report including data for 2024.";

(b) omit the second subparagraph.

(3) In paragraph 2—

(a) in the first subparagraph—

(i) after "must" insert "be verified as satisfactory in accordance with the Verification Regulation 2018 and";

(ii) omit "on the structure of the group, if any, to which the installation belongs and";

(iii) for "to operate" substitute "operation";

(b) omit the second subparagraph.

(4) In paragraph 3—

(a) in the first subparagraph for the words from "by 31 March" to "submission" substitute "to the regulator on or before 30 June in the 2021 scheme year and on or before 31 March in each subsequent scheme year";

(b) omit the second to fifth subparagraphs.

(5) In paragraph 4—

(a) for "competent authority" in each place substitute "regulator";

(b) in the first subparagraph—

(i) in point (a)—

(aa) omit "verified";

(bb) omit "and the issuance of the allowances has not been suspended";

(ii) in point (c) after "verified" insert "as satisfactory";

(c) omit the second subparagraph (that is to say, the words from "The competent authority shall not" to "point (a).").

(6) After paragraph 4 insert—

"5. Where the regulator makes an estimate of the value of a parameter under paragraph 4, the regulator must give notice of the value to the operator.

6. Subject to paragraph 8, where notice of an estimate of the value of a parameter is given, for the purposes of this Regulation, the operator must be treated as having submitted an activity level report including the estimated value.

7. Where, after making an estimate of a parameter (including a rectified estimate, or a further rectified estimate, made under this paragraph), the regulator considers that there is an error in the estimate, the regulator must:

(a) withdraw any notice of the estimate given under paragraph 5;

(b) make a rectified estimate; and

(c) give notice of the rectified estimate in accordance paragraph 5,

and paragraph 6 applies to a notice of the rectified estimate as it does to the notice of the previous estimate.

8. Where no activity level report has been submitted by the operator of an installation by the time limit referred to in paragraph 3 and the regulator makes an estimate of the value of a parameter under paragraph 4(a):

(a) Article 3a does not apply;

(b) the regulator must not send to the UK ETS authority under Article 6a(2) any adjustment to free allocation calculated on the basis of such an estimate, or any recalculation of the preliminary or final annual number of allowances to be allocated in respect of the installation calculated on the basis of such an estimate, if the effect of the adjustment is to increase the final annual number of allowances to be allocated.".

Articles 3a inserted

5. After Article 3 insert—

"Article 3a

Sub-installations for which no historical activity level determined

1. This Article applies where the historical activity level of a sub-installation referred to in an activity level report has not been determined under Article 15 or 17 of the Free Allocation Regulation (see Articles 15(7) and 17(2) of that Regulation) or under this Article.

2. If the activity level report contains data for the first calendar year after the start of normal operation of the sub-installation, the regulator must:

(a) determine the historical activity level of the sub-installation in accordance with Article 17(1) of the Free Allocation Regulation (whether the sub-installation is a sub-installation of an incumbent installation or a new entrant);

(b) calculate in accordance with Article 18(1) of that Regulation the preliminary annual number of allowances to be allocated in respect of the sub-installation for each scheme year in the relevant allocation period beginning with the first scheme year after the start of normal operation; and

(c) calculate the final annual number of allowances to be allocated in respect of the sub-installation for each scheme year referred to in point (b):

(i) in the case of a sub-installation of an incumbent installation, in accordance with Article 16b(2) of that Regulation, but using the preliminary annual number of allowances calculated under point (b) instead of the preliminary annual number of allowances referred to in the words before point (a) of paragraph 2 of Article 16b;

(ii) in the case of a sub-installation of a new entrant, in accordance with Article 18a(3) of that Regulation.

3. If the year in which the start of normal operation of the sub-installation occurs is a scheme year in the relevant allocation period, the regulator must:

(a) determine the activity level of the sub-installation in the scheme year;

(b) calculate in accordance with Article 18(2) of the Free Allocation Regulation the preliminary annual number of allowances to be allocated in respect of the sub-installation for the scheme year;

(c) calculate the final annual number of allowances to be allocated in respect of the sub-installation for the scheme year:

(i) in the case of a sub-installation of an incumbent installation, in accordance with Article 16b(2) of that Regulation, but using the preliminary annual number of allowances calculated under point (b) instead of the preliminary annual number of allowances referred to in the words before point (a) of paragraph 2 of Article 16b;

(ii) in the case of a sub-installation of a new entrant, in accordance with Article 18a(3) of that Regulation.

4. In this Article, "relevant allocation period" means:

(a) in the case of a sub-installation of an incumbent installation in respect of which a deemed application for free allocation in the 2021-2025 allocation period was made or a new entrant in respect of which an application for free allocation is made under Article 5(1)(a) of the Free Allocation Regulation, the 2021-2025 allocation period;

(b) in the case of a sub-installation of an incumbent installation in respect of which an application for free allocation in the 2026-2030 allocation period is made under Article 4 of that Regulation or a new entrant in respect of which an application for free allocation is made under Article 5(1)(b) of that Regulation, the 2026-2030 allocation period.".

Article 4 amended (average activity levels)

6.—(1) Article 4 is amended as follows.

(2) In paragraph 1 for "competent authority" substitute "regulator".

Article 5 amended (adjustments to free allocation due to activity level changes)

7.—(1) Article 5 is amended as follows.

(2) In paragraph 1—

(a) for "competent authority" substitute "regulator";

(b) for "to that installation" substitute "in respect of the sub-installation";

(c) for "That adjustment shall be made" substitute "The regulator must calculate that adjustment".

(3) In paragraph 2—

(a) for "has been made" substitute "has been approved by the UK ETS authority under Article 6a";

(b) for "to that installation" substitute "in respect of the sub-installation".

(4) In paragraph 3—

(a) for "to that sub-installation" substitute "in respect of the sub-installation";

(b) for "determined by Article 16 or 18 of Delegated Regulation (EU) 2019/331" substitute "approved under Article 16b or 18a of the Free Allocation Regulation or under Article 6a of this Regulation";

(c) after "determining the average activity level." insert "The regulator must calculate an adjustment to the free allocation of the sub-installation accordingly.".

(5) In paragraph 4 for "the free allocation of this sub-installation shall be set to" substitute "the regulator must calculate an adjustment to the free allocation of the sub-installation so that it is".

(6) Omit paragraph 6.

(7) After paragraph 5 insert—

"7. In this Article, a reference to the historical activity level of a sub-installation includes a reference to the historical activity level approved under Article 6a.".

Article 6 amended (other changes in the operation of the installation)

8.—(1) Article 6 is amended as follows.

(2) In paragraph 1 for "competent authority" substitute "regulator".

(3) In paragraph 2 for "competent authority" in each place substitute "regulator".

(4) In paragraph 3—

(a) in the first subparagraph after "baseline data report" insert "or the new entrant data report";

(b) in the second subparagraph for "Article 6" substitute "Article 8".

(5) In paragraph 4—

(a) for "to that installation" substitute "in respect of the sub-installation";

(b) for "allowances, by increasing" substitute "allowances. The regulator must calculate that adjustment by increasing".

(6) After paragraph 4 insert—

"5. In this Article, where an application under Article 5 of the Free Allocation Regulation is made in respect of a new entrant that has not been operating for a full calendar year after the start of normal operation, a reference to the new entrant data report includes a reference to the activity level report submitted after the end of the first full calendar year of operation.".

Article 6a inserted

9. After Article 6 insert—

"Article 6a

Approval of changes by UK ETS authority

1. This Article applies where the regulator:

(a) determines the activity level or historical activity level of a sub-installation or calculates the preliminary or final annual number of allowances to be allocated in respect of a sub-installation for a scheme year under Article 3a; or

(b) calculates an adjustment to free allocation in respect of a sub-installation for a scheme year under Article 5 or 6.

2. Subject to Article 3(8), the regulator must as soon as reasonably practicable send to the UK ETS authority:

(a) the determination or calculation referred to in paragraph 1;

(b) the regulator's recalculation of the final annual number of allowances to be allocated in respect of the installation of which the sub-installation is part for the scheme year, taking account of the determination, calculation or adjustment referred to paragraph 1.

3. The UK ETS authority must:

(a) approve the final annual number of allowances to be allocated in respect of the installation for the scheme year, making any corrections to the activity level, historical activity level, preliminary annual number of allowances and final annual number of allowances that the UK ETS authority considers appropriate; and

(b) inform the regulator accordingly.

4. The regulator must inform the operator of the installation of the final annual number of allowances approved.".

Final text amended

10. Omit "This Regulation shall be binding in its entirety and directly applicable in all Member States." (which follows Article 7).

EXPLANATORY NOTE

(This note is not part of the Order)

The United Kingdom Emissions Trading Scheme (the "UK ETS") was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the "UK ETS Order"). The UK ETS runs for ten "scheme years" beginning in 2021, divided into two "allocation periods", the 2021-2025 allocation period and the 2026-2030 allocation period. Operators of certain industrial installations and certain aircraft operators are required to monitor, report on, and surrender "allowances" equivalent to, their greenhouse gas emissions in each scheme year.

This Order amends the UK ETS Order and other legislation, largely to provide for a registry for the UK ETS and for the free allocation of allowances. The legislation amended includes Commission Delegated Regulation (EU) 2019/331 (the "Free Allocation Regulation") and Commission Implementing Regulation (EU) 2019/1842 (the "Activity Level Changes Regulation"). Both Regulations are retained EU law, originally made for the EU Emissions Trading System ("EU ETS"), but adapted for the UK ETS.

For provision for the registry, see new Schedule 5A to the UK ETS Order; for provision for free allocation for installations, see new Part 4A of the UK ETS Order, the Free Allocation Regulation and the Activity Level Changes Regulation; and for provision for free allocation for aircraft operators, see new Part 4A of the UK ETS Order.

Registry

The Order establishes a registry for the UK ETS to record the creation, allocation (whether by free allocation or auction), transfer and surrender of allowances. Operators and aircraft operators are required to have accounts in the registry in order to comply with their obligations under the scheme. Others may apply for trading accounts for the purpose of trading in allowances.

Registry functions are exercised by the "registry administrator", defined as the Secretary of State, the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency and the Northern Ireland chief inspector: see new article 8A of the UK ETS Order.

Free allocation of allowances

Operators of eligible installations and eligible aircraft operators may apply for the free allocation of allowances. Decisions about free allocation are made by the Secretary of State, the Northern Ireland Department of Agriculture, Environment and Rural Affairs, the Scottish Ministers and the Welsh Ministers, referred to as the "UK ETS authority". Allowances are allocated to successful applicants in each scheme year in an allocation period in accordance with allocation tables published by the UK ETS authority. The allowances may be traded or surrendered to comply with the scheme obligation.

For installations, the Order provides for free allocation in both allocation periods in respect of (a) "incumbent installations" - installations for which a greenhouse gas emissions permit is issued by a specified cut-off date, who apply for free allocation for all scheme years in an allocation period; and (b) "new entrants" – new installations in respect of which such a permit is issued after the cut-off date, who apply for free allocation for scheme years in an allocation period after operation starts. For the 2021-2025 allocation period, only operators of installations who applied for free allocation under the EU ETS are eligible for free allocation under the UK ETS as "incumbent installations".

The number of allowances allocated in respect of incumbent installations is subject to an "industry cap" and may be reduced by a cross-sectoral correction factor: see new Article 16a of the Free Allocation Regulation. Allocations in respect of new entrants are reduced by an annual reduction factor over an allocation period: see new Article 18a of that Regulation. Operators of installations are required to report on their "activity level" each year, which may lead to an increase or decrease in the allowances allocated: see the Activity Level Changes Regulation. Allowances allocated in respect of new entrants and increases in allocations in respect of all installations come from a reserve of 30,249,066 allowances known as the "new entrants' reserve" until the reserve is exhausted: see new article 34G of the UK ETS Order.

For aircraft operators, the Order provides for free allocation in the 2021-2025 allocation period only. There is no provision for "new" aircraft operators to apply. Allocations are reduced by an annual reduction factor over the allocation period, but otherwise do not change: see new article 34M of the UK ETS Order. Only an "aircraft operator" as defined in article 6 of the UK ETS Order, that is a person who operates above a specified minimum threshold, is entitled to an allocation of allowances.

Where allowances have been over-allocated, operators and aircraft operators may be required to return them or an equivalent number may be taken directly from registry accounts: see new articles 34S to 34V of the UK ETS Order. The allocation of allowances may be withheld whilst investigation is underway into circumstances which may lead to a change in allocation: see new article 34W of the UK ETS Order. There are also some specific provisions, in article 34O, which take into account that it is not always possible to be certain whether a person will be an aircraft operator in a particular year (and so have an entitlement to free allocation) at the time allowances for that year are due to be allocated. These provide for allowances to be withheld if a person was not an aircraft operator in the previous year and for adjustments in later years where necessary.

A regulatory impact assessment of the effect that the UK ETS will have on the costs of business, the voluntary sector and the public sector is available from the Industrial Energy Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET and is available alongside the UK ETS Order on www.legislation.gov.uk.

Explanatory Memorandum to The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020

This Explanatory Memorandum has been prepared by the Department for Environment, Energy and Rural Affairs and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
17 December 2020

PART 1

1. Description

The UK Emissions Trading Scheme ("ETS") was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the "principal Order") as a UK-wide greenhouse gas emissions trading scheme to encourage cost-effective emissions reductions from the power, industry and aviation sectors. It has been designed jointly by the Governments of the UK, Scotland and Wales, and the Northern Ireland Executive and will contribute to the UK's emissions reduction targets and net zero goal, as well as the emissions reduction targets that we have in Wales.

This Order makes further provision for the UK ETS, in particular for the free allocation of allowances and for a registry for the UK ETS.

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

Part 3 of Schedule 3 to the Climate Change Act 2008 ("CCA") states that an emissions trading scheme that applies to England, Scotland, Wales and Northern Ireland – such as in this case – must be established by Order in Council. The appropriate procedure for an Order in Council is prescribed by section 48 to the CCA. As this instrument does not contain any provisions which would be caught by section 48(3) of the CCA, the negative procedure has been used.

As the Order in Council will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

This Order, which comes into force on 31 December 2020, is laid in breach of the 21-day rule, the convention that an instrument should not be laid before the Senedd less than 21 days before it comes into force. This Order was made on 16 December 2020, the date of the first Privy Council meeting after the meeting at which the principal Order was made, and was laid as soon reasonably practicable thereafter. A later commencement date is considered impossible for two reasons. Firstly, in order to ensure that there will be no pause in the obligations on operators of installations relating to the monitoring of data for the purposes of free allocation. This avoids uncertainty for participants and ensure a seamless transition from the EU Emissions Trading System to the UK ETS. Secondly, there is a need to undo a prospective revocation of Commission Delegated Regulation (EU) 2019/331 ("the Free Allocation Regulation") by regulation 62 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019, which takes effect from Implementation Period completion day. This instrument was made as part of the UK Government's previous "no deal" preparations in spring 2019.

There are three other matters which we would like to draw to the Committee's attention. First, paragraph 6(1)(a) of new Schedule 5A to the principal Order gives the registry administrator the power to establish "administrative arrangements and rules" for the operation of the registry. Paragraph 16(9) of that Schedule makes it clear what the proposed administrative rules are likely to include. The Department considers that section 90(3) of the CCA includes the power to make such provision. The CRC Energy Efficiency Scheme Order 2013, also made under section 90(3) of the CCA, includes similar provision for administrative arrangements and rules: see articles 50(4) and 53(1)(a) of that Order.

Second, paragraph 6 of Schedule 2 to the CCA requires legislation made in exercise of the enabling powers to provide that allowances used by a participant for the purposes of a trading scheme cannot be used by the participant for any other purpose. The definition of "surrender" in article 4(1) of the principal Order which included such provision is amended by this instrument; and paragraph 24(2) of new Schedule 5A to the principal Order now contains that requirement.

Third, in drafting the principal Order, the Department envisaged that Commission Implementing Regulation (EU) 2018/2067 (the "Verification Regulation 2018") would be retained EU law but Commission Implementing Regulation (EU) 2018/2066 (the "Monitoring and Reporting Regulation 2018") would not and that, consequently, incorporating rules from these measures into the UK ETS required different drafting approaches. However, this Order makes a change in relation to the Verification Regulation 2018, eliminating the difference. This was on the expectation, having seen draft EU legislation with amendments related to free allocation, due to come into force on 1st January 2021, that the version of the Verification Regulation 2018 we wanted to use for the UK ETS would not now be retained EU law. Unfortunately, the EU amendments were not ultimately finalised in time for this Order to refer to them. Nevertheless, we have kept the new drafting approach for the Verification Regulation 2018, just applying the original version with modifications for the purpose of the UK ETS instead of applying the amended version that we expected, on the basis that it may facilitate later amendments that may be desirable to mirror the EU scheme (for example, in the context of any linking).

3. Legislative background

The principal Order set up the UK ETS which will be operational from 1 January 2021. Key provisions included in the principal Order covered the scope of the scheme, monitoring and reporting requirements, the cap (the total level of emissions permitted) and the trajectory (the rate at which the cap declines) and the roles of the regulators in monitoring and enforcing the rules of the scheme.

The principal Order was the first of a legislative package designed to deliver a UK ETS which can be operational by the end of the Transition Period, ensuring that no carbon pricing gap emerges when the UK ceases to participate in the EU ETS. A carbon pricing gap could see increased emissions and may risk our ability to meet Carbon Budget and emissions reduction targets.

This Order is the second instrument in the package. It provides amongst other things for free allocation of allowances and for a registry for the UK ETS. This Order amends the principal Order, the Free Allocation Regulation and Commission Implementing Regulation (EU) 2019/1842, referred to in the Order as the "Activity Level Changes Regulation", another EU instrument enacted for the EU ETS that forms part of domestic law after IP completion day and is adopted for the purpose of the UK ETS.

The third instrument in the package will be regulations made under section 96 of the Finance Act 2020 to establish rules for the auctioning of allowances and mechanisms to support market stability[1]. This is due to be in force in the first quarter of 2021.

In addition, a further instrument that will amend financial services legislation will be laid in draft before both the House of Commons and the House of Lords. This SI will set out the regulations for the trading of allowances in the UK ETS. It will enshrine an oversight role for the Financial Conduct Authority (FCA) and will ensure that UK ETS allowances are subject to the relevant regulatory oversight and treatment as financial instruments. This is due to be in force in the first quarter of 2021.

The UK Government has stated it is open to considering a link between the UK ETS and the EU ETS, if a linking agreement is in both sides' interests, and recognises both parties as sovereign equals. A link between the UK ETS and the EU ETS could help to establish a much larger carbon market, which could increase opportunities for emissions reduction and cost-efficiency of emissions trading. The delivery of a UK ETS through this legislative package increases the likelihood that we will be able to secure a linking agreement with the EU through negotiations. Further legislation would be required to deliver any link between the UK ETS and the EU ETS.

[1] Paragraph 5(4) of Schedule 2 to the CCA 2008 prevent legislation made under the CCA from providing for allowances to be allocated in return for consideration.

4. Purpose and intended effect of the legislation

The primary purpose of this Order is to provide for free allocation of allowances and for a registry for the UK ETS.

The territorial extent of this Order is England, Wales, Scotland and Northern Ireland. The Order impacts on industry, the power sector and aviation.

The Order makes provision relating to free allocation of allowances and to the UK ETS registry, as follows:

Allocation of free allowances

The Order provides that free allowances can be given to UK ETS participants most at risk of “carbon leakage”.

Application for free allocation for 2021-2026

The Order provides that any applications for free allocation made by UK installations for the 2021-2026 allocation period under the EU ETS are treated as applications under the UK ETS. This means operators do not have to re-submit any information to the UK Authority, further supporting a smooth transition.

Benchmarks

The calculation to determine how many free allowances each eligible participant in the UK ETS will be awarded takes into account how polluting the emitter is compared to its top-performing competitors: this parameter is known as the benchmark, and there is a separate benchmark for each activity which is eligible for free allocation. Benchmarking free allowances in this way should encourage less efficient operators to improve their performance, while rewarding those that perform well.

Carbon leakage list

Another part of the calculation of free allocation entitlement is whether the installation concerned performs a process (e.g. production of cement) which is deemed to be at risk of carbon leakage. Processes which are deemed to be at risk are listed on the Carbon Leakage List and get their full entitlement to free allocation.

New entrants

The Order also states, again mirroring the approach in the EU ETS to provide a smooth transition for businesses, that a portion of allowances will be made available for new entrants to the UK ETS as well as existing operators who increase their activity. This is known as the New Entrant Reserve.

Activity Level Changes

From 2021 in the EU ETS, after free allocation is calculated initially in 2021 it

will then be recalculated each year based on any significant changes to production, as identified in annual Activity Level Reports submitted by the operators. This is so operators cannot get more free allowances relative to their emissions by simply reducing the amount they produce. The UK ETS will mirror this dynamic approach to free allocation calculation, and the Order provides for this.

Correction and reduction factors

The total number of allowances we give for free reduces over time to incentivise reduction in emissions, and there are a number of factors which achieve this reduction. A cross sectoral correction factor (CSCF) is applied if total free allocation to non-electricity generators exceeds the limited amount of allowances that can be given for free to stationary installations, known as the "industry cap". Electricity generator installations' free allocation is reduced by the Linear Reduction Factor, set out in this Order, if a CSCF is applied.

Applications for free allocation and the opt-outs

Article 4(4) of the Free Allocation Regulation provides for the operator of an incumbent installation to apply for free allocation for the 2026-2030 allocation period at the same time as applying for status as either a hospital or small emitter or an ultra-small emitter for the allocation period, i.e. as part of the opt-out schemes. If the application to be in one of the opt-out schemes does not succeed, but the application for free allocation succeeds, free allocation will be made in the normal way.

The approach to aviation free allocation policy is similar to the approach in the EU ETS, particularly to ensure a smooth transition for the many aircraft operators who will continue participating in the EU ETS post-Transition Period. The amendments to the instrument include creating a UK ETS free allocation application process for the sector, as well as defining a free allocation methodology which reflects aircraft operators' historic activity on flights covered by a UK ETS for the 2021-2025 allocation period. We are reviewing free allocation for aviation, considering competitiveness and our domestic and international climate commitments, with any change likely to be implemented by the start of 2024.

Registry

The approach to registry policy is similar to the approach taken in the EU ETS; therefore participants will be familiar with the process. New Schedule 5A to the principal Order establishes the UK ETS registry and makes related provision, including on how to open/close accounts, access the registry and suspend accounts. The registry will be an online platform, like an online bank, which will keep track of UK ETS allowances held by participants. The registry is the only platform which can hold allowances, which can be transferred between different accounts. The registry functionality will be such that transfers may not complete immediately, in order to mitigate against potential fraud and security concerns. Alongside tracking allowances, the registry also keeps track of UK ETS participants, their reportable emissions, and the surrender of allowances by

these participants. This system is currently being developed and is on track to be ready for January 2021.

This Order provides for the UK ETS authority to issue (create) allowances in line with the cap; create and hold central accounts to ensure free allocation, auctioning and market stability policy is delivered; and suspend the registry in response to security threats and for technical updates. Furthermore, the registry administrator can be instructed by the UK ETS authority to undertake certain actions and is responsible for administering the registry.

New article 8A of the principal Order defines the “registry administrator” as all five bodies who are the “regulators” as defined in article 9. In practice, the intention is for the Environment Agency to exercise the functions of the registry administrator on behalf of the other bodies. This will be communicated to account holders via guidance and communications. Additionally, any notices/decisions the registry administrator takes will need to be clear which body took that decision. This will enable account holders to know which body to appeal against.

Operators and aircraft operators will be required to hold a registry account, and traders may open an account to participate in the allowance market on terms agreed by the registry administrator. If an account holder cannot access the registry through their authorised registry user (“authorised representative”) logging onto the system, then they may instruct the registry administrator to take actions on their behalf.

The registry administrator is able to give enforcement notices under article 44 of The Greenhouse Gas Emissions Trading Scheme Order 2020 for breach of requirements relating to or imposed by the registry administrator contained in Schedule 5A, for example, an account holder’s duty to provide details of a primary contact under paragraph 15 of that Schedule and to comply with information notices given by the registry administrator under article 75. If an enforcement notice given by the registry administrator is not complied with, the intention is that any civil penalty in respect of the breach under article 65 may be imposed by any regulator under article 47.

In addition, there are some changes in respect of the rules on monitoring, reporting and verification of emissions, mostly to support the rules on free allocation. However, the provisions also anticipate likely changes at EU level to both the Monitoring and Reporting Regulation 2018 and the Verification Regulation 2018 and gather together in one place the modifications necessary for the application of the Verification Regulation 2018 in the context of the UK ETS.

5. Consultation

Details of the consultation have been included in the RIA referenced in Part 2 below.

PART 2 – REGULATORY IMPACT ASSESSMENT

A Regulatory Impact Assessment of the UK Emissions Trading Scheme in its entirety was included in the EM/RIA which was laid alongside The Greenhouse Gas Emissions Trading Scheme Order 2020. It is available here:

https://senedd.wales/laid%20documents/sub-ld13345-em/sub-ld13345-em-e.pdf

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/LG/4013/20

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

17 December 2020

Dear Llywydd,

The Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020

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

The UK Emissions Trading Scheme ("ETS") was established by the Greenhouse Gas Emissions Trading Scheme Order 2020 (the "principal Order") as a UK-wide greenhouse gas emissions trading scheme to encourage cost-effective emissions reductions from the power, industry and aviation sectors. It has been designed jointly by the Governments of the UK, Scotland and Wales, and the Northern Ireland Executive and will contribute to the UK's emissions reduction targets and net zero goal, as well as the emissions reduction targets we have in Wales.

This Order makes further provision for the UK ETS, in particular for the free allocation of allowances and for a registry for the UK ETS.

This Order was made on 16 December 2020, the date of the first Privy Council meeting after the meeting at which the principal Order was made, and was laid as soon reasonably practicable thereafter. A later commencement date is considered impossible for two reasons. Firstly, in order to ensure that there will be no pause in the obligations on operators of installations relating to the monitoring of data for the purposes of free allocation. This avoids uncertainty for participants and ensures a seamless transition from the EU Emissions Trading System to the UK ETS. Secondly, there is a need to undo a prospective revocation of Commission Delegated Regulation (EU) 2019/331 ("the Free Allocation Regulation") by regulation 62 of the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) (No. 2) Regulations 2019, which takes effect from Implementation

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Period completion day. This instrument was made as part of the UK Government's previous "no deal" preparations in spring 2019.

As the Order in Council will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

A public consultation on the design features of a UK Emissions Trading Scheme took place between 2 May 2019 and 12 July 2019. Additionally, two stakeholder events were held in Wales to gather views of interested parties including potential scheme participants. The joint Government response to the consultation was published on 1 June 2020.

The Explanatory Memorandum is attached for your information. It is being laid, together with the Order, in the Table Office. A Regulatory Impact Assessment covering the entire impact of the UK ETS was laid together with principal Order; a link is provided in the Explanatory Memorandum attached.

A copy of this letter goes to 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,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)707 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020

Background and Purpose

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (the Principal Regulations). The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the United Kingdom (UK) for certain categories of healthcare provided to them in Wales, unless the overseas visitor, or the service they receive, falls within an exemption.

These Regulations are made in consequence of the UK's withdrawal from the European Union (EU). These Regulations will correct references to EU law that will be inoperable after the UK leaves the EU and make provision on the chargeable status of EU/EEA State and Swiss visitors using NHS services in Wales in the event of a No Deal at implementation period completion day. The amendments will ensure that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for particular NHS care.

Procedure

Negative.

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

The Senedd can annul these 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(vi) – that its drafting appears to be defective or fails to fulfil statutory requirements.

Regulation 4 contains an incorrect cross-reference. The reference to regulation 4A of the Principal Regulations in both the English and Welsh versions of these Regulations should be to regulation 4A(1). A Government response is requested.

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

Regulation 8 amends Schedule 2 to the Principal Regulations, by inserting and omitting various countries and territories. Schedule 2 to the Principal Regulations lists the countries and territories in respect of which the UK Government has entered into reciprocal agreements. The position in England is contained in Schedule 2 to the National Health Service (Charges to Overseas Visitors) Regulations 2015 (England's Charging Regulations). The Explanatory Memorandum does not contain much additional explanation for the amendments made by regulation 8.

Specifically, regulation 8(2)(d) of these Regulations inserts Liechtenstein into Schedule 2 to the Principal Regulations and regulation 8(3)(b) of these Regulations omits Iceland from Schedule 2 to the Principal Regulations. Liechtenstein and Iceland are both members of the European Free Trade Association (EFTA).

Further, it is noted that Sweden remains listed within Schedule 2 to the Principal Regulations despite being a member of the EU.

It is not clear why Lichtenstein is inserted into Schedule 2 to the Principal Regulations when Iceland is omitted. It is also not clear why Sweden remains listed in Schedule 2 to the Principal Regulations when no other EU Member States are listed.

The position in relation to citizens of Lichtenstein and Iceland, as well as Norway, are governed by the EEA EFTA separation agreement. Similarly, the position in relation to citizens of Sweden, as well as the other EU Member States, are governed by the withdrawal agreement between the EU and UK.

Rights under both agreements are provided for under regulation 4B of the Principal Regulations, which is inserted by virtue of regulation 5 of these Regulations. There does not, therefore, appear to be a need to include the signatories to the EEA EFTA separation agreement, nor the EU withdrawal agreement, within Schedule 2 to the Principal Regulations.

Further, it is noted that the Explanatory Memorandum states that:

> *"Amendments to the Principal Regulations are required to ensure that the law remains operable, existing exemptions still operate effectively and there is consistency of approach with England following EU Exit implementation period completion date in the event of a No Deal exit."*

Lichtenstein, Iceland and Sweden are not included in England's Charging Regulations and so the position as set out in Schedule 2 to the Principal Regulations is not consistent with that under England's Charging Regulations.

Welsh Government is asked to explain:

(a) why Lichtenstein is inserted into, and Iceland is omitted from, Schedule 2 to the Principal Regulations; and

(b) whether Sweden should be omitted from Schedule 2 to the Principal Regulations.

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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.

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 21 December 2020.

In particular, we note what the letter says regarding why these Regulations (referred to as "the 2020 Regulations" in the letter) breach the 21 day rule:

> *"The 2020 Regulations were made and laid as soon as practicable after the final draft SI for amending England's Charging Regulations was shared by DHSC in early December. The 2020 Regulations were contingent on these and their lateness has meant that Wales' Regulations have come into force less than 21 days after they were made in order to come into effect by IP completion day at the absolute latest.*
>
> *"Not adhering to the 21 day convention allows the Regulations to come into force on 31 December, IP completion day in order to ensure the continued effective operation of the Principal Regulations following the UK leaving the EU with No Deal. Not adhering to the 21 day rule is therefore necessary and justifiable in this case."*

4. 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(2)(h) inserts a new definition of "relevant services", which refers to provisions in the National Health Service (Wales) Act 2006. One of the services is to "primary ophthalmic services provided under Part 6" of the 2006 Act, although the 2006 Act uses the definition of "general ophthalmic services". A Government response is requested.

Welsh Government response

A Welsh Government response is required in respect of Technical Points 1 and 2 and Merits Point 4.

Legal Advisers
Legislation, Justice and Constitution Committee
20 January 2021

WELSH STATUTORY INSTRUMENTS

2020 No. 1607 (W. 334)

EXITING THE EUROPEAN UNION, WALES

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 ("the Principal Regulations"), which provide for the making and recovery of charges for relevant services provided under the National Health Service (Wales) Act 2006 (c. 42) to certain persons not ordinarily resident in the United Kingdom.

Regulation 1 contains commencement and interpretation provisions. Except for regulation 9, these Regulations come into force on implementation period completion day, as defined in Schedule 1 to the Legislation (Wales) Act 2019 (anaw 4). Regulation 9 comes into force immediately before implementation period completion day.

Regulation 2 amends regulation 1 of the Principal Regulations to insert definitions of "the 2014 Act", "competent institution", "equivalent document", "immigration rules", "listed healthcare arrangements", "Regulation (EC) No 883/2004", "Regulation (EEC) No 1408/71" and "relevant services". It also amends the existing definition of a "member of the family".

Regulation 3 amends regulation 4 of the Principal Regulations. Paragraphs (1) to (3) make minor amendments as a result of the United Kingdom's exit from the European Union. Paragraph (4) provides an exemption from charges for overseas visitors in circumstances where this is captured by a reciprocal

agreement with a country listed in Schedule 2 to the Principal Regulations or with an EEA state or Switzerland under a listed healthcare arrangement. Paragraph (5) provides that where a person with an S2 healthcare certificate is given leave to stay in the United Kingdom for the purposes of their treatment, and has the immigration health charges waived, charges can be made for the provision of relevant services that are not authorised by the S2 healthcare certificate.

Regulation 4 amends regulation 4A of the Principal Regulations to reflect the fact that the term "Member State" will not capture the United Kingdom after implementation period completion day.

Regulation 5 inserts new regulations 4B, 4C and 4D into the Principal Regulations.

Regulation 4B provides that persons who are in scope of Title III of Part 2 of the withdrawal agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement are able to continue to receive relevant services without charge where there is a right to this under Regulation (EU) No 883/2004. It also provides that the family members of such a person will be entitled to receive relevant services without charge, subject to specific conditions.

Regulation 4C provides that a United Kingdom national in receipt of a United Kingdom pension who is ordinarily resident in an EEA state or Switzerland and who has a United Kingdom issued S1 healthcare certificate (or equivalent document) will receive relevant services without charge. It also provides that the family members of such a person will also be entitled to receive relevant services without charge. Regulation 4D provides that a person who makes a late application under Appendix EU to the immigration rules will not be charged for relevant services which are provided while their application is being determined. If that application is unsuccessful they will be charged for the provision of those relevant services and, if an application is successful and if charges have been made and recovered, these will be repaid.

Regulation 6 amends regulation 5 of the Principal Regulations by adding "a British citizen" to the categories of persons who will be exempt from charges for needs arising treatment after implementation period completion day.

Regulation 7 inserts a new regulation 5A into the Principal Regulations as a result of the United Kingdom's exit from the European Union. The new regulation provides that where an overseas visitor from an EEA state or Switzerland has either received

treatment before implementation period completion day or is part way through treatment on implementation period completion day, the charge which applied before implementation completion day will apply in respect of that treatment.

Regulation 8 adds Bosnia and Herzegovina, the Faroe Islands, Kosovo, Liechtenstein, Montenegro, North Macedonia and Serbia to the list of countries in Schedule 2 to the Principal Regulations which concerns reciprocal agreements. Regulation 8 also removes from the list of countries in Schedule 2 Barbados, Iceland, Russian Federation, the Union of Soviet Socialist Republics and Yugoslavia.

Regulation 9 revokes the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019 which were prepared for a "no deal" EU Exit and which do not reflect the provisions of the EU withdrawal agreement, the EEA EFTA separation agreement or the Swiss Citizens' rights agreement.

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 been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

WELSH STATUTORY INSTRUMENTS

2020 No. 1607 (W. 334)

EXITING THE EUROPEAN UNION, WALES

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020

Made	*18 December 2020*
Laid before Senedd Cymru	*21 December 2020*
Coming into force in accordance with regulation 1(2) and 1(3)	

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 124 and 203(9) and (10) of the National Health Service (Wales) Act 2006(**1**).

PART 1

General

Title, commencement and interpretation

1.—(1) The title of these Regulations is the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020.

(2) Except as provided in paragraph (3), these Regulations come into force on implementation period completion day.

(**1**) 2006 c. 42. *See* section 206(1) for the definition of "prescribed" and "regulations".

(3) Regulation 9 comes into force immediately before implementation period completion day.

(4) In these Regulations, "the Principal Regulations" means the National Health Service (Charges to Overseas Visitors) Regulations 1989(**1**).

PART 2

Amendment of the Principal Regulations

Amendment of regulation 1

2.—(1) Regulation 1(2) (citation, commencement and interpretation) of the Principal Regulations is amended as follows.

(2) At the appropriate place insert—

(a) ""the 2014 Act" means the Immigration Act 2014(**2**);";

(b) ""competent institution" has the same meaning as in Regulation (EC) No 883/2004 or Regulation (EEC) No 1408/71, as the case may be;";

(c) ""equivalent document" means a document which, for the purposes of a listed healthcare arrangement is treated as equivalent to an S1 healthcare certificate(**3**);";

(d) ""immigration rules" means the rules laid before Parliament under section 3(2) (general provisions for regulation and control) of the Immigration Act 1971(**4**);";

(e) ""listed healthcare arrangement" has the meaning given in regulation 1(3) of the Healthcare (European Economic Area and

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(**1**) S.I. 1989/306, amended by S.I. 2004/614; S.I. 2004/1433 (W. 146); S.I. 2009/1824 (W. 165); S.I. 2009/3005 (W. 264); S.I. 2010/730 (W. 71); S.I. 2010/927 (W. 94); S.I. 2011/1043; S.I. 2011/2906 (W. 310), S.I. 2012/1809; S.I. 2014/1622 (W. 166); and S.I. 2015/1985; there are other amending instruments but none are relevant to these Regulations.

(**2**) 2014 c. 22.

(**3**) An S1 healthcare certificate entitles a person to healthcare in an EEA state and Switzerland on the same basis as residents of that country. It is issued by an EEA state and Switzerland and was issued by the United Kingdom, before it exited the EU. It was issued to certain workers working in an EEA state or Switzerland who paid National Insurance Contributions in the United Kingdom or to people in receipt of certain United Kingdom exportable benefits (for example, retirement pensions). Following the United Kingdom's exit from the EU, the United Kingdom will no longer issue S1 healthcare certificates but will issue certain qualifying persons with a document which will provide the same access to healthcare as the S1 healthcare document.

(**4**) 1971 c. 77.

Switzerland Arrangements) (EU Exit) Regulations 2019(**1**);";

(f) ""Regulation (EC) No 883/2004" means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems as it had effect immediately before implementation period completion day(**2**);";

(g) ""Regulation (EEC) No 1408/71" means Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community as it had effect immediately before implementation period completion day(**3**);";

(h) ""relevant services" means accommodation, services or facilities(**4**) which are provided, or whose provision is arranged, under the National Health Service (Wales) Act 2006(**5**) other than—

(i) primary medical services provided under Part 4 (medical services);

(ii) primary dental services provided under Part 5 (dental services);

(iii) primary ophthalmic services provided under Part 6 (ophthalmic services); or

(iv) equivalent services which are provided, or whose provision is arranged, under that Act;".

(3) For the definition of "member of the family" substitute—

"member of the family" has the same meaning as in Regulation (EC) No

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(**1**) S.I. 2019/1293, to which there are amendments not relevant to these Regulations.

(**2**) OJ No. L 166, 30.4.2004, p. 1. This EU Regulation has been amended by various EU instruments, most recently by Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 (OJ No. L 186, 11.7.2019, p. 21). Amendments are made prospectively with effect from implementation period completion day by S.I. 2019/722.

(**3**) OJ No. L 149, 5.7.1971, p. 2. Regulation (EEC) No 1408/71 was repealed by Regulation (EC) No 883/2004 but saved for certain purposes. Regulation (EEC) No 1408/71 has been amended by various EU instruments and was restated in Part 1 of Annex A of Council Regulation (EC) No 118/97 of 2 December 1996 (OJ No. L 28, 30.1.1997, p. 1). It has most recently been amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008 (OJ No. L 177, 4.7.2008, p. 1). Amendments are made prospectively with effect from implementation period completion day by S.I. 2019/726.

(**4**) "Facilities" is defined in section 206(1) of the National Health Service (Wales) Act 2006.

(**5**) 2006 c. 42.

883/2004 or Regulation (EEC) No 1408/71 as the case may be;".

Amendment of regulation 4

3.—(1) Regulation 4(1) (overseas visitors exempt from charges) of the Principal Regulations is amended as follows.

(2) In sub-paragraph (l), for "another" substitute "a".

(3) In sub-paragraph (m), after "member state" insert "or a British citizen".

(4) For sub-paragraph (o) substitute—

"(o) in whose case the services are provided in circumstances covered by a reciprocal agreement—

(i) with a country or territory specified in Schedule 2; or

(ii) with an EEA state or Switzerland where that agreement is a listed healthcare arrangement; or".

(5) After sub-paragraph (r) insert—

"(s) who—

(i) is granted leave to remain in the United Kingdom under Appendix S2 Healthcare Visitor to the immigration rules, and

(ii) in respect of whom a waiver to the immigration health charge applies,

except in the case of relevant services which do not form part of the planned healthcare treatment authorised by that person's S2 healthcare certificate(**1**).".

Amendment of regulation 4A

4.—(1) Regulation 4A (exemption from charges during long term visits by United Kingdom pensioners) of the Principal Regulations is amended as follows.

(2) In sub-paragraph (b), for "another" substitute "a".

(3) In sub-paragraph (c), for "another" substitute "a".

(**1**) An S2 healthcare certificate is issued by an EEA state and Switzerland, and, before it exited the EU, by the United Kingdom. It entitles a person to travel to an EEA state or Switzerland to receive pre-authorised planned treatment on the same basis as the national of that country, with the costs of the treatment being met by the country who issued the S2 healthcare certificate, pursuant to Regulation (EC) No 883/2004.

New regulations 4B, 4C and 4D

5. After regulation 4A (exemption from charges during long term visits by United Kingdom pensioners) of the Principal Regulations, insert—

"Overseas visitors with citizens' rights

4B—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who has an entitlement to the provision of those services without charge by virtue of a right arising from—

(a) Title III of Part 2 of the withdrawal agreement;

(b) Title III of Part 2 of the EEA EFTA separation agreement; or

(c) the social security co-ordination provisions of the Swiss citizens' rights agreement.

(2) Subject to paragraphs (3) to (5) of this regulation, no charge may be made or recovered in respect of any relevant services provided to an overseas visitor who is a member of the family of another overseas visitor ("the principal overseas visitor") if—

(a) the overseas visitor is lawfully present in the United Kingdom;

(b) the overseas visitor is visiting the United Kingdom with the principal overseas visitor; and

(c) the principal overseas visitor is exempt from changes under paragraph (1).

(3) The exemption in paragraph (2) only applies if both conditions in paragraphs (4) and (5) are satisfied.

(4) The first condition is that—

(a) the overseas visitor does not have a right under an agreement mentioned in paragraph (1), and

(b) the reason that the overseas visitor does not have such a right is because the overseas visitor is not recognised as a member of the family (within the meaning of Article 1(i) of Regulation (EC) No 883/2004).

(5) The second condition is that the relevant services provided to the overseas visitor are services that the overseas visitor would be entitled to receive without charge by virtue of a right under an agreement mentioned in paragraph (1) if the overseas visitor had such a right.

(6) For the purposes of this regulation, unless otherwise provided, "member of the family" means—

(a) the spouse or civil partner of an overseas visitor; or

(b) a child in respect of whom an overseas visitor has parental responsibility.

(7) In paragraph (1), "withdrawal agreement", "EEA EFTA separation agreement" and "Swiss citizens' rights agreement" have the same meanings as in section 39(1) of the European Union (Withdrawal Agreement) Act 2020(**1**).

Overseas visitors with a United Kingdom issued S1 healthcare certificate or equivalent document

4C—(1) No charge may be made or recovered in respect of any relevant services provided to an overseas visitor who—

(a) was ordinarily resident in an EEA state or Switzerland immediately before implementation period completion day,

(b) continues to be ordinarily resident in an EEA state or Switzerland on and after implementation period completion day,

(c) receives a state pension paid by the United Kingdom Government, and

(d) holds a S1 healthcare certificate, or an equivalent document, issued to or in respect of that person by a competent institution of the United Kingdom.

(2) No charge may be made or recovered in respect of any relevant services provided to—

(a) the spouse or civil partner of an overseas visitor; or

(b) a child in respect of whom an overseas visitor has parental responsibility,

if that overseas visitor is exempt from charges under paragraph (1).

Persons who make late applications under Appendix EU to the immigration rules

4D.—(1) Subject to paragraph (4), no charge may be made or recovered in respect of relevant services provided to an overseas visitor to whom paragraph (2) or (3) applies during the period which begins on the date on which the application mentioned in paragraph (2)(b) or (3)(b), as the case may be, is made and which

(**1**) 2020 c. 1.

ends on the date on which that application is finally determined under Appendix EU to the immigration rules.

(2) This paragraph applies to a person who is an overseas visitor by virtue of section 39 of the 2014 Act who—

(a) is eligible to apply for leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules, and

(b) makes a valid application for leave to enter or remain in the United Kingdom under that Appendix to those rules after the application deadline.

(3) This paragraph applies to a person who is an overseas visitor by virtue of section 39 of the 2014 Act who—

(a) was granted limited leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules, and

(b) after the expiry of that limited leave to enter or remain, makes a valid application for indefinite leave to enter or remain in the United Kingdom under Appendix EU to the immigration rules.

(4) Where it is determined under Appendix EU to the immigration rules not to grant leave to enter or remain in the United Kingdom to a person pursuant to an application mentioned in paragraph (2)(b) or (3)(b), as the case may be, a Local Health Board or NHS trust must make and recover charges for any relevant services provided to that person during the period specified in paragraph (1).

(5) Where a person is granted leave to enter or remain in the United Kingdom pursuant to an application mentioned in paragraph (2)(b) or (3)(b)—

(a) if the Local Health Board or NHS trust has made charges for relevant services provided during the period specified in paragraph (1), it must not recover those charges;

(b) if the Local Health Board or NHS trust has made and recovered charges for relevant services provided during the period specified in paragraph (1), it must repay any sum paid in respect of those charges in accordance with regulation 8.

(6) In paragraph (2), "application deadline" has the meaning given in regulation 2 of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(**1**)."

Amendment of regulation 5

6. In regulation 5(a) (exemption from charges for treatment the need for which arose during the visit) of the Principal Regulations, after "a national of a member state," insert "a British citizen,".

New regulation 5A

7. After regulation 5 (exemption from charges for treatment the need for which arose during the visit) of the Principal Regulations insert—

"EU Exit: transitional arrangements

5A. Where an overseas visitor who is ordinarily resident in an EEA state or Switzerland has—

(a) before implementation period completion day received relevant services from a Local Health Board or NHS trust, or

(b) on or after implementation period completion day received relevant services from a Local Health Board or NHS trust as part of a course of treatment which commenced before implementation period completion day,

the charges payable in respect of those services must be calculated in the same way as provided for by regulation 13(1) of the National Health Service (Cross-Border Healthcare) Regulations 2013(**2**)."

Amendment of Schedule 2

8.—(1) Schedule 2 (countries or territories in respect of which the United Kingdom has entered into a reciprocal agreement) to the Principal Regulations is amended as follows.

(2) At the appropriate place insert—

(a) "Bosnia and Herzegovina";

(b) "Faroe Islands";

(**1**) S.I. 2020/1209

(**2**) S.I. 2013/2269. These Regulations are revoked on implementation period completion day by S.I. 2019/777, subject to saving and transitional provision in regulation 15 to 17 of those Regulations.

(c) "Kosovo";

(d) "Liechtenstein";

(e) "Montenegro";

(f) "North Macedonia"; and

(g) "Serbia".

(3) Omit—

(a) "Barbados";

(b) "Iceland";

(c) "Russian Federation";

(d) "the Union of Soviet Socialist Republics except the States of Estonia, Latvia, Lithuania and the Russian Federation"; and

(e) "Yugoslavia".

PART 3

Revocation of the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019

Revocation of the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019

9. The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019(**1**) are revoked.

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
18 December 2020

(**1**) S.I. 2019/1061 (W. 188).

Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by Health and Social Services Group and is laid before the National Assembly for Wales 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 National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020 and I am satisfied that the benefits justify the likely costs.

Vaughan Gething AM
Minister for Health and Social Services
21 December 2020

PART 1

1. Description

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) (the Principal Regulations).

The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the United Kingdom (UK) for certain categories of healthcare provided to them in Wales, unless the overseas visitor, or the service they receive, falls within an exemption.

These Regulations are being made in consequence of the UK's withdrawal from the European Union (EU). Amendments to the Principal Regulations are required to ensure that the law remains operable, existing exemptions still operate effectively and there is consistency of approach with England following EU Exit implementation period completion date in the event of a No Deal exit.

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

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.

Not adhering to the 21 day convention allows the Regulations to come into force on 31 December, Implementation Period completion day. This will ensure the continued effective operation of the Principal Regulations and that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for NHS services in Wales, in the event that the UK leaves the EU without a deal.

3. Legislative background

The instrument is being made under section 124 of the National Health Service (Wales) Act 2006 (the 2006 Act) which confers a power on the Welsh Ministers to make regulations for the making and recovery of charges from persons who are not "ordinarily resident" in Great Britain for NHS services.

The instrument is also being made under section 203(9) and (1) of the 2006 Act and is subject to the negative resolution procedure.

4. Purpose and intended effect of the legislation

The Regulations will correct references to EU law that will be inoperable after the UK leaves the EU and make provision on the chargeable status of EEA

State and Swiss visitors using NHS services in Wales in the event of a No Deal at implementation period completion day.

The amendments will ensure that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for particular NHS care.

The Regulations:

- Remove references to EU law and rights derived under EU law contained in the Principal Regulations that may no longer be operable or coherent after implementation period completion day.
- Include a provision for a S2 Healthcare Visitor in the UK for planned treatment to be charged for any treatment not covered by their S2 certificate.
- Provide an exemption for charging overseas visitors with citizens' rights under Title III of Part 2 of the Withdrawal Agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement.
- Provide an exemption from charging for UK S1 state pensioners on temporary visits to Wales to those already living in the EEA/Switzerland pre-2021.
- Provide an exemption from charging in relation to late applications to the EU Settlement Scheme.
- Preserves the existing rights from charging family members in certain cases.
- Amend Schedule 2 to the Principle Regulations to add Bosnia and Herzegovina, the Faroe Islands, Kosovo, Liechtenstein, Montenegro, North Macedonia and Serbia to the list of countries and remove Barbados, Iceland, Russian Federation, the Union of Soviet Socialist Republics and Yugoslavia from the list of countries.
- Revoke the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019 which were prepared for Exit Day and consequently do not reflect the provisions of the EU Withdrawal Agreement, the EEA EFTA separation agreement or the Swiss Citizens' rights agreement.

5. Consultation

No public consultation was undertaken. The purpose of the instrument is to enable the law and the existing exemptions still operate effectively after the withdrawal of the UK from the EU.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Two options have been considered:

> Option 1: - Do nothing, retain the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force.
>
> Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989.

Option 1: Do nothing, retain The National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force

In the event that the UK leaves the EU without a ratified agreement, the rights of EU/EEA and Swiss citizens which derive from EU law would fall away.

Free movement rights for EU citizens, EEA EFTA nationals, and Swiss nationals is implemented primarily through the Immigration (European Economic Area) Regulations 2016 (the 'EEA Regulations 2016'). The EEA Regulations 2016 will be revoked on Implementation Period completion day (i.e. 31 December 2020) at which time EU citizens, EEA EFTA nationals, and Swiss nationals will become subject to immigration control and therefore require leave to enter or remain in the UK in accordance with the EU Settlement Scheme.

There would be an immediate loss of rights for particular residents of the EU/EEA/Switzerland in the event that the UK leaves the EU without a deal by implementation period completion date. For example, UK S1 state pensioners on temporary visits to Wales who are already living in the EEA/Switzerland pre-2021 would not have an automatic entitlement to receive free treatment on their return to the UK after 1 January 2021 and EU/EEA and Swiss citizens will be within the definition of "overseas visitor" (i.e. not ordinarily resident) if they make a late application to the EU Settlement Scheme until their application is processed and Settled or Pre-settled status is awarded.

Technical references to aspects of EU reciprocal healthcare arrangements will no longer be applicable following implementation period completion date in the event of a No Deal and parts of the Regulations would be inoperable. For example where an overseas visitor from an EEA state or Switzerland, has either received treatment before implementation period completion day or is part way through treatment on implementation period completion day, they would not remain exempt from charging after implementation period completion day in respect of that treatment.

Under option 1 there could be cost savings for the NHS in cases where an EU/EEA/Swiss resident is not covered by another existing exemption in the 1989 Regulations and is chargeable. However, it is not possible to estimate the extent of these savings but it is likely they would be minimal. Local Health Boards currently receive a recurring annual allocation of £822,000 from Welsh

Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where no costs are recoverable from overseas visitors.

Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989

The objective is to correct references to EU law that will be inoperable after the UK leaves the EU and ensure that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for NHS services in Wales in the event of a No Deal at implementation period completion day. They will provide equality for EEA state or Switzerland citizens accessing healthcare with their counterparts in the rest of the United Kingdom.

In summary, the amendment regulations will:

- Remove references to EU law and rights derived under EU law contained in the Principal Regulations that may no longer be operable or coherent after implementation period completion day.
- Include a provision for a S2 Healthcare Visitor in the UK for planned treatment to be charged for any treatment not covered by their S2 certificate.
- Provide an exemption for charging overseas visitors with citizens' rights under Title III of Part 2 of the Withdrawal Agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement.
- Provide an exemption from charging for UK S1 state pensioners on temporary visits to Wales to those already living in the EEA/Switzerland pre-2021.
- Provide an exemption from charging in relation to late applications to the EU Settlement Scheme.
- Preserves the existing rights from charging family members in certain cases.
- Amend Schedule 2 to the Principle Regulations to add Bosnia and Herzegovina, the Faroe Islands, Kosovo, Liechtenstein, Montenegro, North Macedonia and Serbia to the list of countries and remove Barbados, Iceland, Russian Federation, the Union of Soviet Socialist Republics and Yugoslavia from the list of countries.
- Revoke the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019, which were prepared for Exit Day in the event of a No Deal scenario, but consequently do not now reflect the provisions of the EU Withdrawal Agreement, the EEA EFTA separation agreement or the Swiss Citizens' rights agreement. Those provisions in the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU

Exit) Regulations 2019 which are still required after implementation period completion day have been included in these new amendment regulations.

The changes being made essentially relate to ensuring the law operates correctly at EU implementation period completion day for EU citizens in a No Deal scenario; the continuation of existing rights under Title III of Part 2 of the Withdrawal Agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement and preserves current healthcare arrangements post EU Implementation Period for EU citizens in a No Deal scenario. It is estimated that there would be minimal impact on costs in the day to day delivery of the service as these people are currently exempt from charging. LHBs will continue to receive the current annual allocation of £822,000 from Welsh Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where there are not reciprocal healthcare agreements with Member States and where no costs are recoverable from overseas visitors.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA VG 4223 20

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

21 December 2020

Dear Llywydd,

The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2020

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that this Statutory Instrument (SI) will come into force less than 21 days from the date of laying. The Explanatory Memorandum for these Regulations is attached for your information.

The 2020 Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 ("the Principal Regulations"). The Principal Regulations set the framework for charging persons who are not ordinarily resident in the UK for emergency and non-emergency hospital treatment which is provided in Wales.

Should the UK leave the EU without a deal, amendments to the Principal Regulations are necessary to ensure that the law remains operable and that specified categories of visitors from EU/EEA States and Switzerland with continuing citizens' rights under Title III of Part 2 of the Withdrawal Agreement, Title III of Part 2 of the EEA EFTA separation agreement or the Swiss citizens' rights agreement remain exempt from charging for NHS services in Wales in the event of a No Deal at implementation period (IP) completion day (31 December 2020). This will provide equality for EEA state or Switzerland citizens accessing healthcare with their counterparts in the rest of the United Kingdom.

The 2020 Regulations were made and laid as soon as practicable after the final draft SI for amending England's Charging Regulations was shared by DHSC in early December. The 2020 Regulations were contingent on these and their lateness has meant that Wales' Regulations have come into force less than 21 days after they were made in order to come into effect by IP completion day at the absolute latest.

Not adhering to the 21 day convention allows the Regulations to come into force on 31 December, IP completion day in order to ensure the continued effective operation of the

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Principal Regulations following the UK leaving the EU with No Deal. Not adhering to the 21 day rule is therefore necessary and justifiable in this case.

An Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

A copy of this letter goes to Mick Antoniw AM, 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,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)721 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021

Background and Purpose

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health.

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 the International Travel 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 ("exempt countries and territories") are not required to isolate. Part 2 of these Regulations amends the list of exempt countries and territories.

Regulation 2 amends the International Travel Regulations to remove the entry for the United Arab Emirates. Regulation 3 makes transitional provisions in this regard.[1]

These Regulations came into force at 4.00 am on 12 January 2021.

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

[1] It is noted that the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021 have since removed all countries from the list of exempt countries and territories.

The following three 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.

We note the Welsh Government's justification for any potential interference by these Regulations 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 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."*

Section 5(5) of the European Union Withdrawal Act 2018 states that the European Charter of Fundamental Rights ("the Charter") is not part of domestic law on or after IP completion day, which was at 23:00 on 31 December 2020. The Charter therefore no longer forms part of domestic law. In light of this, it would assist the Committee to receive an explanation as to why reference to the Charter is made in the Explanatory Memorandum.

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 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 11 January 2021.

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

> *"It has been necessary to urgently remove the United Arab Emirates (UAE) from the list of exempted countries and territories that are set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, following advice which indicates the risk to public health of inbound travel from UAE has risen.*
>
> *Not adhering to the 21 day convention, and bringing them into force before they are laid, allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case."*

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.

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."*

We also note that the letter from Rebecca Evans MS, Minister for Finance and Trefnydd to the Llywydd dated 11 January 2021 states that:

> *"Due to the immediacy of the Regulations they have not been subject to consultation."*

Welsh Government response

A Welsh Government response is required in relation to the first reporting point only.

Legal Advisers
Legislation, Justice and Constitution Committee
20 January 2021

WELSH STATUTORY INSTRUMENTS

2021 No. 24 (W. 8)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the "International Travel 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);
- the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 (S.I. 2020/1645) (W. 345); and
- The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021 (S.I. 2021/20) (W. 7).

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 United Arab Emirates from the list of exempt countries and territories.

Regulation 3 of these Regulations makes transitional provision in connection with that country's 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.

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.

WELSH STATUTORY INSTRUMENTS

2021 No. 24 (W. 8)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021

Made *11 January 2021*

Coming into force at 4.00 a.m. on 12 January 2021

Laid before Senedd Cymru at 12.30 p.m. on 12 January 2021

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984(**1**), make the following Regulations.

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 12 January 2021.

(3) In these Regulations, the "International Travel Regulations" means the Health Protection

(**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.

(Coronavirus, International Travel) (Wales) Regulations 2020(**1**).

PART 2

Amendment to the list of exempt countries and territories in Schedule 3 to the International Travel Regulations

Removal of the United Arab Emirates 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 entry—

"United Arab Emirates".

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 12 January 2021, and

(b) was last in the United Arab Emirates—

(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 12 January 2021.

(2) P is, by virtue of having been in the United Arab Emirates 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.

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
11 January 2021

(**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), S.I. 2020/1645 (W. 345) and S.I. 2021/20 (W. 7).

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) 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) (Wales) (Amendment) Regulations 2021.

Vaughan Gething
Minister for Health and Social Services

12 January 2021

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as "exempt countries".

These Regulations amend the International Travel Regulations to implement changes identified by the Joint Biosecurity Centre in the public health risk status of certain countries or territories, as is necessary for the protection of public health.

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

Coming into force

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations have come into force before they were laid, and do not adhere to the 21 day convention. This was necessary in view of the changing evidence on risk in relation to this disease, from passengers travelling to the UK from the United Arab Emirates.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel 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 Public Health (Control of Disease) Act 1984 ("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 and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel 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 8 January 2021.

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 United Arab Emirates ("UAE") 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 the UAE.

The revised requirements came into effect for any travellers entering the Common Travel Area from the UAE on or after 4.00 am this morning, 12 January 2021.

This amendment to the International Travel Regulations does not affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendment.

The Welsh Ministers consider that this amendment is 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.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd/Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/0117/21

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

11 January 2021

Dear Llywydd

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, I am notifying you that this statutory instrument has not adhered to the 21 day convention and will come into force before it can be laid. 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.

It has been necessary to urgently remove the United Arab Emirates (UAE) from the list of exempted countries and territories that are set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, following advice which indicates the risk to public health of inbound travel from UAE has risen.

Not adhering to the 21 day convention, and bringing them into force before they are laid, allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

I am copying this letter to Mick Antoniw AM**,** 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,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020**
DATE	**11 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 10 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 United Arab Emirates will be removed from the list of exempt countries and territories, so travellers from those countries will need to isolate on arrival in Wales.

The necessary regulations will come into force at 04:00 on Tuesday 12 January 2021, and they will be laid tomorrow once they have been registered.

SL(5)724 – The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021

Background and Purpose

The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 ("the Regulations") are made in reliance on the powers in sections 45B, 45F(2)and 45P(2) of the Public Health (Control of Disease) Act 1984.

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("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 Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 were made on 15 June, and came into force on 17 June. They place obligations on operators of international passenger services arriving into Wales from outside the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to ensure that passengers travelling on those services are made aware of their obligations under the International Travel Regulations to provide information and, where relevant, isolate on their return to Wales.

The Regulations amend the International Travel Regulations so as to introduce further measures to protect public health, in the form of a pre-departure testing scheme, which will require all arrivals into Wales from outside the Common Travel Area to possess notification of a negative coronavirus test. They also introduce a new requirement on operators of international passenger services arriving into Wales from outside the Common Travel Area to ensure that passengers on such services possess notification of a negative test result, which it will be a criminal offence to breach.

The new requirements in relation to pre-departure testing came into effect for any travellers arriving in Wales from 4.00 am on Monday 18 January.

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 point is 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

Paragraph 3(1) of new Schedule 1A, as inserted by regulation 3(6) of the Regulations, incorrectly references regulation 6A(4)(a). The correct reference appears instead to be regulation 6A(4)(c).

Paragraph 3(1)(a) of new Schedule 1A, as inserted by regulation 3(6) of the Regulations, incorrectly references paragraph 8 of Schedule 2. The correct reference appears instead to be paragraph 7 of Schedule 2.

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

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 15 January 2021.

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

> "*These Regulations introduce further measures to protect public health, in the form of a pre-departure testing scheme, which will require all arrivals into Wales from outside the common travel area to possess notification of a negative coronavirus test. The Regulations also introduce a new requirement on operators of international passenger services arriving into Wales from outside the common travel area to ensure that passengers on such services possess notification of a negative test result, which it will be a criminal offence to breach.*
>
> *Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.*"

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 paragraph in the Explanatory Memorandum:

> "*The amendments to the International Travel Regulations and operator requirement provisions contained in these Regulations remain consistent with the engagement under the International Travel 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. .*"

Section 5(5) of the European Union Withdrawal Act 2018 states that the European Charter of Fundamental Rights ("the Charter") is not part of domestic law on or after IP completion day, which was at 23:00 on 31 December 2020. The Charter therefore no longer forms part of domestic law. In light of this, it would assist the Committee to receive an explanation as to why reference to the Charter is made in the Explanatory Memorandum.

It is noted also that section 4 of the Explanatory Memorandum asserts the proportionality of the Regulations, and the Regulations themselves impose safeguards on information sharing in regulations 9(4) and (6).

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 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.*"

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.

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

The references to regulations 3(2), 3(3) and 3(4) in the third, fourth and fifth paragraphs respectively of the Explanatory Note are incorrect and should instead refer to regulations 3(3), 3(4) and 3(5) respectively.

It is accepted that the Explanatory Note does not form part of the Regulations. However, its inclusion is to assist citizens in accessing and understanding the new law implemented by the Regulations and, as such, it is desirable the correct references are used.

Welsh Government response

A Welsh Government response is required in relation to the technical reporting point and the second merits reporting point.

Legal Advisers
Legislation, Justice and Constitution Committee
20 January 2021

WELSH STATUTORY INSTRUMENTS

2021 No. 48 (W. 11)

PUBLIC HEALTH, WALES

TRANSPORT, WALES

The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in response to the danger to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales. Section 45B of the Public Health (Control of Disease) Act 1984 enables the Welsh Ministers, by regulations, to make provision for the purpose of (amongst other things) preventing danger to public health from "vessels, aircraft, trains or other conveyances arriving at any place".

Part 2 of these Regulations amends the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) ("the International Travel Regulations") to introduce a requirement for persons travelling to Wales from outside the common travel area to possess a notification of a negative coronavirus test upon arrival in Wales.

Regulation 3(2) of these Regulations inserts a new regulation 6A into the International Travel Regulations, which sets out the notification requirements and provides details of persons who are exempt from these requirements. Regulation 6A also references a new Schedule 1A into the International Travel Regulations, which is inserted by regulation 3(6) and provides further details as to what constitutes a valid test and notification for the purposes of regulation 6A and gives further details in relation to categories of exempt persons.

Regulation 3(3) amends regulation 14 of the International Travel Regulations so that a breach of the requirements in regulation 6A is a criminal offence and a non-exhaustive list of reasonable excuses that can be raised in defence are listed.

Regulation 3(4) amends regulation 16 of the International Travel Regulations so that a fixed penalty notice can be issued in relation to an offence committed under regulation 6A.

Part 3 of these Regulations introduces a requirement for persons operating international passenger services ("operators") arriving into Wales from outside the common travel area to ensure that passengers on such services possess notification of a negative test result (regulation 5(1)). A breach of this requirement is an offence (regulation 6(1)).

Regulation 7 allows an authorised person to deal with an offence under regulation 6(1) by way of fixed penalty notice. A fixed penalty notice must give details of the particulars of the offence, including the name of the passenger who has failed to provide notification of a negative test result.

A full impact assessment has not been completed due to the urgent nature of this instrument. An Explanatory Memorandum has been published alongside this instrument at www.legislation.gov.uk.

WELSH STATUTORY INSTRUMENTS

2021 No. 48 (W. 11)

PUBLIC HEALTH, WALES

TRANSPORT, WALES

The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021

Made *at 3.00 p.m. on 15 January 2021*

Laid before Senedd Cymru at 5.30 p.m. on 15 January 2021

Coming into force at 4.00 a.m. on 18 January 2021.

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45B, 45F(2) and 45P(2) of the Public Health (Control of Disease) Act 1984(**1**).

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 18 January 2021.

(3) These Regulations apply in relation to Wales.

(**1**) 1984 c. 22. Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14).

Interpretation

2. In these Regulations—

"common travel area" ("*ardal deithio gyffredin* ") has the meaning given in section 1(3) of the Immigration Act 1971(**1**);

"the International Travel Regulations" ("*y Rheoliadau Teithio Rhyngwladol*") means the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020(**2**).

PART 2

Pre-Departure Testing

Amendment of the International Travel Regulations

3.—(1) The International Travel Regulations are amended as follows.

(2) In regulation 2(1) (interpretation) at the appropriate place, insert—

(a) ""device" ("*dyfais*") means an in vitro diagnostic medical device within the meaning given in regulation 2(1) of the Medical Devices Regulations 2002(**3**);";

(b) ""qualifying test" ("*prawf cymhwysol*") means a test that is a qualifying test for the purposes of regulation 6A;";

(c) ""sensitivity" ("*sensitifrwydd*"), in relation to a device, means how often the device correctly generates a positive result;";

(d) ""specificity" ("*penodolrwydd*"), in relation to a device, means how often the device correctly generates a negative result;".

(**1**) 1971 c. 77. Section 1(3) provides that the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland are collectively referred to in that Act as "the common travel area".

(**2**) S.I. 2020/574 (W. 132), 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), S.I. 2021/20 (W. 7) and S.I. 2021/24 (W. 8).

(**3**) S.I. 2002/618, to which there are amendments not relevant to these Regulations.

(3) After regulation 6 (passenger information not in a person's possession or control), insert—

"PART 2A

Notification of a negative test result etc.

Requirement to possess notification of a negative test result

6A.—(1) A person ("P") aged 11 or over who arrives in Wales from outside the common travel area must, possess on arrival —

(a) valid notification of a negative result from a qualifying test taken by P, and

(b) where P is an adult who arrives in Wales accompanied by a child aged 11 or over for whom P has responsibility, valid notification of a negative result from a qualifying test taken by the child.

(2) Where P—

(a) possesses a notification referred to in paragraph (1), and

(b) is requested by an immigration officer to do so,

P must produce, physically or digitally, the notification, if requested to do so by an immigration officer.

(3) Paragraphs (1) and (2) do not apply to P if P is a child aged under 11 who arrives in Wales accompanied by an adult who has responsibility for P.

(4) In paragraphs (1) and (2), references to P do not include—

(a) a person described in paragraph 2, 3, 4, 7, 8, 9, 10, 11, 12 or 28 of Schedule 2,

(b) a road haulage worker as described in paragraph 6 of Schedule 2,

(c) a person described in any sub-paragraph of paragraph 3(1) of Schedule 1A.

(5) For the purposes of this regulation—

(a) a test is a qualifying test if it complies with paragraph 1 of Schedule 1A,

(b) a notification of a negative result is valid if it includes the information specified in paragraph 2 of Schedule 1A."

(4) In regulation 14 (offences)—

(a) after paragraph (1)(a), insert—

"(aa) 6A(1) or (2),",

(b) after paragraph (1), insert—

"(1A) But a person does not commit an offence where they contravene a requirement in regulation 6A(1), if they reasonably believed at the time of the contravention that a notification in their possession of a negative result relating to the person or to a child for whom the person has responsibility (as the case may be) was valid and from a qualifying test (for the purposes of that regulation).",

(c) after paragraph (5), insert—

"(5A) In relation to an offence of contravening regulation 6A(1), the circumstances under which a person has a reasonable excuse include where—

(a) a person was medically unfit to provide a sample for a qualifying test before travelling to Wales and possesses a document, signed by a medical practitioner entitled to practise in the country or territory in which that practitioner was based, to that effect,

(b) it was not reasonably practicable for a person to obtain a qualifying test before travelling to Wales due to—

(i) a disability,

(ii) the need to obtain urgent medical treatment

(c) a person was accompanying, in order to provide support (whether medical or otherwise), a person described in sub-paragraph (b) and where it was not reasonably practicable for the accompanying person to obtain a qualifying test before travelling to Wales,

(d) a person began their journey to Wales in a country or territory in which a qualifying test was not available to the public (with or without payment) or in which it was not reasonably practicable for a person to obtain a qualifying test due to a lack of reasonable access to a qualifying test or testing facility and it was not reasonably practicable for them to obtain a qualifying test in their last point of departure if this was

different to where they began their journey,

(e) the time it has taken a person to travel from the country or territory where they began their journey to the country or territory of their last point of departure prior to arriving in Wales meant that it was not reasonably practicable for them to meet the requirement in paragraph 1(c) of Schedule 1A, and it was not reasonably practicable for them to obtain a qualifying test in their last point of departure.".

(5) In regulation 16 (fixed penalty notices)—

(a) In paragraph (1)(a)(i), after "5(2)", insert "6A(1) or (2)"

(b) After paragraph (6)(a), insert—

"(aa) of contravening a requirement imposed by regulation 6A,".

(6) After Schedule 1, insert—

"SCHEDULE 1A

Regulation 6A

Testing before arrival in Wales

1. A test complies with this paragraph if—

(a) it is a test for the detection of coronavirus, which is—

(i) a polymerase chain reaction test, or

(ii) undertaken using a device which the manufacturer states has—

(aa) a sensitivity of at least 80%,

(bb) a specificity of at least 97%, and

(cc) a limit of detection of less than or equal to 100,000 SARS-CoV-2 copies per millilitre,

(b) it is not a test provided or administered under the National Health Service Act 2006(**1**), the National Health Service (Wales) Act 2006(**2**), the National Health Service (Scotland) Act 1978(**3**), or the Health and Personal Social

(**1**) 2006 c. 41.
(**2**) 2006 c. 42.
(**3**) 1978 c. 29.

Services (Northern Ireland) Order 1972(**1**), and

(c) the test sample is taken from the person no more than 72 hours before—

(i) in the case of that person travelling to Wales on a commercial transport service, the service's scheduled time of departure, or

(ii) in any other case, the actual time of departure of the vessel or aircraft on which that person is travelling to Wales.

2. Notification of a negative test result must include, in English, French, or Spanish, the following information—

(a) the name of the person from whom the sample was taken,

(b) that person's date of birth,

(c) the (negative) result of the test,

(d) the date the test sample was collected or received by the test provider,

(e) a statement that the test was—

(i) a polymerase chain reaction test, or

(ii) undertaken using a device which has a sensitivity of at least 80%, a specificity of at least 97%, and a limit of detection of less than or equal to 100,000 SARS-CoV-2 copies per millilitre,

(f) the name of the manufacturer of the test device that was used,

(g) the name of the test provider.

3.—(1) The persons referred to in regulation 6A(4)(a) (as not being required to comply with that regulation) are—

(a) a person described in paragraph 8 of Schedule 2, even if their travel to the United Kingdom in the course of their work or repatriation to the United Kingdom is not in accordance with either of the conventions referred to in that paragraph,

(b) a person described in—

(i) paragraph 13(1)(b) of Schedule 2 where, prior to the person's

(**1**) 1972 No. 1265 (N.I. 14).

departure to the United Kingdom, the relevant Department has certified that they meet this description and are not required to comply with regulation 6A, or

(ii) paragraph 13A of Schedule 2 where, prior to person's departure to the United Kingdom, the relevant Department has also certified that they are not required to comply with regulation 6A,

(c) a Crown servant or government contractor ("C") who is required to undertake essential government work or essential policing in the United Kingdom or is returning from conducting such work outside the United Kingdom where, prior to C's departure to the United Kingdom, the relevant Department has certified that they meet this description and are not required to comply with regulation 6A,

(d) a representative ("R") of a foreign country or territory travelling to the United Kingdom to conduct official business with the United Kingdom where, prior to R's departure to the United Kingdom—

(i) the relevant head of the mission, consular post, or office representing a foreign territory in the United Kingdom, or a Governor of a British overseas territory (as the case may be), or a person acting on their authority, confirms in writing to the Foreign Commonwealth and Development Office that R is required to undertake work which is essential to the foreign country represented by the mission or consular post, the foreign territory represented by the office or the British overseas territory, and

(ii) the Foreign Commonwealth and Development Office has then confirmed in writing to the person giving the notification in sub-paragraph (i) that—

(aa) it has received that confirmation, and

(bb) R is travelling to the United Kingdom to conduct official business with the United Kingdom and is not

required to comply with regulation 6A,

(e) a worker with specialist technical skills, where those specialist technical skills are required for emergency works or services (including commissioning, maintenance, and repairs and safety checks) to ensure the continued production, supply, movement, manufacture, storage or preservation of goods or services, where they have travelled to the United Kingdom in the course of their work or otherwise to commence or resume their work.

(2) In sub-paragraph (1)—

"consular post" ("*swyddfa gonsylaidd*") has the meaning given in paragraph 1(3) of Schedule 2;

"Crown servant" ("*gwas i'r Goron*"), "essential government work" ("*gwaith llywodraeth hanfodol*"), "essential policing" ("*plismona hanfodol*") and "government contractor" ("*contractwr llywodraeth*") have the meanings given in paragraph 13(2) of Schedule 2. ".

PART 3

Operator liability in respect of arrivals

Interpretation

4. In this Part—

"authorised person" ("*person awdurdodedig*") means—

(a) in relation to passengers arriving on a vessel, the Secretary of State;

(b) in relation to passengers arriving on an aircraft, the Civil Aviation Authority(**1**);

"child" ("*plentyn*") means a person under the age of 18;

"immigration officer" ("*swyddog mewnfudo*") means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971(**2**);

"international passenger service" ("*gwasanaeth teithwyr rhyngwladol*") means a commercial

(**1**) The Civil Aviation Authority is a body corporate established by section 1 of the Civil Aviation Act 1971 (c. 75).

(**2**) 1971 c. 77. Paragraph 1 was amended by paragraph 3 of Schedule 3 to the Health Protection Agency Act 2004 (c. 17), and by S.I. 1993/1813.

service by which passengers travel on a vessel or aircraft from outside the common travel area to a port in Wales;

"operator" ("*gweithredwr*") means operator of an international passenger service;

"passenger" ("*teithiwr*") means a person travelling on an international passenger service who is not a member of that service's crew;

"port" ("*porthladd*") includes an airport, heliport or seaport;

"qualifying test" ("*prawf cymhwysol*") is a test that is a qualifying test for the purposes of regulation 6A of the International Travel Regulations;

"relevant passenger" ("*teithiwr perthnasol*") means a passenger who fails, without reasonable excuse, to produce a required notification when requested to do so by an immigration officer pursuant to regulation 6A(2) of the International Travel Regulations;

"required notification" ("*hysbysiad gofynnol*") means a valid notification of a negative test result from a qualifying test for the purposes of regulation 6A of the International Travel Regulations—

(a) taken by the person in possession of that notification, or

(b) taken by a child and treated as being in their possession by virtue of that regulation;

"the requirement to possess notification of a negative test result" ("*y gofyniad i feddu ar hysbysiad o ganlyniad prawf negyddol*") means the requirement in regulation 6A(1) of the International Travel Regulations;

"responsible individual" ("*unigolyn cyfrifol*") means an individual who—

(a) has custody or charge of the child for the time being, or

(b) has parental responsibility for the child within the meaning given in section 3 of the Children Act 1989(**1**).

"vessel" ("*llestr*") means every description of vessel used in navigation (including a hovercraft within the meaning of Hovercraft Act 1968) which is 24 metres or more in length.

(**1**) 1989 c. 41.

Requirement to ensure passengers possess notification of a negative test result

5.—(1) An operator must ensure that a passenger who arrives in Wales on an international passenger service is in possession of a required notification.

(2) Paragraph (1) does not apply in relation to a passenger—

(a) whom the operator, or a person acting on behalf of the operator, reasonably believes is not required to comply with the requirement to possess notification of a negative test result or has a reasonable excuse for failing to comply with that requirement;

(b) who is a child, travelling without a responsible individual; or

(c) who is a transit passenger, who has a right to reside in the United Kingdom and does not have the right to enter the country or territory from which the international passenger service departs.

(3) In this regulation, "transit passenger" means a person who, has arrived in the country or territory from which the international passenger service departs with the intention of passing through to Wales without entering that country or territory.

Offences

6.—(1) An operator who fails to comply with the requirement in regulation 5(1) commits an offence.

(2) An offence under paragraph (1) is punishable on summary conviction by a fine.

(3) In relation to the offence in paragraph (1), it is a defence for an operator to show that the relevant passenger presented a document purporting to be a required notification which the operator, or a person acting on behalf of the operator, could not reasonably have been expected to know was not a required notification.

Fixed penalty notices

7.—(1) An authorised person may issue a fixed penalty notice to any operator who the authorised person reasonably believes has committed an offence under regulation 6(1).

(2) A fixed penalty notice is a notice offering the operator to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to—

(a) the Welsh Ministers; or

(b) a person designated by the Welsh Ministers for the purposes of receiving payment under this regulation.

(3) Where an operator is issued with a notice under paragraph (1) in respect of an offence—

(a) no proceedings may be taken for the offence before the end of the period of 28 days following the date the notice is issued;

(b) the operator may not be convicted of the offence if the operator pays the fixed penalty before the end of that period.

(4) A fixed penalty notice must—

(a) give reasonably detailed particulars of the circumstances alleged to constitute the offence, including the name of the relevant passenger;

(b) state the period during which (because of paragraph (3)(a)) proceedings will not be taken for the offence;

(c) specify the amount of the fixed penalty;

(d) state the name and address of the person to whom payment of the fixed penalty may be paid or evidence of the defence is to be provided; and

(e) specify permissible methods of payment.

(5) The amount of the fixed penalty for the purposes of paragraph (4)(c) is £1,000.

(6) In any proceedings, a certificate that—

(a) purports to be signed on behalf of—

(i) the Welsh Ministers, or

(ii) any person designated by the Welsh Ministers under paragraph (2)(b), and

(b) states that the payment of a fixed penalty, was, or was not, received by the date specified in the certificate,

is evidence of the facts stated.

Prosecutions

8. Proceedings for an offence under regulation 6(1) may only be brought by an authorised person.

Power to use and disclose information

9.—(1) This regulation applies to any person ("P") who holds information described in paragraph (2) relating to a relevant passenger ("relevant information").

(2) The information referred to in paragraph (1) is—

(a) information provided by, or on behalf of, the relevant passenger by way of explanation for

failing to comply with regulation 6A of the International Travel Regulations,

(b) information about the steps taken, pursuant to the International Travel Regulations, in relation to the relevant passenger, including details of any fixed penalty notice issued under those Regulations,

(c) personal details of the relevant passenger, including their—

(i) full name,

(ii) date of birth,

(iii) passport number, or travel document reference number (as appropriate), issue and expiry dates and issuing authority,

(iv) home address,

(v) telephone number,

(vi) email address,

(d) journey details of the relevant passenger, including—

(i) their time and date of arrival in Wales,

(ii) the name of the operator of the international passenger service on which they arrived or through which their booking was made,

(iii) the flight number or vessel name,

(iv) the departure and arrival locations of the international passenger service.

(3) P may only use relevant information where it is necessary for the purpose of carrying out a function under these Regulations.

(4) P may only disclose relevant information to another person ("the recipient") where it is necessary for the recipient to have the relevant information for the purpose of carrying out a function under these Regulations.

(5) This regulation does not limit the circumstances in which information may otherwise lawfully be disclosed under any other enactment or rule of law.

(6) Nothing in this regulation authorises the use or disclosure of personal data where doing so contravenes the data protection legislation.

(7) For the purposes of this regulation "data protection legislation" and "personal data" have the same meanings as in section 3 of the Data Protection Act 2018(**1**).

(**1**) 2018 c. 12.

Review

10. The Welsh Ministers must review the need for the requirement imposed by regulation 5 of these Regulations by 8 February 2021 and at least once every 28 days after that date.

Expiry

11.—(1) These Regulations expire at the end of 7 June 2021.

(2) The expiry of these Regulations does not affect the validity of anything done pursuant to these Regulations before they expire.

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
At 3.00 p.m. on 15 January 2021

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) 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, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021.

Vaughan Gething
Minister for Health and Social Services

15 January 2021

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days.

These Regulations amend the International Travel Regulations so as to introduce further measures to protect public health, in the form of a pre-departure testing scheme, which will require all arrivals into Wales from outside the common travel area to possess notification of a negative coronavirus test.

These Regulations also introduce a new requirement on operators of international passenger services arriving into Wales from outside the common travel area to ensure that passengers on such services possess notification of a negative test result, which it will be a criminal offence to breach.

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

Coming into force

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations do not adhere to the 21 day convention. This was necessary in view of the need to act swiftly and on a four nations basis in order to provide a further safeguard in the effort to prevent danger to public health from persons travelling into Wales from outside the common travel area, especially in relation to the emergence of new variants of concern.

European Convention on Human Rights

The amendments to the International Travel Regulations and operator requirement provisions contained in these Regulations remain consistent with the engagement under the International Travel 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 Public Health (Control of Disease) Act 1984 ("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, 45F(2)and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel 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 Health Protection (Coronavirus, Public Health Information for Persons Travelling to Wales etc.) Regulations 2020 were made on 15 June, and came into force on 17 June. They place obligations on operators of international passenger services arriving into Wales from outside the common travel area to ensure that passengers travelling on those services are made aware of their obligations under the International Travel Regulations to provide information and, where relevant, isolate on their return to Wales.

Both sets of Regulations are kept under regular review and as part of the ongoing effort to prevent danger to public health in connection with the spread of coronavirus in the context of international travel it has been determined that travellers arriving into Wales from outside the common travel area should be in possession of a negative coronavirus test result. The amendments to the International Travel Regulations made by these Regulations introduce this new requirement and the details of the test and notification that is required. These Regulations also introduce a corresponding duty on operators of international passenger services to ensure that passengers travelling on these services are in possession of a notification of a negative test.

The new requirements in relation to pre-departure testing come into effect for any travellers arriving in Wales from 4.00 am on Monday 18 January.

The Welsh Ministers consider that the provisions and amendments contained in these regulations 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.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd/Minister for Finance and Trefnydd

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/0197/21

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

15 January 2021

Dear Llywydd

The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021

In accordance with section 11A(4) of the Statutory Instruments Act 1946, I am notifying you that this statutory instrument will come into force less than 21 days after it has been laid. The Explanatory Memorandum that accompanies the Regulations is attached for your information.

These Regulations introduce further measures to protect public health, in the form of a pre-departure testing scheme, which will require all arrivals into Wales from outside the common travel area to possess notification of a negative coronavirus test. The Regulations also introduce a new requirement on operators of international passenger services arriving into Wales from outside the common travel area to ensure that passengers on such services possess notification of a negative test result, which it will be a criminal offence to breach.

Not adhering to the 21 day convention allows these Regulations to come into force at the earliest opportunity, and in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

I am copying this letter to Mick Antoniw AM**,** 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,

Rebecca Evans AS/MS
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)725 – The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021

Background and Purpose

The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("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 the International Travel Regulations.

The requirements imposed by the International Travel Regulations are subject to exceptions, and certain categories of person are exempt from having to comply.

Until now, persons entering Wales after being in one or more of the countries and territories listed in Parts 1 and 2 of Schedule 3 to the International Travel Regulations ("exempt countries and territories") have not been required to isolate. Part 2 of these Regulations removes all the exempt countries and territories listed in Schedule 3.

These Regulations also:

- Amend Schedule 2 to the International Travel Regulations by removing certain categories of worker that are currently exempt from having to provide passenger information and isolate;
- Amend regulation 10 of the International Travel Regulations by removing certain exceptions to the requirement to isolate.

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 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

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 Vaughan Gething MS, Minister for Health and Social Services, in a letter to the Llywydd dated 16 January 2021.

In particular, we note the following in the letter:

> "*Not adhering to the 21 day convention, and bringing them into force before they are laid, allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.*"

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 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 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.*"

Section 5(4) of the European Union (Withdrawal) Act 2018 states that the European Charter of Fundamental Rights ("the Charter") is not part of domestic law on or after IP completion day (23:00 on 31 December 2020). Can the Welsh Government provide an explanation as to why reference to the Charter is made in the Explanatory Memorandum?

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

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."*

Welsh Government response

A Welsh Government response is required in relation to the second merits point.

Legal Advisers
Legislation, Justice and Constitution Committee
20 January 2021

WELSH STATUTORY INSTRUMENTS

2021 No. 50 (W. 12)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 (S.I. 2020/574 (W. 132)) (the "International Travel 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);
- the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 (S.I. 2020/1645) (W. 345);
- The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2021 (S.I. 2021/20) (W. 7);
- The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) Regulations 2021 (S.I. 2021/24) (W. 8);
- The Health Protection (Coronavirus, International Travel and Restrictions)

(Amendment) (No. 2) (Wales) Regulations 2021 (S.I. 2021/46) (W. 10); and

- The Health Protection (Coronavirus, International Travel, Pre-Departure Testing and Operator Liability) (Wales) (Amendment) Regulations 2021 (S.I. 2021/48) (W. 11).

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 all countries and territories listed in Part 1 and Part 2 of Schedule 3 to the International Travel Regulations from the list of exempt countries and territories.

Regulation 3 of these Regulations makes transitional provision in connection with those 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 Schedule 2 (exempt persons) to the International Travel Regulations. Schedule 2 to those Regulations exempts certain categories of worker from having to provide passenger information and from having to isolate. Regulation 4 removes paragraph 37 of Schedule 2 to the International Travel Regulations.

Part 4 of these Regulations amends regulation 10 of the International Travel Regulations (isolation requirements: exceptions). Regulation 5 removes subparagraphs (4)(jc) and (4)(jd) from regulation 10.

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.

WELSH STATUTORY INSTRUMENTS

2021 No. 50 (W. 12)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021

Made *16 January 2021*

Coming into force at 4.00 a.m. on 18 January 2021

Laid before Senedd Cymru at 12.30 p.m. on 18 January 2021

The Welsh Ministers, in exercise of the powers conferred on them by sections 45B and 45P(2) of the Public Health (Control of Disease) Act 1984(**1**), make the following Regulations.

PART 1

General

Title, coming into force and interpretation

1.—(1) The title of these Regulations is the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021.

(2) These Regulations come into force at 4.00 a.m. on 18 January 2021.

(3) In these Regulations, the "International Travel Regulations" means the Health Protection

(**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.

(Coronavirus, International Travel) (Wales) Regulations 2020(**1**).

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.—(1) Schedule 3 to the International Travel Regulations (exempt countries and territories outside the common travel area) is amended as follows.

(2) For the entries in Part 1 (countries, territories and parts of countries or territories), substitute "No countries, territories or parts of countries or territories are specified in this Part".

(3) For the entries in Part 2 (United Kingdom overseas territories), substitute "No territories are specified in this Part".

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 18 January 2021, and

(b) was last in a country or territory that was listed in Part 1 or Part 2 of Schedule 3 to the International Travel Regulations immediately before 4.00 a.m. on 18 January 2021—

(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 18 January 2021.

(2) P is, by virtue of having been in a country or territory that was listed in Part 1 or Part 2 of Schedule 3 to the International Travel Regulations immediately before 4.00 a.m. on 18 January 2021, to be treated for

(**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), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7), S.I. 2021/24 (W. 8), S.I. 2021/46 (W. 10) and S.I. 2021/48 (W. 11).

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

Amendment to Part 2 of Schedule 2 to the International Travel Regulations

Amendment to Part 2 of Schedule 2 to the International Travel Regulations (exempt persons)

4. In Part 2 of Schedule 2 to the International Travel Regulations (persons not required to comply with regulations 7 or 8), omit paragraph 37.

PART 4

Amendment to Regulation 10 of the International Travel Regulations

Amendment to Regulation 10 of the International Travel Regulations (isolation requirements: exceptions)

5. In regulation 10 of the International Travel Regulations (isolation requirements: exceptions), omit subparagraphs (4)(jc) and (4)(jd).

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
16 January 2021

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) 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) (Wales) (Amendment) (No.2) Regulations 2021.

Vaughan Gething
Minister for Health and Social Services

18 January 2021

1. Description

Subject to specified exemptions, until 10 July 2020, the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020 ("the International Travel Regulations") required all passengers arriving in Wales from outside of the Common Travel Area (i.e. the open borders area comprising the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland) to provide their contact details and travel information and to isolate for a period of 14 days. As of 10 December 2020, the isolation period was reduced to 10 days.

The International Travel Regulations were amended by the Health Protection (Coronavirus, International Travel and Public Health Information to Travellers) (Wales) (Amendment) Regulations 2020 so as to (among other things) introduce an exemption from the isolation requirement for passengers arriving from specified countries and territories, known as "exempt countries".

These Regulations amend the International Travel Regulations to respond to the risk posed by and difficulties assessing the risk of imported variant strains of SARS-COV-2 ("coronavirus"), which is necessary for the protection of public health.

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

Coming into force

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations have come into force before they were laid, and do not adhere to the 21 day convention. This was necessary owing to the risk posed in relation to coronavirus and in particular variant strains of the same, from passengers travelling to the UK.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel 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 Public Health (Control of Disease) Act 1984 ("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 and 45P(2) of the 1984 Act. The Explanatory Memorandum to the International Travel 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 12 January 2021.

Advice which has now been received from the Joint Biosecurity Centre indicates that it is difficult to fully assess the public health risk posed by the incidence and spread of variant strains of coronavirus. On the basis of this advice the Welsh Government consider that it would not at present be appropriate for any country or territory outside the common travel area to be on the travel corridors list, exempting travellers from the isolation requirements and that is it advisable to remove some of the sectoral exemptions and exceptions from the requirement to isolate that are in place.

The revised requirements came into effect for any travellers arriving in Wales on or after 4.00 am on 18 January 2021.

These amendments to the International Travel Regulations do not affect the requirements under those Regulations for persons arriving into Wales before the coming into force of the amendment.

These amendments do not change the current arrangements for travel within the Common Travel Area (Ireland, Isle of Man and the Channel Islands).

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.

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/VG/0225/21

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

16 January 2021

Dear Llywydd

The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 2) Regulations 2021

In accordance with sections 4(1) and 11A(4) of the Statutory Instruments Act 1946, I am notifying you that this statutory instrument has not adhered to the 21 day convention and will come into force before it can be laid. I attach a copy of the statutory instrument and I intend to lay this and an accompanying Explanatory Memorandum on Monday, 18 January 2021.

It has been necessary to urgently remove the all of the currently listed countries and territories from which travellers to Wales were exempt from the quarantine requirements, together with a number of sectoral exemptions and exceptions from the requirement to isolate, as set out in the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020, to minimise the risk to public health from variant strains of the coronavirus.

Not adhering to the 21 day convention, and bringing them into force before they are laid, allows these Regulations to come into force at the earliest opportunity and continue the four nation approach to international travel; in view of the changing evidence on risk in relation to this disease this is considered necessary and justifiable in this case.

Due to the immediacy of the Regulations they have not been subject to consultation.

I am copying this letter to the Minister for Finance and Trefnydd, Mick Antoniw AM**,** 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.

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Yours sincerely,

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

SL(5)723 – The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021

Background and Purpose

The 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 Restrictions Regulations).

Advice received from the Joint Biosecurity Centre (JBC) indicates that the risk to public health posed by the incidence and community spread of a new variant of coronavirus in Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, French Guiana, Guyana, Paraguay, Peru, Portugal, Republic of Cabo Verde, Republic of Panama, Suriname, Uruguay, and Venezuela has increased.

In respect of these countries and territories, the Regulations:

- amend Schedule 3A to the International Travel Regulations, which list those countries and territories subject to additional measures by virtue of regulations 12E and 12F of the International Travel Regulations;
- amend the Restrictions Regulations to impose more stringent isolation requirements on people who have been in one of those countries and territories within the period of 10 days prior to 4.00 a.m. on 15 January 2021 and on anyone in the same household as such people.; and
- correct the Welsh language text of paragraph 48 of Schedule 4 to the Restrictions Regulations to clarify that show homes are permitted to stay open in Alert Level 4 areas – a point which was raised in a previous report of the Committee.

Advice has also been received from the JBC that the risk to public health posed by the incidence and spread of coronavirus in Aruba, the Azores, Bonaire, Sint Eustatius and Saba, Madeira and Qatar has increased.

In respect of these countries and territories, the Regulations:

- omit them from the list of exempt countries and territories contained under the International Travel Regulations; and
- make transitional provision in connection with their change of status.

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: (i) dissolved, or (ii) in recess for more than four days) of the date they were made for them to continue to have effect.

Technical Scrutiny

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

Merits Scrutiny

The following three 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 Regulations came into force before they were laid before the Senedd. We note the notification provided by Vaughan Gething MS, Minister for Health and Social Services, in a letter to the Llywydd dated 14 January 2021, which states:

> *"I have today made these Regulations 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 in part at 4.00am on 15 January 2021, with the remaining provisions coming into force at 4.00am on 16 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 section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force in part before they are laid before the Senedd. This is considered a necessary response to the news that a new variant of Covid-19 has been detected firstly in Brazil, which increases the risk posed by travellers into Wales, and also ensures that a four nations approach on international travel can be maintained."*

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 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 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."*

The Regulations amend the Restrictions Regulations as well as the International Travel Regulations. Although there is no express reference to the Restrictions Regulations within this paragraph, we acknowledge that, as with the International Travel Regulations, the Regulations may be unlikely to change the engagement of human rights issues under the Restrictions Regulations. It would assist the Committee if the position in relation to the Restrictions Regulations could be clarified.

Further, section 5(4) of the European Union (Withdrawal) Act 2018 states that the European Charter of Fundamental Rights is not part of domestic law on or after IP completion day (23:00 on 31 December 2020). As such, providing an explanation for the reference to the Charter in the Explanatory Memorandum would assist the Committee.

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.

We note there has been no formal consultation on the 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."*

Welsh Government response

A Welsh Government response is required in relation to the second merits point.

Legal Advisers
Legislation, Justice and Constitution Committee
20 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.

WELSH STATUTORY INSTRUMENTS

2021 No. 46 (W. 10)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (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);
- the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 (S.I. 2020/1645) (W. 345);
- The Health Protection (Coronavirus, International Travel and Restrictions) (Wales) (Amendment) Regulations 2021 (S.I. 2021/20) (W. 7); and
- The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) 2021 (S.I. 2021/24) (W. 8).

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);
- the Health Protection (Coronavirus, South Africa) (Wales) Regulations 2020 (S.I. 2020/1645) (W. 345); and
- The Health Protection (Coronavirus, International Travel and Restrictions) (Wales) (Amendment) Regulations 2021 (S.I. 2021/20) (W. 7).

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 Aruba, the Azores, Bonaire, Sint Eustatius and Saba, Chile, and Madeira and Qatar.

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 Schedule 3A to the International Travel Regulations. Schedule 3A to the International Travel Regulations list those countries and territories subject to additional measures by virtue of regulations 12E and 12F of those Regulations. Regulation 12E provides that when a person has been in a specified country or territory listed in Schedule 3A, that person 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 12F imposes restrictions on the arrival of aircraft and vessels arriving directly from a country listed in the Schedule 3A to the International Travel Regulations.

Regulation 4 lists the following countries and territories in Schedule 3A: Argentina; Brazil; Bolivia; Chile; Colombia; Ecuador; French Guiana; Guyana; Paraguay; Peru; Portugal; Republic of Cabo Verde; Republic of Panama; Suriname; Uruguay; and Venezuela.

Part 4 of these Regulations amends the Restrictions Regulations to impose more stringent isolation requirements on people who have been in one of 16 listed countries within the period of 10 days prior to 4.00 a.m. on 15 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. The amendments also correct the Welsh language text of paragraph 48 of Schedule 4 to the Restrictions Regulations to clarify that show homes are permitted to stay open in Alert Level 4 areas.

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.

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

2021 No. 46 (W. 10)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021

Made	*14 January 2021*
Coming into force in accordance with regulation 1(2) and (3)	
Laid before Senedd Cymru	*at 12.30 p.m. on 15 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

(**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.

proportionate to what they seek to achieve, which is a public health response to that threat.

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) (No. 2) (Wales) Regulations 2021.

(2) Parts 1, 3 and 4 of these Regulations come into force at 4.00 a.m. on 15 January 2021.

(3) Part 2 of these Regulations comes into force at 4.00 a.m. on 16 January 2021.

(4) 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**).

(**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), S.I. 2020/1645 (W. 345), S.I. 2021/20 (W. 7) and S.I. 2021/24 (W. 8).

(**2**) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336), S.I. 2020/1623 (W. 340), S.I. 2020/1645 (W. 345) and S.I. 2021/20 (W. 7).

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—

"Aruba"

"the Azores"

"Bonaire, Sint Eustatius and Saba"

"Chile"

"Madeira"

"Qatar".

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 16 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 16 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

Other amendments to the International Travel Regulations

Addition of countries to the list of countries and territories subject to additional measures

4. In Schedule 3A to the International Travel Regulations (countries and territories subject to additional measures), at the appropriate place insert—

"Argentina"

"Brazil"

"Bolivia"

"Chile"

"Colombia"

"Ecuador"

"French Guiana"

"Guyana"

"Paraguay"

"Peru"

"Portugal"

"Republic of Cabo Verde"

"Republic of Panama"

"Suriname"

"Uruguay"

"Venezuela".

Transitional provision in connection with regulation 4

5. Regulation 12F of the International Travel Regulations does not apply in respect of any flight or voyage that commenced before these Regulations came into force.

Amendment of regulation 12E of the International Travel Regulations

6. In regulation 12E of the International Travel Regulations, after paragraph (8) insert—

"(9) This regulation does not apply where P—

(a) is a road haulage worker (within the meaning given in paragraph 6 of Schedule 2),

(b) was last in Portugal within the period of 10 days ending with the day of P's arrival in Wales, and

(c) has not, during that period, been in any other country or territory listed in Schedule 3A."

Amendment of Schedule 2 to the International Travel Regulations

7. In paragraph 8 of Schedule 2 to the International Travel Regulations, omit "in accordance with the Maritime Labour Convention, 2006 or the Work in Fishing Convention, 2007".

PART 4

Amendments to the Restrictions Regulations

Amendments to the Restrictions Regulations

8.—(1) The Restrictions Regulations are amended as follows.

(2) In regulation 11A, for the heading substitute—

> **"Requirement to isolate: specific provision for people who are in Wales on 9 January 2021 and who have been in certain countries in the previous 10 days"**.

(3) After regulation 11A insert—

> **"Requirement to isolate: specific provision for people who are in Wales on 15 January 2021 and who have been in certain countries in the previous 10 days**
>
> **11AA**.—(1) This regulation applies where a person ("P")—
>
> (a) is in Wales at 4.00 a.m. on 15 January 2021,
>
> (b) has arrived in Wales within the period of 10 days ending immediately before 4.00 a.m. on 15 January 2021, and
>
> (c) has been in a listed country within that period.
>
> (2) Unless regulation 11B applies, P, and any person living in the same household with P, may not leave or be outside the place where they are living until the end of the period of 10 days beginning with the day on which P was last in a listed country.
>
> (3) If requested by a contract tracer, P must notify the contract tracer—
>
> (a) of the name of each person living at the place P is living, and
>
> (b) of the address of that place.
>
> (4) For the purposes of this regulation, the following are listed countries—
>
> (a) Argentina;
>
> (b) Brazil;
>
> (c) Bolivia;
>
> (d) Chile;
>
> (e) Colombia;
>
> (f) Ecuador;
>
> (g) French Guiana;
>
> (h) Guyana;

(i) Paraguay;

(j) Peru;

(k) Portugal;

(l) Republic of Cabo Verde;

(m) Republic of Panama;

(n) Suriname;

(o) Uruguay;

(p) Venezuela.

(5) This regulation does not apply where P—

(a) is a road haulage worker (within the meaning given in paragraph 6 of Schedule 2 to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020),

(b) has been in Portugal within the period of 10 days ending immediately before 4.00 a.m. on 15 January 2021, and

(c) has not, during that period, been in any other listed country."

(4) In regulation 11B(1), after "11A(2)" insert "or 11AA(2)".

(5) In regulation 12, for "or 11A(2)" substitute ", 11A(2) or 11AA(2)".

(6) In regulation 14(2)(aa), after "11A(2)" insert "or 11AA(2)".

(7) In regulation 22(4)(a), for "or 11A(2)" substitute ", 11A(2) or 11AA(2)".

(8) In regulation 30, for "or 11A(2)" substitute ", 11A(2) or 11AA(2)".

(9) In regulation 40—

(a) in paragraph (1)—

(i) in sub-paragraph (a), after "11A(2)" insert ", 11AA(2)";

(ii) in sub-paragraph (b), for "or 11A(3)" substitute ", 11A(3) or 11AA(3)";

(b) in paragraph (2)(a), for "or 11A(3)" substitute ", 11A(3) or 11AA(3)".

(10) In paragraph 48 of Schedule 4, in the Welsh language text, for "a chartrefi arddangos" substitute "a swyddfeydd gwerthiant datblygwyr".

Vaughan Gething
Minister for Health and Social Services, one of the Welsh Ministers
14 January 2021

Explanatory Memorandum to the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No.2) (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) (No.2) (Wales) Regulations 2021.

Vaughan Gething
Minister for Health and Social Services

15 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 "Restrictions Regulations").

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

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.

Coming into force

In accordance with sections 4(1) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations came into force in part before they were laid, owning to the need to respond urgently to identified changes on risk posed by these new variants of concern.

European Convention on Human Rights

The amendments contained in these Regulations do not change the engagement under the International Travel 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 Public Health (Control of Disease) Act 1984 ("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 Memorandum to the International Travel Regulations and the Restriction Regulations provide 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 12 January 2021.

Advice which has now been received from the Joint Biosecurity Centre indicates that the risk to public health posed by the incidence and community spread of a new variant of coronavirus in Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, French Guiana, Guyana, Paraguay, Peru, Portugal, Republic of Cabo Verde, Republic of Panama, Suriname, Uruguay, and Venezuela has increased.

Additional measures are now being made to the International Travel Regulations so any person arriving into Wales from these countries will be required to isolate and that isolation requirement will to all members of the household of any person entering Wales from 4.00 a.m. on 15 January 2021.

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 these 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.

These changes are necessary because of emerging health risks being reported from these countries that a new strain of coronavirus with high levels of transmissibility has been identified.

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 4.00 a.m. on 15 January having been in these countries in the previous 10 days to isolate for 10 days from the date they were last in those countries. This requirement will also extend to any members of that person's household.

Restrictions in the International Travel Regulations preventing vessels and aircraft from arriving directly into Wales will also apply to these countries from 4.00am on the 16 January 2021.

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 4.00am on Monday 18 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 these countries in the past 10 days to explain the new isolation requirements.

In addition advice has also been received from the JBC that the risk to public health posed by the incidence and spread of coronavirus in Aruba, the Azores, Bonaire, Sint Eustatius and Saba, and Madeira 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 these countries and territories. These revised requirements come into effect for any travellers entering the Common Travel Area from these countries on or after 4.00 am on 16 January 2021.

This amendment to the International Travel Regulations does not affect the requirements under those Regulations for persons arriving into the Common Travel Area before the coming into force of the amendment.

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.

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/VG/0168/21

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

14 January 2021

Dear Elin,

The Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021

I have today made these Regulations 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 in part at 4.00am on 15 January 2021, with the remaining provisions coming into force at 4.00am on 16 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 section 4(1) of the Statutory Instruments Act 1946, I am informing you that that these Regulations will come into force in part before they are laid before the Senedd. This is considered a necessary response to the news that a new variant of Covid-19 has been detected firstly in Brazil, which increases the risk posed by travellers into Wales, and also ensures that a four nations approach on international travel can be maintained.

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 10 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 26 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.

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Bae Caerdydd • Cardiff Bay
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CF99 1SN

Yours sincerely,

Vaughan Gething AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Amendments to the Health Protection (Coronavirus, International Travel) (Wales) Regulations 2020**
DATE	**14 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 10 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 Aruba, the Azores, Bonaire, Sint Eustatius and Saba, Chile, Madeira and Qatar will be removed from the list of exempt countries and territories, so travellers from those countries will need to isolate on arrival in Wales.

The JBC assessment also considered the emergence of a new variant in Brazil and JBC recommends a precautionary approach is appropriate until definite information is available.

Uruguay, Paraguay, Argentina, Bolivia, Peru, Colombia, Suriname, and French Guiana have strong travel connections with Brazil and their reported epidemiological data is increasing, consistent with a new variant. Also Chile has a border with Argentina who have reported community spread of the variant and their epidemiological metrics are increasing.

I have therefore decided that action should be taken to remove the sectoral exemptions for travellers arriving from these countries potentially linked to this new variant. 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.

In addition direct flights from these countries will no longer be able to land in Wales.

The necessary regulations will be made today and the additional measures relating to the Brazil variant will come into force at 04:00 on Friday 15 January 2021, with the remainder coming into force at 04:00 on Saturday 16 January and they will be laid tomorrow once they have been registered.

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.

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

2021 No. 57 (W. 13)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) 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 Restrictions) (No. 5) (Wales) Regulations 2020 (S.I. 2020/1609 (W. 335)) ("the Restrictions Regulations") to—

(a) require all persons who are subject to the obligation in regulation 16 to take measures to minimise the risk of exposure to coronavirus on their premises to undertake a specific assessment of the risk of exposure to coronavirus on those premises and to consult on that;

(b) make specific provision about the measures that must be taken to minimise the risk of exposure to coronavirus on retail premises;

(c) make provision imposing duties on the proprietors of schools and further education institutions preventing pupils or students from attending to their premises, subject to some limited exceptions;

(d) make consequential and other minor changes to ensure consistency with the new provisions.

The Regulations also amend the Health Protection (Coronavirus, Functions of Local Authorities etc.) (Wales) Regulations 2020 (S.I. 2020/1011 (W. 225)) ("the Functions of Local Authorities Regulations"). The amendment is consequential on the making of the Restrictions Regulations and requires a local authority, when deciding whether to give an event direction under the Functions of Local Authorities Regulations, to have regard to whether the event may result in people gathering in contravention of the relevant Schedule to the Restrictions Regulations. The Regulations also revoke spent enactments relating to the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 (S.I. 2020/1219 (W. 276)).

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.

WELSH STATUTORY INSTRUMENTS

2021 No. 57 (W. 13)

PUBLIC HEALTH, WALES

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021

Made	*at 12.48 p.m. on 19 January 2021*
Laid before Senedd Cymru	*at 5.30 p.m. on 19 January 2021*
Coming into force	*20 January 2021*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 45C(1) and (3)(c), 45F(2) 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 restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

(**1**) 1984 c. 22. Sections 45C, 45F and 45P were inserted by section 129 of the Health and Social Care Act 2008 (c. 14). The functions under these sections are 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.

Title and coming into force

1.—(1) The title of these Regulations is the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021.

(2) These Regulations come into force on 20 January 2021.

Amendment of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020

2.—(1) The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020(**1**) are amended as follows.

(2) In regulation 16—

(a) before paragraph (1)(a), insert—

"(za) undertake a specific assessment of the risk of exposure to coronavirus at the premises and in doing so consult persons working on the premises or representatives of those persons;"

(b) after paragraph (2), insert—

"(3) An assessment under paragraph (1)(za)—

(a) must satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999(**2**) (the "1999 Regulations"), and

(b) must be undertaken—

(i) whether or not the responsible person has already undertaken an assessment under that regulation, and

(ii) whether or not that regulation applies to the responsible person.

(4) For the purposes of paragraph (3)—

(a) regulation 3 of the 1999 Regulations is to be read as if the words "by or under the relevant statutory provisions and by Part II of the Fire Precautions (Workplace) Regulations 1997", in both places it occurs, were substituted by the words "by regulations 16, 17

(**1**) S.I. 2020/1609 (W. 335) as amended by S.I. 2020/1610 (W. 336).

(**2**) S.I. 1999/3242. Regulation 3 was amended by S.I. 2005/1541, S.I. 2015/21 and S.I. 2015/1637.

and 17A of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020", and

(b) if regulation 3 of the 1999 Regulations would not, but for paragraph (3)(b)(ii), apply to a responsible person—

(i) that regulation is to be treated as applying to the person as if the person were an employer, and

(ii) persons working at the premises are, for the purposes of that regulation as it applies by virtue of paragraph (3)(b)(ii), treated as being employed by the responsible person."

(3) In regulation 17—

(a) for paragraphs (1) and (2) substitute—

"(1) Where regulation 16(1) applies to a person responsible for premises authorised for the sale or supply of alcohol for consumption on the premises, the measures to be taken by the responsible person include (but are not limited to)—

(a) having a person controlling entry to the premises and allocating a limited time period to customers for which they may stay in the premises;

(b) requiring customers to be seated in the premises in any place other than at a bar—

(i) when ordering food or drink,

(ii) when being served with food or drink, and

(iii) when consuming food or drink.";

(b) in paragraph (4), for "(2)" substitute "(1)".

(4) After regulation 17, insert—

"**Specific measures applicable to retail premises**

17A. Where regulation 16(1) applies to a person responsible for retail premises of a business offering goods or services for sale or hire in those premises (including businesses selling food or drink for consumption off the premises), the measures to be taken by the responsible person must include (but are not limited to)—

(a) measures for controlling entry to the premises and limiting the number of customers who are on the premises at any one time;

(b) provision of hand sanitisation products or hand washing facilities for use by customers when they enter and exit the premises;

(c) measures to sanitise any baskets, trolleys or similar containers provided for use by customers on the premises;

(d) in order to remind customers to maintain a distance of 2 metres between each other and to wear a face covering—

(i) displaying signs and other visual aids;

(ii) making announcements on a regular basis."

(5) In regulation 18(1), for "or 17(1)" substitute ", 17(1) or 17A".

(6) In regulation 25(3)(a)(i), for "or 17(1)" substitute ", 17(1) or 17A".

(7) In regulation 26, for "and 17(1)" substitute ", 17(1) and 17A.

(8) In paragraph 6(5)(e) of Schedule 1, in the English language text, omit "and is" in the first place it occurs.

(9) In paragraph 6(5)(e) of Schedule 2, in the English language text, omit "and is" in the first place it occurs.

(10) In paragraph 6(5)(e) of Schedule 3, in the English language text, omit "and is" in the first place it occurs.

(11) In Schedule 4, after paragraph 6 insert—

"PART 3A

Restrictions on attending schools and further education institutions

Restriction on attending school premises

6A.—(1) The proprietor of a school in Wales may not permit a pupil to attend the premises of the school.

(2) But sub-paragraph (1) does not prevent a proprietor from permitting —

(a) a pupil to attend a school's premises—

(i) to undertake an examination or other assessment;

(ii) where the pupil's parent is notified by the proprietor of the school at which the pupil is registered that the proprietor considers it

appropriate for the pupil to attend by reason of the pupil's vulnerability;

(iii) where—

(aa) the local authority that maintains the school at which the pupil is registered, or

(bb) the proprietor of the independent school at which the pupil is registered,

decides the pupil is the child of a critical worker;

(b) a pupil from attending the premises of a special school;

(c) a pupil from attending the premises of a pupil referral unit;

(d) a pupil from attending the premises of a unit in a school, where—

(i) the unit is recognised by a local authority as being reserved for pupils with special educational needs, and

(ii) the pupil is wholly or mainly educated at the unit;

(e) a pupil who is a boarder from residing in accommodation at the school premises.

(3) In deciding whether a pupil is the child of a critical worker, the local authority or the proprietor of an independent school must have regard to any guidance published by the Welsh Ministers about identifying children of critical workers.

Restriction on attending further education premises

6B.—(1) A proprietor of a further education institution in Wales may not permit a student to attend the premises of the further education institution.

(2) But sub-paragraph (1) does not prevent a proprietor from permitting a student to attend the premises of—

(a) a further education institution to undertake an examination or other assessment;

(b) an institution within the further education sector where the student is notified by the institution that the institution considers it appropriate for

the student to attend due to the student's vulnerability.

Enforcement

6C. Any failure by a proprietor to comply with paragraph 6A or 6B is enforceable by an application for injunction by the Welsh Ministers or the local authority in whose area the alleged failure occurred to the High Court or County Court, without notice.

Interpretation of Part 3A

6D. In this Part—

(a) the "1996 Act" means the Education Act 1996(**1**);

(b) "boarder" has the meaning given by section 579 of the 1996 Act;

(c) "further education institution" means—

(i) an institution within the further education sector;

(ii) a provider of education or training within the meaning of section 31(1)(a) or (b) or 32(1)(a) or (b) of the Learning and Skills Act 2000(**2**) that—

(aa) is not an institution within the meaning of paragraph (i),

(bb) is not an institution within the higher education sector within the meaning of section 91(5) of the Further and Higher Education Act 1992(**3**), and

(cc) is in receipt of funding for provision of that education or training from the Welsh Ministers or a local authority,

but does not include an employer who is a provider by reason only of the employer providing such education or training to its employees;

(d) "independent school" has the meaning given by section 463 of the 1996 Act;

(**1**) 1996 c. 56.
(**2**) 2000 c. 21.
(**3**) 1992 c. 13.

(e) "institution within the further education sector" has the meaning given by section 91(3) of the Further and Higher Education Act 1992;

(f) "parent" has the meaning given by section 576 of the 1996 Act;

(g) "proprietor" has the meaning given by section 579 of the 1996 Act in relation to a school and, in relation to an institution that is not a school, means the person or body of persons responsible for the management of the institution;

(h) "pupil" has the meaning given by section 3 of the 1996 Act;

(i) "pupil referral unit" has the meaning given by section 19 of the 1996 Act;

(j) "special educational needs" has the meaning given by section 312 of the 1996 Act;

(k) "special school" means—

(i) a special school within the meaning given by section 337 of the 1996 Act;

(ii) an independent school which wholly or mainly provides education for pupils with special educational needs;

(l) "school" has the meaning given by section 4 of the 1996 Act."

(12) In Schedule 8—

(a) in paragraph 1—

(i) in sub-paragraph (1)(a), for "or 17" substitute ", 17 or 17A";

(ii) in sub-paragraph (2)(b), for "or 17" substitute ", 17 or 17A";

(b) in paragraph 2—

(i) in sub-paragraph (3)(a), for "or 17" substitute ", 17 or 17A";

(ii) in sub-paragraph (4)(b)(ii), for "or 17" substitute ", 17 or 17A";

(iii) in sub-paragraph (4)(c), for "or 17" substitute ", 17 or 17A";

(c) in paragraph 3(3)(c), after "17" insert "or 17A";

(d) in paragraph 4(1)(b), after "17" insert "or 17A".

Amendment of the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020

3.—(1) The Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020(**1**) are amended as follows.

(2) In regulation 3(1), for "19 February" substitute "31 March".

(3) In regulation 6—

(a) for paragraph (2) substitute—

"(2) In considering whether the public health conditions are met, a local authority must, in particular, have regard to whether people are gathering, or are likely to gather, at the event in contravention of whichever of the following provisions of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 applies to the area in which the event is held or is proposed to be held—

(a) paragraph 2 of Schedule 1;

(b) paragraph 2 of Schedule 2;

(c) paragraph 2 of Schedule 3;

(d) paragraph 2 of Schedule 4."

(b) omit paragraph (8).

Revocation

4. The following Regulations are revoked—

(a) the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (Wales) Regulations 2020(**2**);

(b) regulation 7 of the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2020(**3**);

(c) regulation 2 of the Health Protection (Coronavirus Restrictions and Functions of Local Authorities) (Amendment) (Wales) Regulations 2020(**4**);

(d) regulations 4 and 5 of the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 3) (Wales) Regulations 2020(**5**);

(**1**) S.I. 2020/1011 (W. 225) as amended by S.I. 2020/1100 (W. 250), S.I. 2020/1149 (W. 261), S.I. 2020/1219 (W. 276), S.I. 2020/1409 (W. 311)_and S.I. 2020/1609 (W. 335).

(**2**) S.I. 2020/1237 (W. 279) as amended by S.I. 2020/1288 (W. 286) and S.I. 2020/1609 (W. 335).

(**3**) S.I. 2020/1288 (W. 286) as amended by S.I. 2020/1609 (W. 335).

(**4**) S.I. 2020/1409 (W. 311).

(**5**) S.I. 2020/1477 (W. 316).

(e) the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) (Amendment) Regulations 2020(**1**).

Mark Drakeford
First Minister, one of the Welsh Ministers
At 12.48 p.m. on 19 January 2021

(**1**) S.I. 2020/1522 (W. 326).

Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) 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 Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021.

Mark Drakeford
First Minister

19 January 2021

1. Description

The Regulations amend the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 ("the principal Regulations"), and the Health Protection (Coronavirus Restrictions) (Functions of Local Authorities etc.) (Wales) Regulations 2020 ("the Functions of Local Authorities Regulations").

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

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.

European Convention on Human Rights

Whilst the principal Regulations, as amended by these 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 the principal Regulations. These Regulations also engage Article 2 of the First Protocol (right to education). Despite the closure of the premises of schools to some learners, maintained schools remain under their usual duties, but the duty to deliver the curriculum has been modified to a duty to use reasonable endeavours to deliver the curriculum (using a notice under Schedule 17 to the Coronavirus Act 2020).

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 the restrictions and requirements under the principal 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.

These amending Regulations do not change the nature or extent of the engagement of individual rights.

3. Legislative background

The Public Health (Control of Disease) Act 1984 ("the 1984 Act"), and regulations made under it, provide a legislative framework for health protection in England and Wales. These Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P(2) of the 1984 Act. Further information on these powers is set out in the Explanatory Memorandum to the principal Regulations.

4. Purpose and intended effect of the legislation

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) which causes the disease known as COVID-19 or "coronavirus".

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. Wales has been in Alert Level Four since the beginning of the day on 20 December 2020.

These Regulations amend the principal Regulations to:

a. require the person responsible for business premises that are open to the public, public service vehicles and workplaces to undertake a specific coronavirus risk assessment;

b. specify additional reasonable measures applicable to retail premises and premises licensed to sell or supply alcohol for consumption on the premises.;

c. require the proprietor of a school or a Further Education Institution (FEI) to not permit pupils to attend the school premises, or students to attend FEI premises (subject to specified exceptions);

d. make minor consequential and technical amendments to the principal Regulations and the Functions of Local Authorities Regulations.

Coronavirus risk assessment

Under the Management of Health and Safety at Work Regulations 1999, an employer must identify hazards, decide risk and take action to eliminate the hazard or control the risk. Alongside these requirements, Part 4 of the principal Regulations makes provision for the purpose of minimising risk of exposure to coronavirus in premises open to the public and in workplaces.

The principal Regulations are now amended to require a specific coronavirus risk assessment to be carried out, in consultation with any person working on the premises

or workplace (or their representatives). This risk assessment will form the basis for the pre-existing obligation to take “all reasonable measures” to minimise the risk of exposure to coronavirus on premises open the public and workplaces. Guidance is being updated to provide that the risk assessment should consider issues such as:

- whether ventilation is adequate to minimise risks and to consider mitigations.
- whether 2m distancing is practicable;
- the extent to which the use of screens, PPE and face coverings can mitigate risks;
- the extent to which people can work from home.

The assessment will be required to be reviewed and updated regularly, in particular should the coronavirus alert levels increase in Wales.

Retail premises

Regulation 16 of the principal Regulations applies to “regulated premises” which includes retail premises. Such premises are required to take (1) all reasonable measures to ensure that a distance of 2 metres is maintained between persons on the premises; (2) all other reasonable measures, for example to limit close face to face interaction and maintain hygiene; and (3) provide information to those entering or working at premises about how to minimise risk of exposure to coronavirus.

There is evidence of good adherence in all sizes and types of businesses, however there are also emerging concerns being raised by local authorities, and by worker representative bodies, about a lack of physical distancing and crowding in retail stores. In light of the spread of coronavirus, and the current levels of transmission, the Regulations will now also specifically require the owners and operators of open retail premises to:

- put in place measures to control entry to their premises and limit the number of customers who are on the premises at any one time;
- provide hand sanitisation products or hand washing facilities for customers when they enter and exit the premises;
- put in place measures to sanitise baskets or trolleys; and
- remind customers of the need to maintain 2m distance via signage and announcements.

These requirements apply to <u>all retailers</u> permitted to be open within any Alert Level.

School and FEI premises

On 4 January 2021, the four UK Chief Medical Officers agreed that the UK is now at the highest level of risk, Joint Biosecurity Centre Level 5. In the light of that decision the Welsh Government, in consultation with the WLGA and Colegau Cymru, agreed that all schools, colleges and independent schools should move to online learning.

On 8 January I announced that this approach would continue, but would be brought in line with the three week review cycle of the principal Regulations. Unless there is

a significant reduction in cases of coronavirus before the review that must take place by 29 January, schools and colleges in Wales should continue to provide online provision until the end of February half term.

The amendments made by these Regulations:

- prevent proprietors from allowing pupils to attend school premises, including independent schools;
- prevent proprietors from allowing students from attending FEI premises.

The Regulations do not prevent the proprietor from permitting the attendance at the premises of:

- learners at school or FEI undertaking exams or assessment;
- vulnerable learners at school or FEI (as determined by the proprietor); and
- learners at school who are a child of a critical worker (as determined by the local authority).

The Regulations also permit the proprietor to allow learners to attend the premises of special schools, pupil referral units and SEN units in schools. Further, they do not prevent a boarder from residing in accommodation at the school premises. The Regulations also provide for the enforcement of any failure to comply by the Welsh Ministers or the local authority in whose area the alleged failure occurred.

Consequential and technical amendments

In light of the amendments made above, a number of minor consequential amendments are also required to the principal Regulations. Additionally, the opportunity is being taken to correct some minor drafting points in the principal Regulations, but which do not affect the operation or effect of those provisions.

The expiry date of the Functions of Local Authorities Regulations has been extended to 31 March 2021, to bring it into line with the expiry of the principal Regulations. The opportunity has also been taken to make a minor amendment to regulation 6 of the Functions of Local Authorities Regulations. The amendment is consequential on the making of the principal Regulations, and replaces references to the Health Protection (Coronavirus Restrictions) (No. 4) (Wales) Regulations 2020 with references to the principal Regulations.

Finally, these Regulations also revoke provisions and instruments relating to the coronavirus restriction legislation which are now spent.

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.

The Welsh Government have engaged with stakeholders within the Health and Safety Forum to seek their views on this proposal for a specific Covid Assessment.

This has included the following trade unions; Wales TUC, USDAW, UNITE, the GBM and Unite. The following business organisations: CBI, the Federation of Small Businesses and Chambers Wales. It has also included seeking the views of the Welsh Local Government Association and the Health and Safety Executive.

The Minister for Environment, Energy and Rural Affairs has met with representatives of retailers, including supermarkets and other 'mixed' retailers, to discuss their role during the pandemic. They broadly welcomed the current good practice by a number of premises and adherence to the guidance being 'formalised' by being included within the principal Regulations.

In determining the need for, and details of the restrictions and requirements, relating to the closure of school and FEI premises, Welsh Government officials undertook a series of urgent discussions with key sectors and stakeholders, including local government and schools. The Minister for Education provided a written statement on this matter on 4 January 2021.

6. Regulatory and other impact assessments

A regulatory impact assessment has not been prepared 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.

In relation to the closure of school and FEI premises to learners a Children's Rights Impact Assessment and Equality Impact Assessments have been completed and considered**.** While it is inevitable there will be impacts on children's rights and, in particular, on groups with protected characteristics, there will be some scope to mitigate the most significant impacts especially for the most vulnerable learners by allowing them access to school or college premises, but it will not be possible to address all of the disproportionate and negative impacts. These negative impacts continue to be tolerated on the basis of the risk to public health. Copies of these assessments will be published on the GOV.wales website:

https://gov.wales/impact-assessments-coronavirus.

Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

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

19 January 2021

Dear Elin

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2021

I have today made the Health Protection **(**Coronavirus Restrictions) (No. 5) (Wales) (Amendment) Regulations 2020 under sections 45C(1) and (3)(c), 45F(2) and 45P of the Public Health (Control of Disease) Act 1984. These Regulations come into force on 20 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 22 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 26 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

Mark Drakeford

MARK DRAKEFORD

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Amendments to the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020**
DATE	**19 January 2021**
BY	**Mark Drakeford MS, First Minister**

The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020 ("the Regulations") have today been amended in a number of areas.

Following my Written Statement on 15 January, the Regulations now place requirements on businesses and premises to undertake a specific coronavirus risk assessment.

As I also set out last week, they have been amended to strengthen requirements on retail to specify certain reasonable measures they must take.

In addition, the Regulations have been amended to require the proprietor of a school or further education institution not to permit learners to attend the premises of a school or further education institution (FEI) from 20 January.

The restriction will apply to all schools, including independent schools and FEI. However, the Regulations will provide that this does not prevent the following:

- Pupils/Students attending the school or FEI premises to undertake an examination or other assessment;
- Pupils/Students from attending the premises whose school or FEI considers it appropriate for them to do so by reason of the learner's vulnerability;
- Pupils who are a child of a critical worker from attending school premises. In deciding whether a pupil is the child of a critical worker, the local authority and the proprietor of an independent school must have regard to any guidance published by the Welsh Ministers about identifying children of critical workers. The Welsh Ministers have published the following guidance – https://gov.wales/identifying-children-critical-workers-guidance

- Pupils attending the premises of a special school, a pupil referral unit, a unit in a school where the unit is recognised by a local authority as being reserved for pupils with SEN and the pupils are wholly or mainly educated at the unit; or
- A pupil who is a boarder residing in accommodation at the school premises.

Placing the requirement for all schools and FEI to close their premises to most learners on a statutory footing will ensure consistency and clarity across Wales.

Finally, as a result of the amendments described above, a number of minor consequential amendments have been made to the Regulations.

SL(5)703 – The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020

Background and Purpose

These Regulations are made by the Welsh Ministers under paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018, 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.

The Regulations make technical amendments and corrections to domestic secondary EU Exit legislation relating to seeds, plants for planting and reproductive material as a consequence of EU Exit. The explanatory memorandum to the Regulations confirms that the Regulations do not make any policy changes.

The Regulations came into force on 30 December 2020 (regulations 1, 3 and 5) and immediately before IP completion day (regulations 2 and 4).

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: (i) dissolved, or (ii) 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(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 4(3)(j)(iv) of the subject regulations substitutes regulation 4(13)(f) of the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019, which amends paragraph 10 of Schedule 4 to the Seed Marketing (Wales) Regulations 2012 (the "2012 Regulations").

Paragraph 10 of Schedule 4 to the 2012 Regulations concerns the marketing of unlisted varieties of vegetable seed and, as amended, provides at sub-paragraph (1) that for the purpose of gaining knowledge and practical experience of a variety during cultivation, the

Welsh Ministers may authorise the marketing of vegetable seed not listed on the GB Variety List, provided an application has been made for entry into the GB Variety List or the NI Variety List.

Sub-paragraph (4) of that paragraph, as amended, provides that authorisation may only be requested by the person who has submitted an application for entry of the varieties concerned on to the GB Variety List, NI Variety List or an equivalent list of a country granted equivalence.

It is not immediately clear why a person who submits an application for entry onto an equivalent list is permitted to request authorisation from the Welsh Ministers in these circumstances, given that a condition for that authorisation is that an application has been made for entry into the GB Variety List or the NI Variety List (and not an equivalent list).

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
19 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.

WELSH STATUTORY INSTRUMENTS

2020 No. 1573 (W. 330)

EXITING THE EUROPEAN UNION, WALES

SEEDS, WALES

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) 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 amend domestic secondary EU Exit legislation relating to seeds, plants for planting and reproductive material as a consequence of EU Exit. Regulation 2 also addresses errors identified in domestic secondary EU Exit legislation.

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.

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

2020 No. 1573 (W. 330)

EXITING THE EUROPEAN UNION, WALES

SEEDS, WALES

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020

Made *15 December 2020*

Laid before Senedd Cymru *18 December 2020*

Coming into force in accordance with regulation 1(2)

The Welsh Ministers make these Regulations 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(**1**).

In accordance with paragraph 4(a) of Schedule 2 to that Act, the Welsh Ministers have consulted the Secretary of State with regard to these Regulations that come into force before implementation period completion day.

(**1**) 2018 c. 16; see section 20(1) for the definition of "devolved authority". Paragraph 21 of Schedule 7 was amended by section 41(4) of, and paragraph 53(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(**1**).

Title and commencement

1.—(1) The title of these Regulations is the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020.

(2) These Regulations come into force as follows—

(a) regulations 1, 3 and 5 come into force on 30 December 2020;

(b) regulations 2 and 4 come into force immediately before implementation period completion day.

The Seed Potato (Wales) (Amendment) (EU Exit) Regulations 2019

2.—(1) The Seed Potato (Wales) (Amendment) (EU Exit) Regulations 2019(**2**) are amended as follows.

(2) In regulation 1—

(a) in paragraph (2), omit ", apart from regulations 3 and 4,";

(b) omit paragraph (3).

(3) In regulation 2—

(a) in paragraph (2)—

(i) in sub-paragraphs (a), (c), (d), (i), (j), (k) and (o)—

(aa) in the new sub-paragraph (ii) to be inserted by each of those sub-paragraphs, after "Crown Dependency" insert "or a country granted equivalence";

(bb) omit the new sub-paragraph (iii) to be inserted by each of those sub-paragraphs;

(ii) in sub-paragraph (b), for "in accordance with the Swiss trade agreement" substitute "from "(or, in relation" to the end";

(iii) in sub-paragraph (d), for the new sub-paragraph (i) to be inserted by that sub-paragraph substitute—

(**1**) The references in the European Union (Withdrawal) Act 2018 to the National Assembly for Wales now have effect as references to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

(**2**) S.I. 2019/738 (W. 141), prospectively amended by S.I. 2019/1281 (W. 225), regulation 5: that regulation is being omitted by these Regulations.

"(i) in the case of seed potatoes produced in England, Part 1 of Schedule 2 to the Seed Potatoes (England) Regulations 2015(**1**);";

(iv) in sub-paragraphs (e), (f) and (n), for the words before the new definitions to be inserted by those sub-paragraphs substitute "in paragraph (1), at the appropriate place insert—";

(v) in sub-paragraph (g), for the new definition of "grade" to be inserted by that sub-paragraph substitute—

""grade" ("*gradd*") includes the GB grade;" ;

(vi) for sub-paragraph (h) substitute—

"(h) omit the definition of "National List";";

(vii) in sub-paragraph (l), in the new definition of "seed potatoes of a conservation variety" to be inserted by that sub-paragraph, for "National List" substitute "GB Variety List";

(viii) in sub-paragraph (m), for "in paragraph (b) omit "other than the United Kingdom "" substitute "omit paragraphs (b) and (c) and, at the end insert—

"or

(b) seed potatoes produced in a country granted equivalence;"";

(ix) in sub-paragraph (p), in the new definition of "Union grade" to be inserted by that sub-paragraph, for "a member State or Switzerland" substitute "Northern Ireland";

(x) for sub-paragraph (q) substitute—

"(q) in paragraph (1), at the appropriate places insert—

""country granted equivalence" ("*gwlad y caniatawyd cywerthedd iddi*") means a country that has been assessed by the Welsh Ministers that seed potatoes from that country are produced under conditions equivalent to the requirements of these Regulations;";

""equivalent grade" ("*gradd gyfatebol*") means—

(a) for Northern Ireland, an equivalent Union grade;

(**1**) S.I. 2015/1953, amended by S.I. 2017/288, S.I. 2019/472, S.I. 2019/1517 and prospectively amended by S.I. 2019/809.

(b) for a Crown Dependency or a country granted equivalence, a grade recognised by the Welsh Ministers as being equivalent to a GB grade;";

""equivalent Union grade" ("*gradd Undeb gyfatebol*") means—

(a) for "GB Grade PBTC", "Union grade PBTC";

(b) for "GB Grade PB", "Union grade PB";

(c) for "GB Grade S", "Union grade S";

(d) for "GB Grade SE", "Union grade SE";

(e) for "GB Grade E", "Union grade E";

(f) for "GB Grade A", "Union grade A";

(g) for "GB Grade B", "Union grade B";";

""GB grade" ("*gradd Prydain Fawr*") means—

(a) in relation to seed potatoes produced in Wales, the GB grade determined in accordance with Schedule 4 during certification, this being—

(i) in the case of pre-basic seed potatoes, GB grade PBTC or GB grade PB;

(ii) in the case of basic seed potatoes, GB grade S, GB grade SE or GB grade E;

(iii) in the case of certified seed potatoes, GB grade A or GB grade B;

(b) in relation to seed potatoes produced in England or Scotland, the GB grade determined in accordance with the relevant seed potatoes regulations;";

""GB Variety List" ("*Rhestr Amrywogaethau Prydain Fawr*") means a list of varieties of potato species prepared and published in accordance with regulation 3 of the National Lists Regulations;";";

(xi) for sub-paragraph (r) substitute—

"(r) omit paragraph (2);";

(b) for paragraph (3) substitute—

"(3) In regulation 4, for "the European Union" substitute "Great Britain".";

(c) in paragraph (4)—

(i) in the English language text, after "accordance with", in the first place where it occurs, insert "to the end substitute";

(ii) in the new paragraph (ii), after "Crown Dependency" insert "or a country granted equivalence";

(iii) omit the new paragraph (iii) to be inserted by that paragraph;

(d) in paragraph (5)—

(i) before sub-paragraph (a) insert—

"(za) in paragraph (1)(a), for "National List" substitute "GB Variety List";";

(ii) in sub-paragraph (b), in the new paragraph (3A), for "the United Kingdom", in each place where it occurs, substitute "Great Britain";

(e) in paragraph (6), in the new sub-paragraph (c) to be inserted by that paragraph, for "exit day" substitute "implementation period completion day";

(f) in paragraph (7)—

(i) in sub-paragraph (a)—

(aa) in paragraph (i), for "the United Kingdom" substitute "Great Britain";

(bb) in paragraph (ii), in the new sub-paragraph (iii) to be inserted by that paragraph, for "exit day" substitute "implementation period completion day";

(ii) for sub-paragraph (b) substitute—

"(b) in paragraph (6)(b), for "National List or the Common Catalogue" substitute "GB Variety List";";

(g) in paragraphs (8) and (9)—

(i) in the new paragraph (ii) to be inserted by those paragraphs, after "Crown Dependency" insert "or a country granted equivalence";

(ii) omit the new paragraph (iii) to be inserted by those paragraphs;

(h) for paragraph (10) substitute—

"(10) In regulation 16 and in the heading, for "European Union" substitute "British Islands"." ;

(i) in paragraph (11), in the new regulation 23A and its heading, to be inserted by that paragraph—

(i) for "exit day", in each place where it occurs, substitute "implementation period completion day";

(ii) after "official label for", in the second place where it occurs, insert "basic seed potatoes or certified seed potatoes for";

(j) for paragraph (12) substitute—

"(12) In Schedule 1—

(a) in paragraph 3(a), for "National List or the Common Catalogue" substitute "GB Variety List";

(b) in paragraphs 5, 6 and 10, for "Union", in each place where it occurs, substitute "GB";

(c) in paragraph 8(b)—

(i) in the English language text, for "Union", in each place where it occurs, substitute "GB";

(ii) in the Welsh language text—

(aa) in paragraph (i), after "gradd S" insert "Prydain Fawr";

(bb) in paragraph (ii), after "gradd SE" insert "Prydain Fawr"; and

(cc) in paragraph (iii), after "gradd E" insert "Prydain Fawr".";

(k) in paragraph (13)—

(i) in sub-paragraph (b)(i), for "UK" substitute "GB";

(ii) for sub-paragraph (c) substitute—

"(c) in paragraph 8(b)—

(i) in paragraph (i), for "member State" substitute "country";

(ii) in paragraph (vi), for "a National List" substitute "a GB Variety List";";

(iii) in sub-paragraphs (d)(ii) and (e), for "UK" substitute "GB";

(l) in paragraph (14)(a) and (b), for "UK" substitute "GB";

(m) in paragraph (16)—

(i) in sub-paragraph (a), for "United Kingdom" substitute "GB";

(ii) in sub-paragraph (b)(i), for "UK" substitute "GB";

(iii) for sub-paragraph (b)(ii) substitute—

"(ii) in the row relating to grade "PB" in column 2, in paragraph (1)(b), for "Union grade PB" substitute "GB grade PB or equivalent grade";";

(n) in paragraph (17)—

(i) in sub-paragraph (a), for "United Kingdom" substitute "GB";

(ii) in sub-paragraph (b)(i), for "UK" substitute "GB";

(iii) for sub-paragraph (b)(ii) to (iv) substitute—

"(ii) in the row relating to grade "S", in column 2, in paragraph (1)(a), for "Union grade S" substitute "GB grade S or equivalent grade";

(iii) in the row relating to grade "SE", in column 2, in paragraph (1)(a), for "Union grade S or Union grade SE" substitute "GB grade S, GB grade SE or equivalent grade";

(iv) in the row relating to grade "E", in column 2—

(aa) in paragraph (1)(a), for "Union grade S or Union grade SE" substitute "GB grade S, GB grade SE or equivalent grade";

(bb) in paragraph (1)(b), for "Union grade S, Union grade SE or Union grade E" substitute "GB grade S, GB grade SE, GB grade E or equivalent grade.";

(o) for paragraph (18) substitute—

"(18) In Part 3, in Table 3—

(a) in the heading to column 1, for "Union" substitute "GB";

(b) in column 2, for "Union grade A", in both places where it occurs, substitute "GB grade A or equivalent grade";

(c) in column 2, for "Union grade B" substitute "GB grade B or equivalent grade."

(4) Omit regulations 3 and 4.

The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

3.—(1) The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019(**1**) are amended as follows.

(2) In regulation 1(3), omit ", 5".

(3) Omit regulation 5.

(**1**) S.I. 2019/1281 (W. 225).

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019

4.—(1) The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019(**1**) are amended as follows.

(2) In the Welsh language text, regulations 2 to 6 are renumbered as regulations 1 to 5 and the following paragraphs refer to those regulations as renumbered.

(3) In regulation 4—

(a) for paragraph (2) substitute—

"(2) In regulation 3, for paragraph (1) substitute—

"(1) For the purposes of these Regulations—

(a) the "GB Variety List" is the list of plant varieties prepared and published by the Secretary of State in accordance with the provisions of the Seeds (National Lists of Varieties) Regulations 2001(**2**);

(b) a "country granted equivalence" means—

(i) a country that has been granted equivalence under Council Decision 2003/17/EC on the equivalence of field inspections carried out in third countries on seed-producing crops and on the equivalence of seed produced in third countries; or

(ii) a country that has been assessed by the Welsh Ministers that the seed from that country is produced under conditions equivalent to the requirements in these Regulations for seed to

(**1**) S.I. 2019/368 (W. 90); prospectively amended by S.I. 2019/1382 (W. 245), regulation 3: that regulation is being omitted by these Regulations.

(**2**) S.I. 2001/3510, amended by S.S.I. 2004/317, S.I. 2004/2949, S.S.I. 2005/328, 329, S.I. 2007/1871, 2009/1273, 2010/1195, 2011/464, 2012/2897, 2013/2042, 2014/487, S.S.I. 2015/395, S.I. 2016/106 (W. 52), 2018/942, 2020/579. It is prospectively amended by S.I. 2019/162.

which these Regulations apply;

(c) "Crown Dependency" means any of the Channel Islands or the Isle of Man;

(d) the "NI Variety List" means the list of plant varieties prepared and published by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland in accordance with legislation having equivalent effect to the Seeds (National Lists of Varieties) Regulations 2001.";

(b) for paragraph (3) substitute—

"(3) In regulation 4(2), for "the European Union" substitute "Great Britain".";

(c) for paragraph (4) substitute—

"(4) In regulation 7, for the words from "United Kingdom" to the end substitute "GB Variety List, NI Variety List or an equivalent list in a country granted equivalence".";

(d) omit paragraph (5);

(e) for paragraph (6) substitute—

"(6) In regulation 10, in paragraph (a), for "United Kingdom National List or the Common Catalogue" substitute "GB Variety List".";

(f) in paragraph (9)—

(i) for sub-paragraph (a) substitute—

"(a) in the heading, for "outside the European Union" substitute "a country granted equivalence";";

(ii) after sub-paragraph (a) insert—

"(aa) for paragraph (1) substitute—

"(1) Seed imported from a country granted equivalence must—

(a) be a variety listed in the GB Variety List; and

(b) be labelled with—

(i) for standard vegetable seed, a supplier's label in accordance with paragraph 25(4) or (5) of Schedule 3;

(ii) for all other seed, a label approved by the Organisation for Economic Cooperation and Development for the varietal certification on the

control of seed moving in international trade.";";

(iii) in sub-paragraph (b), for "into the United Kingdom" substitute "from a country granted equivalence";

(iv) omit sub-paragraph (c);

(g) in paragraph (10)—

(i) in the new regulation 32A and in its heading to be inserted by that paragraph, after "Crown Dependency" insert "or a country granted equivalence";

(ii) in the new regulation 32B and in its heading to be inserted by that paragraph—

(aa) for "exit day", in each place where it occurs, substitute "implementation period completion day";

(bb) for "two years" substitute "one year";

(h) in paragraph (11)—

(i) in sub-paragraph (a)(iii), in the new sub-paragraph (6)(b)(i)(bb) to be inserted by that sub-paragraph, for "United Kingdom National" substitute "GB Variety";

(ii) for sub-paragraph (e) substitute—

"(e) in paragraph 43(2), for "United Kingdom National List or the Common Catalogue" substitute "GB Variety List";";

(i) in paragraph (12)—

(i) in sub-paragraph (c)(i), for "UK" substitute "GB";

(ii) for sub-paragraph (e) substitute—

"(e) in paragraphs 12(2)(a) and 14(1)(a), for "United Kingdom National List or the Common Catalogue" substitute "GB Variety List";";

(iii) in sub-paragraphs (g) and (j), for "UK" substitute "GB";

(j) in paragraph (13)—

(i) in sub-paragraph (d)—

(aa) before paragraph (i), insert—

"(ai) in sub-paragraphs (2) and (3), for "United Kingdom National" substitute "GB Variety";";

(bb) in paragraph (i), in the new sub-paragraph (5A) to be inserted by that paragraph, for "the United

Kingdom", in each place where it occurs, substitute "Great Britain";

(ii) in sub-paragraph (e)(ii), for "UK" substitute "GB";

(iii) after sub-paragraph (e) insert—

"(ea) in paragraph 9—

(i) in sub-paragraphs (1), (5) and (6), for "United Kingdom National" substitute "GB Variety";

(ii) in sub-paragraph (8), in the words before paragraph (a), for "the United Kingdom" substitute "Great Britain";";

(iv) for sub-paragraph (f) substitute—

"(f) in paragraph 10—

(i) in sub-paragraph (1), for the words from "United Kingdom" to the end substitute "GB Variety List provided an application has been made for entry into the GB Variety List or the NI Variety List";

(ii) in sub-paragraph (4), for "relevant National List" substitute "GB Variety List, NI Variety List or an equivalent list of a country granted equivalence";

(iii) omit sub-paragraphs (7) and (8);";

(v) for sub-paragraph (g) substitute—

"(g) in paragraph 11(2), for "United Kingdom National List or the Common Catalogue" substitute "GB Variety List";";

(vi) in sub-paragraph (h)(ii)(bb), for "exit day" substitute "implementation period completion day";

(vii) for sub-paragraph (l) substitute—

"(l) omit paragraph 16;";

(viii) for sub-paragraph (n) substitute—

"(n) in paragraph 18, for "United Kingdom National List or the Common Catalogue" substitute "GB Variety List";".

(4) In regulation 5—

(a) in paragraph (2)—

(i) in sub-paragraphs (a), (b), (c), (f), and (i)—

(aa) in the new sub-paragraph (ii) to be inserted by each of those sub-paragraphs, after "Crown

Dependency" insert "or a country granted equivalence";

(bb) omit the new sub-paragraph (iii) to be inserted by each of those sub-paragraphs;

(ii) after sub-paragraph (c) insert—

"(ca) in the appropriate place insert—

""country granted equivalence" ("*gwlad y caniatawyd cywerthedd iddi*") means a country that has been assessed under regulation 5(3) and the Welsh Ministers are satisfied that the plant material from the country is produced under conditions equivalent to the requirements in these Regulations for plant material;";";

(iii) in sub-paragraph (g), for ", any member State or any Crown Dependency" substitute ", any Crown Dependency or country granted equivalence";

(b) for paragraph (3) substitute—

"(3) In regulation 4(3), for "the European Union" substitute "Great Britain".";

(c) for paragraph (4) substitute—

"(4) In regulation 5, in paragraph (3), for "European Union" substitute "United Kingdom".";

(d) omit paragraphs (6), (7) and (8);

(e) in paragraph (9)—

(i) in sub-paragraphs (a) and (c)(i), for "UK" substitute "GB";

(ii) in sub-paragraph (c)(ii), for "sub-paragraphs (b)(i) and (x)" substitute "sub-paragraph (b)(i)";

(f) in paragraphs (13)(a), (15)(a) and (16), in the new sub-paragraph (ii) to be inserted by those paragraphs, for "exit day" substitute "implementation period completion day".

The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019

5.—(1) The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019(**1**) are amended as follows.

(2) Omit regulation 1(2)(b) and Part 3.

(**1**) S.I. 2019/1382 (W. 245).

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
15 December 2020

Explanatory Memorandum to the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020

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 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 Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (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 and Rural Affairs
18 December 2020

Part 1

1. Description

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020 (the "instrument") will make amendments to subordinate legislation, which apply in relation to Wales, in relation to seeds, plants for planting and reproductive material.

This instrument applies to Wales and will come into force before implementation period (IP) completion day.

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 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (the 'Withdrawal Act'), in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

The instrument is being laid under the "Made Affirmative procedure and the Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

There is a requirement under paragraph 4(a) of Schedule 2 to the European Union Withdrawal Act 2018 for the Welsh Ministers to consult with the Secretary of State regarding any provisions that are due to come into force prior to IP completion. In accordance with this requirement, the Secretary of State has been consulted and a record of the process set out in a separate letter issued on 15 December 2020.

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK's exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before IP completion day into domestic law and preserves laws made in the UK which implement EU obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK's exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

In accordance with the requirements of the Withdrawal Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

This instrument amends EU Exit legislation made in 2019. Since making those EU Exit SIs, a Withdrawal Agreement between the UK and the EU has been signed. It is necessary to update those earlier EU Exit SIs to ensure they function effectively at the end of the transition period. Amendments must also be made to reflect the Protocol and correct minor drafting errors in those earlier EU Exit SIs.

The purpose of the instrument is to ensure that legislation relating to plant propagating material and seeds remains operable at the end of the transition period.

5. What the instrument does

The instrument amends the Seed Potato (Wales) (Amendment) (EU Exit) Regulations 2019 and the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 and revokes elements of the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019.

The Seed Potato (Wales) (Amendment) (EU Exit) Regulations 2019 make amendments to the Seed Potatoes (Wales) Regulations 2016 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.

The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 include an amendment to the Seed Potatoes (Wales) (Amendment) (EU Exit) Regulations 2019. This instrument incorporates and revokes that amendment.

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2019 make amendments to the Seed Marketing Regulations (Wales) 2012 and the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017. They address deficiencies in domestic legislation on the marketing of seeds and fruit plant and propagating material arising from the withdrawal of the UK from the EU.

The Seeds (Amendment etc.) (Wales) (EU Exit) Regulations 2019 include an amendment to the Marketing of Seeds and Plant Propagating Material

(Amendment) (Wales) (EU Exit) Regulations 2019 and this instrument replaces and revokes that amendment.

6. Consultation

This instrument makes amendments that are technical in nature and do not reflect a change of policy. As there is change of policy, no public consultation has been undertaken.

7. Regulatory Impact Assessment (RIA)

No impact assessment has been produced in relation to this instrument as no impact is foreseen on the private, voluntary or public sectors.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which 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
Appropriate-ness	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) and (5) 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	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement which the Minister has had due regard to the need

		when exercising powers in Schedule 2	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	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority	
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

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

2. Good reasons

The Minister for Environment, Energy and Rural Affairs 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”.

3. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020 do 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 and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

4. Explanations

The explanations statement has been made in section 4 (Purpose and 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 opinion, by reason of urgency, it is necessary to make the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020, without a draft of the Regulations being laid before, and approved by a resolution of the Senedd”.

This is because the Welsh Ministers have concluded that the ‘urgent made affirmative’ procedure provided for in the European Union (Withdrawal) Act 2018 is needed to ensure that this instrument is in place before implementation period (IP) completion day.”

It is important to have this instrument in place before IP completion day to provide confidence and certainty to the public and business and to ensure the continued effective functioning of the statute book. If this instrument is not in force before IP completion day, the UK will not be able to meet its commitments and obligations under the Withdrawal Agreement and the Protocol on Ireland / Northern Ireland, in relation to plant propagating material and seeds.

Using this procedure still allows for scrutiny and the Senedd will need to approve the Regulations for them to remain in force.

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-LG-3828-20

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15 December 2020

Dear Elin

The Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020

I have today made the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020 under paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Regulations come into force before implementation 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.

In accordance with paragraph 7(3) and 7(4) of Schedule 7 of the European Union (Withdrawal) Act 2018, this instrument must be laid before and approved by the Senedd by 2 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 26 January 2021.

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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,

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

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***2***3 and S.I. 16***4***5 (*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.

Committee Consideration

The Committee considered the instrument at its meeting on 18 January 2021 and reports to the Senedd in line with the reporting points above.

GOVERNMENT RESPONSE: THE HEALTH PROTECTION (CORONAVIRUS, INTERNATIONAL TRAVEL AND RESTRICTIONS) (AMENDMENT) (WALES) REGULATIONS 2020

Technical scrutiny point 1: *inconsistency between English and Welsh texts*

The Government is grateful for the notice of the issue. The Welsh text should refer to "swyddfeydd gwerthiant datblygwyr" ("developer sales offices"), not "cartrefi arddangos" ("show homes"). The error has been addressed in the Health Protection (Coronavirus, International Travel and Restrictions) (Amendment) (No. 2) (Wales) Regulations 2021.

SL(5)722 – The Primary Care (Oxford/AstraZeneca Vaccine COVID-19 Immunisation Scheme) Directions 2020

Background and Purpose

Local Health Boards in Wales must establish, operate and, as appropriate, revise an Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme.

The underlying purpose of the Scheme is to enable the provision of services to administer the vaccine as part of the health service in Wales.

As part of its Scheme, each Local Health Board may enter into arrangements for the provision of services in accordance with the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification with—

(a) a dentist;

(b) a general medical practitioner—

(i) in relation to the registered patients of that general medical practitioner,

(ii) one or more cluster lead practices, in relation to the registered patients of the cluster lead practice and the registered patients of those general medical practitioners, if any, in its cluster that have not agreed within such time period as the Local Health Board requires, to deliver the Scheme to their registered patients pursuant to sub-paragraph (i),

(iii) a general medical practitioner that has agreed to deliver the Scheme pursuant to sub-paragraph (i) in relation to the registered patients of another general medical practitioner or group of general medical practitioners, subject to the agreement of the other general medical practitioner or group of general medical practitioners;

(c) an optician; or

(d) a pharmacist.

Procedure

No Senedd procedure – the Directions do not have to be laid before the Senedd.

Scrutiny under Standing Order 21.7

One point is identified for reporting under Standing Order 21.7 in respect of these Directions.

We note the broad powers that the Welsh Ministers have under the National Health Service (Wales) Act 2006, including the power to give directions to Local Health Boards in Wales relating to the health service.

In particular, we note that the power to give directions is broad enough to allow the Welsh Ministers to direct Local Health Boards to establish a nationwide vaccination scheme to deal with the coronavirus pandemic, without the need for primary legislation or subordinate legislation that must be laid before the Senedd.

Government response

A Welsh Government response is not required.

Legal Advisers
Legislation, Justice and Constitution Committee
18 January 2021

SUBORDINATE LEGISLATION

WG No. 20-XX

THE NATIONAL HEALTH SERVICE (WALES) ACT 2006

The Primary Care (Oxford/AstraZeneca Vaccine COVID-19 Immunisation Scheme) Directions 2020

Made	**** December 2020*
Coming into force	**** December 2020*

The Welsh Ministers, in exercise of the powers conferred on them by sections 10, 12(3) and 203(9) and (10) of the National Health Service (Wales) Act 2006(**1**), make the following Directions.

Title, application and commencement

1.—(1) The title of these Directions is the Primary Care (Oxford/AstraZeneca Vaccine COVID-19 Immunisation Scheme) Directions 2020.

(2) These Directions are given to Local Health Boards.

(3) These Directions come into force immediately after they are signed.

Interpretation

2. In these Directions—

"the Act" ("*y Deddf*") means the National Health Service (Wales) Act 2006;

"cluster" ("*clwstwr*") means a group of local service providers involved in health and care who have agreed to collaboratively work together to deliver primary medical services across a specified geographical area;

"cluster lead practice" ("*practis arweiniol y clwstwr*") means a general medical practitioner that

(**1**) 2006 c. 42.

has agreed to provide the Scheme to its registered patients, and to the registered patients of a general medical practitioner in its cluster that is not an engaged provider, and which the Local Health Board agrees will be a cluster lead practice;

"corporate optician" ("") means a body corporate registered in the register of bodies corporate maintained under section 9 of the Opticians Act 1989(**1**), which is carrying on business as an optometrist;

"dentist" ("*deintydd*") means a dental practitioner who is registered in the dentists register;

"dentists register" ("") means the register referred to in section 14(1) of the Dentists Act 1984(**2**);

"engaged provider" ("XX *â chytundeb*") means a dentist, general medical practitioner (whether acting for itself, as a cluster lead practice or on behalf of another practice or group of practices), optician or pharmacist that agrees with a Local Health Board to provide services under the Scheme pursuant to an arrangement made in accordance with Direction 4;

"general medical practitioner" ("") means a medical practitioner whose name is included in the General Practitioner Register kept by the General Medical Council under section 34C of the Medical Act 1983(**3**);

"health care professional" ("*gweithiwr gofal iechyd proffesiynol*") means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(**4**);

"Local Health Board" ("*Bwrdd Iechyd Lleol*") means a Local Health Board established under section 11 of the Act (local health boards);

"optician" means a person registered in the register of optometrists maintained under section 7 (register of opticians) of the Opticians Act 1989 or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act, or a corporate optician;

"pharmacist" ("*fferyllydd"*) means a person who is—

(**1**) 1989 c. 44.
(**2**) 1984 c. 24, amended by S.I. 2005/2011 and S.I. 2007/3101.
(**3**) 1983 c. 54. Section 34C was inserted by paragraph 10 of Schedule 1 to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (S.I. 2010/234).
(**4**) 2002 c. 17.

(a) registered in Part 1 of the General Pharmaceutical Council Register(**1**) or in the register maintained under Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976(**2**), or

(b) lawfully carrying on a retail pharmacy business in accordance with section 69 of the Medicines Act 1968, and

whose name is included in a pharmaceutical list under regulation 10 (preparation and maintenance of pharmaceutical lists) of the National Health Service (Pharmaceutical Services) (Wales) Regulations 2020, for the provision of pharmaceutical services in particular by the provision of drugs;

"registered patient" ("*claf cofrestredig*") means—

(a) a person who is recorded by the Local Health Board as being on a general medical practitioner's list of patients, or

(b) a person whom the general medical practitioner has accepted for inclusion on its list of patients, whether or not notification of that acceptance has been received by the Local Health Board and who has not been notified by the Local Health Board as having ceased to be on that list;

"Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification" ("") means the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification at the Schedule to these Directions;

"Scheme" ("y *Cynllun*") means the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme established by a Local Health Board in accordance with Direction 3;

"the vaccine" ("") means the (ChAdOx1 nCoV-19) (Oxford) Vaccine.

Establishment of an Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme

3.—(1) Each Local Health Board must establish, operate and, as appropriate, revise an Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme.

(2) The underlying purpose of the Scheme is to enable the provision of services to administer the vaccine as part of the health service in Wales by dentists, general medical practitioners, opticians and pharmacists.

(**1**) Maintained under article 19 (establishment, maintenance of and access to the Register) of the Pharmacy Order 2010 (S.I. 2010/231).
(**2**) S.I. 1976/1213 (N.I.22).

Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme

4. As part of its Scheme, each Local Health Board may enter into arrangements for the provision of services in accordance with the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification with—

(a) a dentist;

(b) a general medical practitioner—

(i) in relation to the registered patients of that general medical practitioner,

(ii) one or more cluster lead practices, in relation to the registered patients of the cluster lead practice and the registered patients of those general medical practitioners, if any, in its cluster that have not agreed within such time period as the Local Health Board requires, to deliver the Scheme to their registered patients pursuant to sub-paragraph (i),

(iii) a general medical practitioner that has agreed to deliver the Scheme pursuant to sub-paragraph (i) in relation to the registered patients of another general medical practitioner or group of general medical practitioners, subject to the agreement of the other general medical practitioner or group of general medical practitioners;

(c) an optician; or

(d) a pharmacist.

5. Where the registered patients of a general medical practitioner will not receive the services under the Scheme, either from the general medical practitioner in relation to whom they are registered patients, or from a cluster lead practice, the Local Health Board must make arrangements to ensure the provision of the services to the registered patients of that general medical practitioner as close to the practice premises of that general medical practitioner as is reasonably practicable and the Local Health Board may deliver the services under the Scheme to those patients in any way it believes is appropriate (including, but not limited to, by providing the services itself or arranging for the delivery of those services by any engaged provider).

6. An arrangement made between a cluster lead practice and a Local Health Board in accordance with direction 4(b)(ii) must include a requirement that each engaged provider co-operates with the other engaged providers and the cluster lead practice in its cluster in order for the cluster lead practice to complete, by such date as the Local Health Board requires, a plan setting out the arrangement for the delivery of the services under the Scheme to all registered patients of the general medical practitioners across the cluster

(whether or not a general medical practitioner is a member of the cluster is an engaged provider or not).

7.—(1) Where arrangements are made between a Local Health Board and an engaged provider, those arrangements must include—

(a) a requirement that the engaged provider—

(i) reads and takes account of these Directions alongside complying with the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification and its appendices which together provide the detailed requirements for the Scheme;

(ii) maintains and keeps up to date a record on the Welsh Immunisation System of all persons receiving treatment under the Scheme;

(iii) provides the services outlined in the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification and, where applicable, in line with the plan specified in direction 6;

(b) a requirement that the engaged provider takes all reasonable steps to ensure that the lifelong medical records held by the general medical practitioner with whom the person receiving the vaccine is a registered patient are kept up-to-date with regard to that person's immunisation status, and in particular to include—

(i) any refusal of an offer of vaccination,

(ii) where an offer of vaccination was accepted—

(aa) details of the consent to the vaccination or immunisation (where a person has consented on another person's behalf, the relationship to the person receiving the vaccine must also be recorded),

(bb) the batch number, expiry date and title of the vaccine,

(cc) the dose of the vaccine administered,

(dd) the name of the person drawing up the vaccine,

(ee) the name of the person administering the vaccine (if different to the person in (dd)),

(ff) the date and time the vaccine was administered,

(gg) the route of administration and the injection site of each dose of the vaccine,

(hh) any contraindications to the vaccination or immunisation, and

(ii) any adverse reactions to the vaccination or immunisation;

(c) a requirement that the engaged provider ensures that it adheres to the current guidance on "Storage, distribution and disposal of vaccines in the latest edition of the "Green Book"(**1**) and has the minimum necessary security requirements specified in paragraph 8(cc) to (gg) of the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification;

(d) a requirement that the engaged provider—

(i) supplies Public Health Wales with information on persons they have administered the vaccine to, via automated data extraction, for the purpose of monitoring local and national uptake;

(ii) supplies NHS Wales Shared Services Partnership, via the Welsh Immunisation System, with information on persons who have received the vaccine, for payment and post payment verification purposes;

(iii) provides data, subject to paragraph (iv) below, to the cluster lead practice of a cluster (where applicable), Local Health Boards and Welsh Government when required;

(iv) ensures consistent coding for capture of data and compliance with relevant information governance legislation;

(v) ensures that each health care professional involved in the provision of services under the Scheme has the necessary skills, training, competence and experience in order to provide those services;

(vi) ensures that each health care professional involved in the provision of services under the Scheme completes any relevant training provided by Public Health Wales and that the engaged provider keeps a record to confirm that each health care professional has undertaken the relevant training prior to participating in the administration of vaccinations;

(vii) ensures each health care professional involved in the provision of services under the Scheme completes relevant CPD activity through, for example, regular educational updates, attendance at relevant courses

(**1**) "Green Book" means 'Immunisation against infectious disease' at http://immunisation.dh.gov.uk/category/the-green-book/

provided by the Local Health Boards, as well as self-directed learning, to be able to demonstrate they have adequate knowledge and skills through their annual appraisal and revalidation;

(viii) ensures that each health care professional involved in the provision of services under the Scheme is adequately indemnified / insured for any liability arising from the work performed;

(ix) ensures that any person involved in the administration of the vaccine who is not a health care professional—

(aa) is authorised, listed, referred to or otherwise identified by reference to the Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020,

(bb) is supervised by a health care professional who satisfies the criteria in sub-paragraphs (v) to (viii) while preparing and/or administering vaccinations,

(cc) has completed the online COVID-19 specific training modules available on the e-learning for health website when available,

(dd) has the necessary skills and training to administer vaccines in general, including completion of the general immunisation training available on e-learning for health and face-to-face administration training, where relevant, and

(ee) has the necessary skills and training, including training with regard to the recognition and initial treatment of anaphylaxis;

(x) in accordance with paragraph 9 of the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification gives at least 4 weeks' notice in writing prior to terminating their provision of the Scheme;

(xi) supplies its Local Health Board with such information as the Local Health Board may reasonably request for the purposes of monitoring the performance of obligations under the Scheme and, where applicable, the cluster's performance in relation to the plan specified in direction 6; and

(xii) completes an annual report of outcomes by 31 March each year;

(e) payment arrangements for an engaged provider which must provide for it to be able to claim, in accordance with paragraph 7 of the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification, a payment of—

(i) £12.58 per vaccine administered, and

(ii) £400 per 1,000 vaccines administered.

(2) Any disputes arising as a result of provision of services under the Scheme will be dealt with in accordance with paragraph 10 of the Oxford/AstraZeneca Vaccine Primary Care COVID-19 Immunisation Scheme Specification.

(3) Where the Local Health Board delivers the Scheme pursuant to an arrangement in accordance with Direction 6, the Local Health Board must ensure that paragraphs (1) and (2) apply to such arrangements as they would to an engaged provider.

Signed by Alex Slade, Deputy Director, Primary Care Division under the authority of the Minister for Health and Social Services, one of the Welsh Ministers

Dated: 18 December 2020

Schedule
Oxford / AstraZeneca Vaccine
Primary Care COVID-19
Immunisation Scheme Specification

1. Introduction

The long term response to the COVID-19 pandemic requires the deployment of a safe and effective vaccine with enough uptake in the 'at risk' and overall population to protect individual patients and reduce the burden on and risk to NHS services. Rapid progress has been made. UK governments have announced the advanced purchase of four different COVID-19 vaccine technologies, totalling 350 million doses, including the Oxford / AstraZeneca Vaccine*,* a collaboration between Oxford University and AstraZeneca.

Planning for delivery is exceptionally challenging due to the emerging nature of data on vaccine characteristics and of developing understanding of which individuals are most at risk of severe COVID-19 infection. The overall Wales Programme Covid 19 Vaccination strategic intent is to immunise as many eligible individuals, as swiftly as possible, safely with minimum waste.

Primary Care in Wales has an excellent track record of delivering immunisation programmes, and has the skilled and experienced workforce necessary to deliver a COVID-19 vaccination programme. Successful delivery will require significant resources to deliver a mass vaccination programme with additional workforce, venues, logistics and data management solutions to ensure safe and timely vaccine deployment.

This Primary Care COVID-19 Immunisation Scheme Specification specifically relates to the administration of the Oxford / AstraZeneca Vaccine by Primary Care providers, defined for the purpose of this specification as "engaged providers".

2. Background

SARS-CoV-2 virus is the official name of the strain of coronavirus that causes the disease known as COVID-19. When a human is exposed to the SARS-CoV-2 virus, spike glycoprotein (S) found on the surface of the virus binds to ACE2 receptors on human cells to gain entry to the cells and cause an infection. Early vaccines act by boosting the ability of the body to recognise and develop an immune response to the spike protein, and this will help stop the SARS-CoV-2 virus from entering human cells and therefore prevent infection.

Vaccinating people against the SARS-CoV-2 virus is key to reducing the severe morbidity and mortality it causes and providing a long term solution to controlling the current COVID-19 pandemic. When safe and effective vaccines against COVID-19 are available it is essential that they are delivered quickly to those who need it.

The Oxford / AstraZeneca Vaccine is a non-replicating viral vector vaccine made from a weakened version of a common cold virus (adenovirus) that causes infections

in chimpanzees. The virus has been genetically changed so that it is impossible for it to replicate in humans. Assuming successful trials demonstrate effectiveness and safety, and exemption or licensure, which are currently uncertain, it's expected the Oxford / AstraZeneca Vaccine will be available from January 2021.

Vaccine supply to Wales is being managed centrally by Welsh Government in conjunction with Local Health Boards. Engaged providers who participate in the Primary Care COVID-19 Immunisation Scheme (PCCIS) will not be required to purchase any stock of the vaccine. Supplies of the Oxford / AstraZeneca Vaccine will be delivered regularly but in limited quantities over several months and so care must be taken to ensure that the most vulnerable have adequate access before the general population. All vaccines will be free and mandatory vaccination is not planned. Private supplies of vaccine will not be available.

A Patient Group Direction for administering COVID-19 vaccine has been authorised by each HB.

The Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020 (https://www.legislation.gov.uk/uksi/2020/1125/pdfs/uksi_20201125_en.pdf) also allow the vaccine to be administered according to a two-step national protocol using registered trained and competent healthcare professionals to carry out the clinical assessment, consent and preparation and a suitably trained non registered trained and competent member of staff will be able to administer the vaccine itself under clinical supervision by a registered healthcare professional. The Regulations do not specify who these non-registered vaccinators might be. This will be covered in the protocol which will be published soon.

Those persons engaged in delivery of the PCCIS will be covered by existing indemnity arrangements pursuant to regulation 8 of the NHS (Clinical Negligence Scheme) (Wales) Regulations 2019.

3. Primary Care COVID-19 Immunisation Scheme Aims

The Primary Care COVID-19 Immunisation Scheme (PCCIS) will provide a mechanism for Primary Care providers to enter in to an arrangement with their Local Health Board ("the relevant LHB") to enable the provision of services to administer the Oxford / AstraZeneca Vaccine as part of the health service in Wales and the wider COVID-19 vaccination programme led by Local Health Boards.

4. Cluster Working

Engaged providers are strongly encouraged to work collectively within cluster groupings, whether or not these have previously been in place and irrespective of which primary care services a provider usually provides, to increase the vaccine administration rates. For example, for a general medical practitioner this may mean administering vaccinations to people who are not registered with the provider administering the vaccine, whilst for other providers, it could also mean administering vaccines at venues away from their normal working location.

5. Eligible Cohorts for Vaccination under the Primary Care COVID-19 Immunisation Scheme

The Joint Committee on Vaccination and Immunisation (JCVI) advises UK health departments on immunisation and will determine eligibility for specific COVID-19 vaccines. However, prioritisation amongst the eligible groups will depend on vaccine characteristics and advice from the JCVI. This means that the use of the Oxford / AstraZeneca Vaccine needs to be considered as part of the wider COVID-19 vaccination programme, where multiple vaccines and multiple models of delivery are in use. JCVI priority groups are listed in Appendix A.

Consequently, **this PCCIS only relates to those specific eligible groups as determined by the contracting Local Health Board based on the JCVI advice**. Engaged providers who participate in this PCCIS should ensure all of their staff are aware of which groups are eligible for vaccination under this PCCIS and the prioritised sequence for delivery. Vaccination outside of these specific eligible groups will not receive payments under this PCCIS.

For full details of vaccination against COVID-19, healthcare practitioners should refer to the relevant chapters of the Green Book “Immunisation against infectious disease” at:

https://www.gov.uk/government/collections/immunisation-against-infectious-disease-the-green-book

and MHRA authorisation documents COVID-19 - GOV.UK (www.gov.uk)

6. Conditions for Service Delivery

In order for a primary care provider to be considered for participation in this PCIS, all of the following conditions must be met:

a. There must be an up-to-date and appropriate level of equipment for **resuscitation and anaphylaxis,** specifically adrenaline, at any site where vaccination occurs.
b. All persons who are involved in administration of vaccinations must be;
    I. adequately **trained** in administration of multi-dose vaccinations, vaccine storage, handling, security and assessment and management of **resuscitation, anaphylaxis and aseptic no-touch techniques**, and
    II. **trained in the use of PPE, be supplied with and wear the appropriate PPE** for the setting in which they are working.
c. All venues where vaccination occurs must have **been risk-assessed for transmission of coronavirus, based on local guidance,** and action taken to reduce risk where possible.
d. Patients who for the purposes of this specification shall be defined to mean a person who will be or has been administered the vaccine under the PCCIS, should be advised in advance not to attend if feeling unwell. Nonetheless, some patients may present to the

vaccination location unwell, or may become unwell whilst attending the vaccination location. Facilities must be in place for the assessment and management of patients who are unwell, this must include resources to manage fainting and anaphylaxis/cardiac arrest to a primary care level of skill. Reliance on 999 Paramedics is not appropriate

e. The engaged provider and any person involved in the administration of the Oxford / AstraZeneca Vaccine must have undertaken an appropriate training program specific to the vaccine being used. Public Health Wales has provided an e-learning module: https://www.e-lfh.org.uk/programmes/covid-19-vaccination/
f. Primary care providers are encouraged to collaborate with other primary care providers both within existing clusters but also, where necessary, to form new clusters specifically to deliver this PCCIS, which can be with providers outside of their own profession, if they have not already done so.
g. A clinical record of immunisation with COVID-19 vaccine must be entered onto the Welsh Immunisation System (WIS). Arrangements are being made at UK level with GP system providers for the Welsh Immunisation System (and NHSE NIMS) to populate patient records automatically, to avoid double entry.

7. Payment for administration of the (ChAdOx1 nCoV-19) (Oxford) COVID-19 Vaccine under the Scheme

a. The Local Health Board must pay to an engaged provider who qualifies for the payment in accordance with paragraphs b to p, a payment of—

(i) £12.58 in respect of each dose of the vaccine administered to a person under the Scheme, and

(ii) £400 for every 1,000 vaccines administered under the Scheme.

Eligibility for payment

b. A dentist, general medical practitioner, optician or pharmacist is only eligible for a payment for provision of services under the Scheme in circumstances where the following conditions are met—

i. they are an engaged provider,
ii. the person in respect of whom the payment is claimed was allocated to the engaged provider by the Local Health Board with whom the engaged provider has an agreement to provide services under the Scheme,
iii. all required details have been entered on to the Welsh Immunisation System to create a clinical record of immunisation with the vaccine for each person in respect of whom a payment is being claimed by the engaged provider,
iv. the engaged provider does not receive any payment from any other source in respect of the vaccine (if the engaged provider does receive payments from other sources in respect of any person, the Local Health Board must consider whether to recover any payment made under the Scheme in respect of that person

pursuant to sub-paragraphs j and k (overpayments and withheld amounts), and

v. the engaged provider creates the clinical record on the Welsh Immunisation System at point of administration of each dose.

c. An engaged provider is not entitled to receive payment of more than £25.16 in respect of any one person under the Scheme.

Payment

d. The engaged provider will receive an automatic payment based on information recorded on the Welsh Immunisation System in respect of each person who has received a vaccine and, where applicable, for every 1,000 vaccines administered, and the activity of the engaged provider will be captured by NHS Wales Shared Services Partnership as at the tenth day of each calendar month.

e. Any amount payable in accordance with sub-paragraph d falls due following the expiry of 14 days after the activity is captured under sub-paragraph d—
   i. in the case of a GDS contractor, on the next date when the GDS contractor's payable monthly Annual Contract Value Payment falls due in accordance with the relevant GDS Statement of Financial Entitlements;
   ii. in the case of a GMS contractor, on the next date when the GMS contractor's Global Sum monthly payment falls due in accordance with the relevant Statement of Financial Entitlements;
   iii. in the case of a GOS contractor, on the date in the next month when the GOS contractor's General Ophthalmic Services monthly reimbursement falls due in accordance with the Statement of Remuneration;
   iv. in the case of a pharmacist, on the next date when the pharmacist receives any other payments due under the Drug Tariff, and
   v. in the case of any other engaged provider, no later than 8 weeks beginning with the date on which the engaged provider creates or updates the clinical record on the Welsh Immunisation System or as otherwise may be agreed between the Local Health Board and the engaged provider.

f. The Local Health Board must ensure that the receipt and payment in respect of any automatic payments made pursuant to sub-paragraph d are properly recorded and that each such payment has a clear audit trail.

Conditions attached to payment

g. A payment under the provisions of these Directions is only payable if an engaged provider satisfies the following conditions;

i. in respect of each person for which a payment under the Scheme is claimed, the engaged provider has supplied the Local Health Board, via the Welsh Immunisation System, with—
    a. the name of the person,
    b. the date of birth of the person,
    c. the NHS number, where known, of the person,
    d. the date each dose of the vaccine is administered

h. to the Local Health Board may request from an engaged provider any information which the Local Health Board does not have but needs, and the engaged provider either has or could be reasonably expected to obtain, in order for the Local Health Board to form an opinion on whether the engaged provider is eligible for payment under the provisions of the Scheme,

i. the Local Health Board may, in appropriate circumstances, withhold payment of any, or any part of, payments due under the Scheme if an engaged provider breaches any of these conditions.

Overpayments and withheld amounts

j. If the Local Health Board makes a payment to an engaged provider pursuant to the Scheme and;
    i. the engaged provider was not entitled to receive all or part thereof, whether because it did not meet the entitlement conditions for the payment or because the payment was calculated incorrectly (including where a payment on account overestimates the amount that is to fall due);
    ii. the Local Health Board was entitled to withhold all or part of the payment because of a breach of a condition attached to the payment, but is unable to do so because the money has already been paid; or
    iii. the Local Health Board is entitled to repayment of all or part of the money paid,
    iv. the Local Health Board may recover the money paid by deducting an equivalent amount from any payment payable pursuant to these Directions, and where no such deduction can be made, it is a condition of the payments made pursuant to these Directions that the engaged provider must pay to the Local Health Board that equivalent amount.

k. Where the Local Health Board is entitled pursuant to sub-paragraph j to withhold all or part of a payment because of a breach of a payment condition, and the Local Health Board does so or recovers the money by deducting an equivalent amount from another payment made in accordance with sub-paragraph b, it may, where it sees fit to do so, reimburse the engaged provider the amount withheld or recovered, if the breach is cured.

Underpayments and late payments

l. If the full amount of a payment that is payable pursuant to the Scheme has not been paid before the date on which the payment falls due, then unless;
   i. this is with the consent of the engaged provider; or
   ii. the amount of, or entitlement to, the payment, or any part thereof, is in dispute,

once it falls due, it must be paid promptly.

m. If the engaged provider's entitlement to the payment is not in dispute but the amount of the payment is in dispute, then once the payment falls due, pending the resolution of the dispute, the Local Health Board must;
   i. pay to the engaged provider, promptly, an amount representing the amount that the Local Health Board accepts that the engaged provider is at least entitled to, and
   ii. thereafter pay any shortfall promptly, once the dispute is finally resolved.

n. However, if an engaged provider has;
   i. not claimed a payment to which it would be entitled pursuant to the Scheme if it claimed the payment; or
   ii. claimed a payment to which it is entitled pursuant to the Scheme but a Local Health Board is unable to calculate the payment until after the payment is due to fall due because it does not have the information it needs in order to calculate that payment (all reasonable efforts to obtain the information having been undertaken),

   that payment is (instead) to fall due on the first working day of the month after the month during which the Local Health Board obtains the information it needs in order to calculate the payment.

Payments on account

o. Where the Local Health Board and the engaged provider agree (but the Local Health Board's agreement may be withdrawn where it is reasonable to do so and if it has given the engaged provider reasonable notice thereof), the Local Health Board must pay to an engaged provider on account any amount that is;
   i. the amount of, or a reasonable approximation of the amount of, a payment that is due to fall due pursuant to the Scheme; or
   ii. an agreed percentage of the amount of, or a reasonable approximation of the amount of, a payment that is due to fall due pursuant to the Scheme, and if that payment results in an overpayment in respect of the payment, sub-paragraphs j and k apply.

Post payment verification

p. Post payment verification(**9**) applies to the provision of services under the Scheme.

8. Scheme Specification

Agreement of Eligible Cohorts

a. The relevant LHB will develop a proactive and preventative approach to offering the Oxford / AstraZeneca Vaccine by adopting robust call and reminder systems to contact individuals within eligible cohorts, with the aims of—
    i. maximising uptake in the interests of those persons, and
    ii. meeting any public health targets in respect of the administration of the Oxford / AstraZeneca Vaccine .

The engaged provider must agree with the relevant LHB to;

b. participate in a scheme to maximise the vaccination of specific cohorts of the population with the Oxford / AstraZeneca Vaccine **listed in Appendix A;**
c. accept the order of the cohorts and timescale over which the vaccines will be administered; and
d. in the case of general medical practitioners, vaccinate appropriate people who are not registered with their practice.

Publicity & Promotion

e. The engaged provider must **prominently display provided materials** advertising the availability of the Oxford / AstraZeneca vaccinations for eligible groups. This should include displaying advertisements on the premises website, using social media as well as inside the premises.
f. **Booking** of the first appointments for vaccination and any appointments for second vaccinations, will be according to local policy set by the Health Board and the Welsh Immunisation System will be used.

Model for Delivery

g. The **engaged provider and LHB must agree the timing and location of the vaccination clinic sessions**
h. The engaged provider is actively encouraged to **work collaboratively with other engaged providers** in a cluster to share resources and maximise efficiencies to deliver the PCCIS.
i. The engaged provider **must notify the relevant LHB of the number of vaccination slots they have available and of all vaccination clinic sessions** start and finish times, and their locations, at least 14 days in advance.
j. **Vaccination appointments and number of people per session will be agreed between the LHB and engaged provider** and will be in multiples of 8 or 10 doses, depending on vial supplier to minimise waste

(**9**) For more information on post payment verification, please see; https://nwssp.nhs.wales/ourservices/primary-care-services/general-information/post-payment-verification-ppv/

as the Oxford / AstraZeneca Vaccine is contained within a multi-dose vial.

k. The engaged provider must **administer the Oxford / AstraZeneca Vaccine to those persons allocated to them by the relevant LHB in accordance with the Directions and this PCCIS**, after obtaining consent, and following guidance in the Green Book.

l. The engaged provider must ensure that all persons who receive vaccinations are eligible under the cohorts and suitable clinically in accordance with law and guidance;

    i. Informed consent is obtained by a registered healthcare professional and the Patient's consent to the vaccination (or the name of the person who gave consent to the vaccination and that person's relationship to the Patient) must be recorded in accordance with law and guidance;

m. Consent obtained in accordance with paragraph k(i) must be recorded (as appropriate) for any necessary information sharing with the relevant LHB in accordance with data protection law and guidance;

n. Engaged providers must ensure a person receives a complete course of the same vaccine, unless in exceptional circumstances in which, for a person attending for a second vaccination, that first vaccine type is not available, or the vaccine type received is not known.

o. Engaged providers must:

    i. ensure the correct dosage of the vaccine is administered, as clinically appropriate;

    ii. that they comply with relevant guidance issued by JCVI on, but not limited to:

        1. which vaccine is the most suitable for each cohort of people;
        2. the relevant maximum and minimum intervals (as applicable) for administration of each vaccination;
        3. the relevant vaccination time limitations and expiry date following reconstitution;
        4. the number of doses of each vaccine required to achieve the desired immune response; and
        5. any other relevant guidance relating to the administration of the different types of vaccine and the different cohorts from time to time.

Persons involved in administering the vaccine

p. The engaged provider must ensure that vaccinations are administered only by a person permitted to do so in accordance with the Human Medicines Regulations 2012 as amended by the Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020, including under a relevant Patient Group Direction or under a National Protocol approved by Welsh Ministers.

q. All healthcare professionals administering the vaccine, must have:

    i. read and understood the clinical guidance available at http://nww.immunisation.wales.nhs.uk/covid-19-vaccination-programme

ii. completed the additional online COVID-19 specific training modules available on the e-learning for health website when available. Engaged providers will be expected to oversee and keep a record to confirm that all persons administering the vaccines have undertaken the training prior to participating in vaccinations;
iii. the necessary experience, skills, training and competency to administer vaccines in general, including completion of the general immunisation training available on e-learning for health and face-to-face administration training, where relevant;
iv. the necessary experience, skills, training and competency to administer vaccines in general, including training with regard to the recognition and initial treatment of anaphylaxis; and
v. ensured that registered healthcare professionals were involved in the preparation (in accordance with the manufacturer's instructions) of the vaccine(s) unless unregistered staff have been trained to do this.

r. All other persons administering the vaccine, must:
i. be authorised, listed, referred to or otherwise identified by reference to The Human Medicines (Coronavirus and Influenza) (Amendment) Regulations 2020, including under a relevant Patient Group Direction or National Protocol approved by Welsh Ministers;
ii. while preparing and/or administering vaccinations be supervised by a healthcare professional fulfilling the requirements of paragraph p, above;
iii. have completed the additional online COVID-19 specific training modules available on the e-learning for health website when available. Engaged providers must oversee and keep a record to confirm that all staff have undertaken the training prior to participating in administration of the vaccination. This includes any additional training associated with new vaccines that become available while this PCCIS is in operation;
iv. have the necessary skills and training to administer vaccines in general, including completion of the general immunisation training available on e-learning for health and face-to-face administration training, where relevant; and
v. the necessary skills and training, including training with regard to the recognition and initial treatment of anaphylaxis.

s. Engaged providers must ensure that all vaccines are received, stored, prepared and subsequently transported (where appropriate) in accordance with the relevant manufacturer's, Public Health Wales and Local Health Board instructions and all associated Standard Operating Procedures, including that all refrigerators in which vaccines are stored have a maximum/minimum thermometer and that the readings are taken

and recorded from that thermometer on all working days and that appropriate action is taken when readings are outside the recommended temperature. Appropriate procedures must be in place to ensure stock rotation, monitoring of expiry dates and appropriate use of multi-dose vials to ensure that wastage is minimised and certainly does not exceed 5% of the total number of vaccines supplied. Wastage levels will be reviewed by the relevant LHB on an ongoing basis. Where wastage exceeds 5% of the vaccines supplied and that wastage is as a result of supply chain or relevant LHB fault, those vaccines shall be removed from any wastage calculations when reviewed by the relevant LHB on an ongoing basis.

t. Engaged providers must ensure that services are accessible, appropriate and sensitive to the needs of all persons. No person allocated by a relevant LHB shall be excluded or experience particular difficulty in accessing and effectively using this PCCIS due to a protected characteristic, as outlined in the Equality Act (2010) – this includes Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex or Sexual Orientation.

Record-keeping

u. The engaged provider must use the **Welsh Immunisation System (WIS);**
    i. for recording consent for vaccination,
    ii. for noting any contraindications,
    iii. for recording when a vaccination has been given, including the batch number and expiry date,
    iv. for recording immediate adverse events,
    v. for providing evidence for payments under the PCCIS, including for Post Payment Verification.
    v. By using the Welsh Immunisation System (WIS), the record of vaccination of a person by the engaged provider will be sent electronically to the individuals GMS record
    w. The engaged provider must;
        i. supply Public Health Wales with information on persons who have received the vaccine, via the Welsh Immunisation System (WIS), for the purpose of monitoring local and national uptake;
        ii. supply NHS Wales Shared Services Partnership with information on persons who have received the vaccine, via the Welsh Immunisations System (WIS) for the purposes of payment, and/or post payment verification
        iii. provide data, to the cluster lead practice of a cluster (where applicable), Local Health Boards and Welsh Government when required; and
        iv. ensure consistent coding for capture of data and compliance with relevant information governance legislation.

Adverse Events

x. All adverse events relating to the vaccine **must** be
    1. reported to the MHRA using the Yellow Card scheme www.yellowcard.gov.uk
    2. And reported to the Health Board Primary Care Team (by using DATIX or the all Wales Concerns Management System, or existing local arrangements).

y. Although no data for co-administration of COVID-19 vaccine with other vaccines exists, in the absence of such data, first principles would suggest that interference between inactivated vaccines with different antigenic content is likely to be limited. Whilst there is no evidence of any safety concerns, the Oxford / AstraZeneca Vaccine should not be routinely offered at the same time as other vaccines. Engaged providers should refer to the available guidance which can currently be found here.

z. The engaged provider must ensure the person receiving the Oxford / AstraZeneca Vaccine has understood that failure to receive all recommended doses of the vaccine may render the vaccination ineffective and should ensure that a follow up appointment to receive the subsequent dose has been booked, acknowledging that in exceptional circumstances appointments may need to be moved, before administering the first dose of the vaccine.

Vaccine stock and consumables

aa.
    i. Vaccine supplies will be coordinated by the Health Board.
    ii. Consumables such as PPE, syringes and needles will be provided by the Health Board.

Publicity and Information Materials

bb. Publicity materials and information leaflets will be provided by the Health Board.

Security

cc. The security assessment related to delivery of the vaccine is continually evolving. In order to ensure the safety of patients, staff and the vaccine itself, engaged providers must have robust security measures in place.

dd. At this moment, at a minimum this must include:

1. Lockable temperature controlled storage (vaccine fridge). This can include adaptation to an existing fridge;
2. Lockable internal doors preventing access to vaccine storage by unauthorised persons;
3. Lockable external windows and doors;

4. An operational intruder alarm, preferably linked to an Alarm Receiving Centre; and
5. A robust and operational security process which all staff are aware of and are compliant with.

ee. All packaging must be destroyed or defaced in such a manner that prevents it being reused for any purpose. This includes the safe and secure disposal of empty vials to ensure they cannot be reused.

ff. Additional measures that should also be considered but are desirable, include:

1. Operational external CCTV covering all entry points;
2. External Lighting; and
3. Operational internal CCTV covering the location of the vaccine storage.

gg. Due to the continually changing nature of the COVID-19 pandemic and the resources and vaccines that the NHS is able to deploy, these security arrangements must be responsive and may be frequently updated as necessary, dictated by any changes in the threat assessment. Engaged providers are expected to be alive to this issue and committed to providing the best possible COVID-19 PCCIS.

9. Notice Period

Notice period for ending the agreement for service provision will be four weeks for the relevant LHB and the engaged provider, unless varied by mutual agreement between the LHB and engaged provider. Notice must be given in writing setting out detailed reasons.

The arrangements between an engaged provider and a relevant LHB may be terminated on any of the following events:

i. automatically when the COVID-19 vaccination programme comes to an end;

ii. the relevant LHB is entitled to require that the engaged provider withdraws from the arrangement

iii. the relevant LHB terminates the arrangement with the engaged provider by giving not less than 4 weeks' notice to the engaged provider;

iv. the relevant LHB is entitled to terminate the arrangement by giving not less than 4 weeks' notice where the engaged provider has failed to comply with any reasonable request for information

from the relevant LHB relating to the provision of the services pursuant to this PCCIS; or

v. Where the engaged provider cannot meet the requirements of this PCCIS it must withdraw from this PCCIS by serving written notice on the relevant LHB to that effect with supporting reasons as to why it cannot meet the requirements, such notice must be received by the relevant LHB no less than 4 weeks' prior to date on which the engaged provider wishes to withdraw its provision of services under the PCCIS.

The agreement cannot be terminated until any second completing dose has been administered to those persons who have received a first dose on the date the engaged provider or relevant LHB gives notice of termination.

10. Disputes

Local resolution of contract disputes

a. In the case of any dispute arising out of or in connection with the Scheme, the engaged provider and the Local Health Board must make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute, before referring the dispute for consideration and determination to the Welsh Ministers in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings) specified in paragraphs b to n of this section.

NHS dispute resolution procedure

b. The procedure specified in the following sub-paragraphs applies in the case of any dispute arising out of or in connection with the Scheme which is referred to the Welsh Ministers.

c. Any party wishing to refer a dispute as mentioned in sub-paragraph b must send to the Welsh Ministers a written request for dispute resolution which must include or be accompanied by—
   i. the names and addresses of the parties to the dispute;
   ii. a copy of any arrangement made under the Scheme; and
   iii. a brief statement describing the nature and circumstances of the dispute.

d. Any party wishing to refer a dispute as mentioned in sub-paragraph b must send the request under sub-paragraph c within a period of 3 years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.

e. The Welsh Ministers may determine the matter themselves or, if the Welsh Ministers consider it appropriate, appoint a person or persons to consider and determine it.

f. Before reaching a decision as to who should determine the dispute, under sub-paragraph e, the Welsh Ministers must, within 7 days beginning with the date on which a matter under dispute was referred to them, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter under dispute.

g. The Welsh Ministers must give, with the notice given under sub-paragraph f, to the party other than the one which referred the matter to dispute resolution a copy of any document by which the matter was referred to dispute resolution.

h. The Welsh Ministers must give a copy of any representation received from a party to the other party and must in each case request (in writing) a party to whom a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.

i. Following receipt of any representations from the parties or, if earlier at the end of the period for making such representations specified in the request sent under sub-paragraph f or h, the Welsh Ministers must, if they decide to appoint a person or person to hear the dispute;
    i. inform the parties in writing of the name of the person or persons whom it has appointed; and
    ii. pass to the person or persons so appointed any documents received from the parties under or pursuant to paragraph c, f or h.

j. For the purpose of assisting the adjudicator in the consideration of the matter, the adjudicator may—
    i. invite representatives of the parties to appear before the adjudicator to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which the adjudicator wishes them to give special consideration; or
    ii. consult other persons whose expertise the adjudicator considers will assist in the consideration of the matter.

k. Where the adjudicator consults another person under sub-paragraph j.ii., the adjudicator must notify the parties accordingly in writing and, where the adjudicator considers that the interests of any party might be substantially affected by the result of the consultation, the adjudicator must give to the parties such opportunity as the adjudicator considers reasonable in the circumstances to make observations on those results.

l. In considering the matter, the adjudicator must consider—

i. any written representations made in response to a request under sub-paragraph j, but only if they are made within the specified period;
ii. any written observations made in response to a request under sub-paragraph h, but only if they are made within the specified period;
iii. any oral representations made in response to an invitation under sub-paragraph j.i.;
iv. the results of any consultation under sub-paragraph j.ii.; and
v. any observations made in accordance with an opportunity given under sub-paragraph m.

m. In section 10 of this Specification, “specified period” means such period as the Welsh Ministers specify in the request, being not less than 2, nor more than 4, weeks beginning with the date on which the notice referred to is given, but the Welsh Ministers may, if they consider that there is good reason for doing so, extend any such period (even after it has expired) and, where they do so, a reference in this paragraph to the specified period is to the period as so extended.

n. Subject to the other provisions within section 10 of this Specification and to any agreement by the parties, the adjudicator has wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

Determination of dispute

o. The determination of the adjudicator and the reasons for it, must be recorded in writing and the adjudicator must give notice of the determination (including the record of the reasons) to the parties.

11. Application for Participation

Signature of engaged provider
Date

Appendix A

List of eligible cohorts that may be chosen by the LHB for inclusion in this PCIS:

1. residents in a care home for older adults and their carers
2. all those 80 years of age and over and frontline health and social care workers
3. all those 75 years of age and over
4. all those 70 years of age and over and clinically extremely vulnerable individuals
5. all those 65 years of age and over
6. all individuals aged 16 years to 64 years with underlying health conditions which put them at higher risk of serious disease and mortality
7. all those 60 years of age and over
8. all those 55 years of age and over
9. all those 50 years of age and over

Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE **The Organic Production (Organic Indications) (Amendment) (EU Exit) Regulations 2020**

DATE **08 January 2021**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SO30C – Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Assembly

The Organic Production (Organic Indications) (Amendment) (EU Exit) Regulations 2020 (the "2020 Regulations")

The law which is being amended

EU legislation

- Council Regulation (EC) No 834/2007 on organic production and labelling of organic products.

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

The 2020 Regulations make minor technical amendments to retained direct EU legislation to ensure the operability of this legislation at the end of the transition period. There is no impact on the Welsh Ministers' executive competence or the Senedd's legislative competence.

The purpose of the amendments

The 2020 Regulations ensures that organic rules are updated in preparation for the end of the transition period by amending deficiencies within the retained EU legislation.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: https://www.legislation.gov.uk/uksi/2020/1669/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 on matters relating to organic labelling 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 following the UK's exit from the EU.

The 2020 Regulations will follow the 'urgent made affirmative procedure' that is set out in paragraph 5 of Schedule 7 to the European Union (Withdrawal) Act 2018. In accordance with this procedure, the 2020 Regulations may be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament, provided a declaration is made by the relevant Minister that as a result of urgency, it is necessary to make the regulations without a draft being laid and approved.

UK MINISTERS ACTING IN DEVOLVED AREAS

214 - The Organic Production (Organic Indications) (Amendment) (EU Exit) Regulations 2020

Laid in the UK Parliament: 5 January 2021

Sifting	
Subject to sifting in UK Parliament?	No
Procedure:	Made 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	Made 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 have been made by the UK Government pursuant to section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

Summary

These Regulations make operability amendments to retained EU legislation relating to organic products to ensure that it remains coherent and continues to function as intended after the UK has left the EU.

The Regulations amend retained Council Regulation (EC) No 834/2007 on organic production and labelling of organic products to ensure organic labelling regulations work in domestic law. They remove the mandatory requirement for the EU organic logo to be used in Great Britain (GB) and set out rules for the use of any United Kingdom (UK) organic logo when developed. The instrument also amends the statement of agricultural origin to reference the UK and provides that this must be used on GB organic products even where there is no UK logo.

Statement by Welsh Government
Legal Advisers agree with the statement laid by the Welsh Government dated 8 January 2021 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.

Elin Jones AS, Llywydd
Senedd Cymru
Elin Jones MS, Presiding Officer
Welsh Parliament

Procedure Committee
House of Commons
London
SW1A 0AA
proccom@parliament.uk

Our ref: EJ/HoC

04 January 2021

Dear Chair,

Call for Evidence: the procedure of the House of Commons and the territorial constitution

I write in my capacity as the Llywydd (Presiding Officer) of the Welsh Parliament, commonly known as the Senedd, in response to the Committee's invitation to comment on the ways in which the procedures of the House of Commons engage with the United Kingdom's territorial constitution.

I have focussed on your requests for evidence on:

- The procedures for notification to the House of decisions of the devolved legislatures relevant to matters under consideration in the House, including decisions on legislative consent motions
- The procedural steps required to facilitate greater joint working between committees of each of the UK's devolved legislatures and committees of the House, for purposes including shared scrutiny of intergovernmental working on policy areas of common interest and effective scrutiny of common frameworks.

Notification of devolved legislatures' decisions

The officials of our respective Parliaments operate on the basis of a shared understanding of the arrangements for informing the UK Parliament of legislative consent decisions. Following a decision by the Senedd on whether or not to agree a legislative consent motion the Clerk of the Senedd will send - via correspondence -notification of the Senedd's decision to her counterparts at the UK Parliament, along with any associated memoranda received

from the Welsh Government. Such letters and memoranda are published on the relevant Bill's page of the UK Parliament website, and may also be 'tagged' on the Order Paper in the Commons. Information about all legislative consent decisions is thereby available on the UK Parliament's website, including any decision of a legislature where consent is not granted.

The Committee may wish to consider the merits of introducing a procedure to formally recognise whether or not devolved legislatures have given their consent for the UK Parliament to legislate on devolved matters.

As you will be aware from previous correspondence, the Senedd's Legislation, Justice and the Constitution Committee is currently giving consideration to how the operation of the Sewel Convention might be reformed.1 This work is expected to conclude early in the New Year, which may lead to specific recommendations in this regard.

The House of Lords Procedure and Privileges Committee also recommended in a report published on 13 October 2020 and agreed by the House of Lords on 20 October 2020 that:

> "when legislative consent has been refused, or not yet granted by the time of third reading, a minister should orally draw it to the attention of the House before third reading commences. In doing this the Minister should set out the efforts that were made to secure consent and the reasons for the disagreement." [2]

Such a procedure, particularly if adopted by both Houses of the UK Parliament, would provide greater transparency regarding whether or not the Senedd has provided legislative consent and how UK Ministers have taken such decisions into account. It could go some way towards ensuring the views of the devolved legislatures are respected throughout the legislative process. Such a procedure should apply to all legislative consent decisions taken by the Senedd, including Legislative Consent Motions, Statutory Instrument Consent Motions, and Consent Decision Motions (further detail on the circumstances in which such motions take place is set out in an annex to this correspondence).

<u>The procedural steps required to facilitate greater joint working between committees of each of the UK's devolved legislatures and committees of the House</u>

Inter-parliamentary scrutiny can be an effective tool in holding governments to account, and I welcome the Committee's interest in examining the procedural steps by which greater joint working could be better facilitated.

There are also a wide range of mechanisms by which our parliaments can work together. Committees can collaborate through correspondence, sharing of reports, dialogue between their officials, sharing of good practice, informal meetings etc. Officials supporting committees of the UK and devolved parliaments are already working together on an

[1] Senedd, Legislation, Justice and the Constitution Committee, Inquiry into the procedure of the House of Commons and the territorial constitution, 1 October 2020.
[2] House of Lords, Procedure and Privileges Committee, 4th Report of Session 2019–21 https://publications.parliament.uk/pa/ld5801/ldselect/ldproced/140/140.pdf, paragraph 43.

informal basis to share information in support of committee scrutiny of Common Frameworks and other Brexit related work. This has been a positive example of inter-parliamentary working at official level and could be a model for inter-parliamentary engagement in other areas, particularly in relation to legislation. For example, ongoing, proactive dialogue around legislation, including amendments to such, could facilitate Senedd officials in planning and maximising the time available to Senedd Members to consider Legislative Consent Memoranda and Statutory Instrument Consent Memoranda as well as influence consideration of the related legislation at Westminster.

The Inter-parliamentary Forum on Brexit, postponed due to the COVID-19 pandemic, offered a model for joint working. Officials supporting the work of the forum have continued to meet in the absence of formal Member-level engagement. Members of the Senedd's External Affairs and Additional Legislation Committee and of the Legislation Justice and the Constitution Committees have expressed a strong desire to continue to work with colleagues in other legislatures on matters related to Brexit and in particular, on issues related to the future of intergovernmental relations and the future constitution of the UK. Accordingly, Senedd committees are continuing to pursue bilateral relations.

Concurrent meetings

One procedural step the Committee may wish to consider relates to concurrent meetings. The Senedd's Standing Orders currently provide that its "Committees may meet concurrently with any committee or joint committee of any legislature in the UK."3 The House of Commons Standing Orders provide that "The Welsh Affairs Committee may invite members of any specified committee of the National Assembly for Wales (sic)[4] to attend and participate in its proceedings (but not to vote)." [5]

These provisions have enabled Senedd Committees to meet concurrently with the Welsh Affairs Committee , including the Senedd's Constitutional and Legislative Affairs Committee meeting concurrently with the Welsh Affairs Committee in 2015 for scrutiny of the Draft Wales Bill. The Welsh Affairs Committee Chair subsequently wrote to the Speaker of the House of Commons seeking a change to its Standing Orders to allow all House of Commons committees to meet jointly with committees of the other UK legislatures. This reflected that the Welsh Affairs Committee is not the only House of Commons committee

[3] Senedd, Standing Orders, 17.54

[4] In May 2020, the National Assembly for Wales formally changed its name to the Welsh Parliament, commonly known as the Senedd.

[5] House of Commons, Standing Orders for Public Business, 5 November 2019, 137A(3)

whose work overlaps with that of Senedd committees.[6] However, to date, the House of Commons' standing order 137A(1b) is limited to providing that:

> "Any select committee or sub-committee with power to send for persons, papers and records shall have power— to meet concurrently with any committee or sub-committee of either House of Parliament for the purpose of deliberating or taking evidence."[7]

To facilitate joint working across a range of policy and legislative areas, the Committee may wish to recommend that this Standing Order be broadened to enable concurrent meetings of all select committees or sub-committees with the committees of other UK legislatures.

International agreements

The current processes for scrutinising and ratifying international agreements - in particular international trade agreements - do not currently allow for formal consideration of the views of the devolved legislatures in areas that will significantly impact upon areas of devolved competence, such as health and agriculture.

The Senedd's External Affairs and Additional Legislation Committee, in submitting a response to the House of Lords International Agreements Sub-Committee ("the IAC"), has highlighted the need for a revised process of UK Parliamentary scrutiny of international agreements to incorporate:

> "the need to consider the views of the Senedd before the conclusion of its scrutiny process."[8]

The IAC concurred with this assessment, commenting that:

> "it is vital that Westminster committees engage closely with the Welsh and Scottish Parliaments and the Northern Ireland Assembly in scrutinising the negotiation and agreement of future treaties."[9]

The Committee may wish to consider how procedures that govern the joint working arrangements between the devolved legislatures and the House of Commons could be

[6] For example, engagement on frameworks is likely to be more beneficial between committees with equivalent policy remits rather than with the House of Commons' territorial committees.
[7] House of Commons, Standing Orders for Public Business, 5 November 2019, 137A(1b)
[8] Senedd, External Affairs and Additional Legislation Committee, written evidence to the House of Lords International Agreements Sub-Committee, June 2020
[9] House of Lords, European Union Committee, Treaty scrutiny: working practice, 10 July 2020, https://publications.parliament.uk/pa/ld5801/ldselect/ldeucom/97/97.pdf, Paragraph 52.

amended to encourage formal consultation with the devolved parliaments in ratification processes and scrutiny of international agreements.

I or my officials would be happy to explore further these matters with the Committee.

Yours sincerely,

Elin Jones MS
Llywydd

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English

Elin Jones AS, Llywydd
Senedd Cymru
Elin Jones MS, Presiding Officer
Welsh Parliament

Annex: Legislative Consent Decisions

As set out in the Senedd's Standing Order 29, a **Legislative Consent Motion** is a motion seeking the Senedd's agreement to the inclusion of a relevant provision in a relevant UK Bill. A "relevant Bill" is Bill is one which is under consideration in the UK Parliament which makes provision ("relevant provision") in relation to Wales: for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd); or which modifies the legislative competence of the Senedd.

As set out in the Senedd's Standing Order 30A, **Statutory Instrument Consent Motions** is a motion seeking the Senedd's agreement to the inclusion of a relevant provision in a 'relevant statutory instrument.' A 'relevant statutory instrument' means a statutory instrument or draft statutory instrument laid before the UK Parliament by UK Ministers which makes provision ("relevant provision") in relation to Wales amending primary legislation within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd).

As set out in the Senedd's Standing Order 30B, **Consent Decision Motions** is a motion for a decision either giving or refusing the Senedd's consent to 'relevant draft regulations' being laid before the UK Parliament. In this context 'relevant draft regulations' are Statutory Instruments made by UK Ministers under the Act temporarily restricting the Senedd's legislative competence or the Welsh Ministers' executive competence seeking draft regulations that a Minister of the Crown proposes to lay before the UK Parliament, in accordance with section 109A or 80(8) of the Act.

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Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT

TITLE	**Legal challenge to the UK Internal Market Act 2020**
DATE	**19 January 2020**
BY	**Jeremy Miles MS, Counsel General and Minister for European Transition**

I have committed in statements to the Senedd, at committee appearances and in correspondence, to keep Members of the Senedd updated as to the steps the Welsh Government is taking to protect the Senedd from the attack on its competence made by the UK Internal Market Act 2020.

So far, there has been an exchange of pre-action correspondence with the UK Government about the Act. Members will recall that a pre-action letter was sent to the UK Government on 16 December, just before the Act was passed and received Royal Assent. We received a response to that letter on 8 January. That response did not address any of our concerns about the effect of the Act on devolution.

Therefore, I have today issued formal proceedings in the Administrative Court seeking permission for a judicial review. We recognise the difficulties faced by the Senedd because of the uncertainty that this Act leaves in terms of the Senedd's ability to legislate. I have therefore applied for the proceedings to be expedited although this is entirely a matter for the Court. I have proposed a timetable to the Court which would result in this case being heard in the final week of March 2021.

I attach the detailed Grounds of Claim. These grounds confirm the two planks of the challenge we seek to make; that the Act impermissibly, impliedly repeals parts of the Government of Wales Act 2006 in a way that diminishes the Senedd's legislative competence and that the Act confers power on the UK Government, by way of wide Henry VIII powers, which could be used by UK Ministers to substantively amend the Government of Wales Act in a way that cuts down the devolution settlement.

I will continue to keep Members closely updated on the progress of this action.

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT IN WALES

BETWEEN

THE COUNSEL GENERAL FOR WALES

Claimant

-v-

THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

Defendant

-and-

(1) THE LORD ADVOCATE FOR SCOTLAND

(2) THE ATTORNEY GENERAL FOR NORTHERN IRELAND

Interested Parties

GROUNDS FOR JUDICIAL REVIEW

Introduction & Overview

1. This is a judicial review to seek declarations as to the scope of provisions of the United Kingdom Internal Market Act 2020 ('UKIMA') which ostensibly – albeit implicitly - limit the scope of the devolved powers of the Senedd and Welsh Government; and which appear to confer upon the Defendant power to limit the devolved powers further using secondary legislation. The ambit of these powers is set out in the Government of Wales Act 2006 as amended by the Wales Act 2017 ('GoWA'), and it was no part of the stated rationale for UKIMA that they should be curtailed: indeed, the Defendant asserts that they have not. UKIMA received Royal Assent on 17 December 2020 and was brought into force on 31 December 2020.

2. The Claimant is the Chief Law Officer for the Welsh Government, with statutory authority to bring litigation in the public interest under s67 of GoWA. The Defendant is the sponsoring Minister of the enactment.

3. The Claimant makes two central submissions:
    a. In so far as s54(2) of UKIMA purports impliedly to repeal areas of the Senedd's legislative competence, by including UKIMA – and the mutual recognition principle contained in s2 of UKIMA - in the list of enactments in schedule 7B of GoWA which may not be amended by the Senedd in their application to Wales, it must be interpreted in accordance with the principle of legality so that it does not prevent the Senedd legislating inconsistently with the mutual recognition principle;
    b. The delegated powers in UKIMA to amend primary legislation contained in ss 6(5), 8(7), 10(2), 18(2) and 21(8), read together with s56(2)(a), must be limited in application in relation to UKIMA and GoWA to incidental and consequential amendments, in accordance with the principle of legality.

4. Accordingly, the Claimant seeks declarations to the following effect:
    a. The amendment of schedule 7B of GoWA by s54(2) of UKIMA, to add UKIMA to the list of protected enactments, does not amount to a reservation and does not operate so as to prevent the Senedd from legislating on devolved matters in a way that is inconsistent with the mutual recognition principle in UKIMA;
    b. The Defendant's powers to make delegated legislation in ss 6(5), 8(7), 10(2), 18(2) and 21(8) of UKIMA, read together with s56(2)(a), cannot lawfully be used to amend either UKIMA or GoWA in a way which would substantively limit the legislative competence of the Senedd.

5. The devolution settlement for Wales is contained in GoWA, which is constitutional legislation. As is set out in sA1 of GoWA, the Senedd (formerly referred to as 'the Assembly') and Welsh Government are a permanent part of the constitutional arrangements of the United Kingdom, to which the United Kingdom Government and

Parliament have expressed their commitment, and which Parliament has expressly stated are not to be abolished without the consent of the people of Wales through a referendum. It is against that background that this claim is issued.

6. The need for these advisory declarations arises because:
    a. UKIMA leaves the ambit of the devolution settlement with Wales uncertain, and ostensibly limited, in important ways which are not clear on its face and which have a practical effect on the operation of democracy in Wales, by rendering uncertain the extent of the Senedd's ability to consider legislation and the operation of the Welsh Government; and
    b. The ostensible scope of the Defendant's regulation-making powers in UKIMA apparently render the scope of the Senedd and Welsh Government's devolved powers under GoWA susceptible to wide substantive future amendment, and serious diminution, at the hands of the Defendant, inadequately supervised by Parliament.

7. There was limited consultation with the Welsh Government before or during the Act's passage through Parliament and the Senedd refused legislative consent to UKIMA. The statutory mechanism set out in s109 of GoWA for amending the list of statutes 'protected' by provisions of schedule 7B of GoWA (which schedule precludes the Senedd from legislating in a way which would conflict with a scheduled enactment), was not used.

8. In short, the Claimant is concerned to establish that UKIMA cannot be interpreted so as to have the effect of cutting down the ambit of constitutional legislation, which protects the devolved powers of the Senedd and Welsh Government, either by implication or by secondary legislation. This is a matter of practical, constitutional and democratic significance.

The two issues in more detail

Implied Repeal

9. The Welsh devolution settlement means that the Senedd has power to legislate for Wales in all matters save those expressly reserved to the Westminster Parliament by being listed in schedule 7A of GoWA. For example, legislating in relation to consumer standards is a matter generally reserved to the Westminster Parliament by virtue of section C6, paras 72-76, schedule 7A of GoWA. However, food standards ("food, food products and food contact materials") are an explicit exception under section C6. Therefore, legislating for sale and supply of food is within the Senedd's devolved competence.

10. Even in relation to devolved matters, the Senedd may not legislate for matters within its own competence to the extent that any such Senedd legislation would conflict with the operation of 'protected enactments', which are set out in a list at para 5(1), schedule 7B of GoWA. These include, for example, the Human Rights Act 1998 and the Civil Contingencies Act 2004. It is because of the important implications for the scope of the devolution settlement that a mechanism was put into s109 of GoWA for amending schedule 7B, which required the consent both of the Senedd and the Westminster Parliament (but which mechanism was not invoked when adding UKIMA to schedule 7B).

11. Section 54(2) of UKIMA amends schedule 7B of GoWA so as to include UKIMA in the list of 'protected enactments'. No provision in UKIMA (save the limited exception of new C18 schedule 7A) expressly reserves any matter which was previously within the Senedd's devolved competence under schedule 7A of GoWA. In other words, save in the limited respects identified above, UKIMA does not expressly cut down or amend the ambit of the Senedd's devolved competence.

12. Nonetheless, for reasons explained below, the combination of the mutual recognition principle in s2 of UKIMA and the protection of UKIMA in schedule 7B of GoWA would

seem by implication to render certain devolved matters empty of content and implicitly 're-reserve' them by a sidewind, without expressly facing up to this on the face of the legislation. To the extent that the inclusion of UKIMA in schedule 7B of GoWA would protect it from modification by the Senedd in exercise of its power to legislate for Wales, this would amount to impermissible implied amendment of the ambit of devolved matters in schedule 7A of GoWA. The proposal to protect UKIMA would amount to a substantial diminution of the powers of the Senedd and Welsh Government, without their consent.

13. Schedule 7A of GoWA is constitutional legislation and so cannot be impliedly repealed in this way. It is important for the Welsh legislature and executive to be able to operate on the basis of a correct legal appreciation of this position. (It is also democratically important – in the forthcoming elections to be held in May 2021 – for all political parties to be able to set out their stalls on the basis of a proper understanding of the ambit of matters in relation to which legislative promises can be made).

Parliament purporting to delegate power to amend GoWA to a Minister

14. The Claimant's second concern is that UKIMA contains provisions which appear on their face to grant the Secretary of State power to make regulations from time to time amending the scope of UKIMA (and indeed other primary legislation). GoWA is constitutional legislation and can only be repealed by express Parliamentary authority. So, Parliament cannot - consistently with the long-established principle of legality - legislate so as to enable the extent of UKIMA (or GoWA) to be modified by a Minister, to the extent that, by doing so, it may permit the Government substantively to alter the ambit of the devolution settlement in Wales without express Parliamentary authority. Again, it is important for the proper operation of democratically accountable government in Wales that all constitutional actors operate on the basis of a proper understanding of this issue.

Legislative Material

United Kingdom Internal Market Act 2020

15. Part 1 of UKIMA sets out the new market access rules for goods, namely the mutual recognition principle and the non-discrimination principle.

16. The mutual recognition principle, set out in section 2 of UKIMA, provides:

> "***The mutual recognition principle for goods***
> *(1) The mutual recognition principle for goods is the principle that goods which—*
> *(a) have been produced in, or imported into, one part of the United Kingdom ("the originating part"), and*
> *(b) can be sold there without contravening any relevant requirements that would apply to their sale, should be able to be sold in any other part of the United Kingdom, **free from any relevant requirements** that would otherwise apply to the sale.*
>
> *(2) Where goods are to be sold in a particular way in the other part of the United Kingdom, the condition in subsection (1)(b) has effect as if the reference to "their sale" were a reference to their sale in that particular way.*
>
> *So, for example, if goods are to be sold by auction, the condition is met if (and only if) they can be sold by auction in the originating part without contravening any applicable relevant requirements there.*
>
> *(3) Where the principle applies in relation to a sale of goods in a part of the United Kingdom because the conditions in subsection (1)(a) and (b) are met, any relevant requirements there do not apply in relation to the sale*." [emphasis added]

17. Section 3 of UKIMA defines "*relevant requirements*" for the purpose of section 2 and provides so far as material:

> "***Relevant requirements for the purposes of section 2***

(1) This section defines "relevant requirement" for the purposes of the mutual recognition principle for goods as it applies in relation to a particular sale of goods in a part of the United Kingdom.

(2) A statutory requirement in the part of the United Kingdom concerned which—

(a) prohibits the sale of the goods or, in the case of an obligation or condition, results in their sale being prohibited if it is not complied with, and

(b) is within the scope of the mutual recognition principle,

is a relevant requirement in relation to the sale unless excluded from being a relevant requirement by any provision of this Part.

(3) A statutory requirement is within the scope of the mutual recognition principle if it relates to any one or more of the following—

(a) characteristics of the goods themselves (such as their nature, composition, age, quality or performance);

(b) any matter connected with the presentation of the goods (such as the name or description applied to them or their packaging, labelling, lot- marking or date-stamping);

(c) any matter connected with the production of the goods or anything from which they are made or is involved in their production, including the place at which, or the circumstances in which, production or any step in production took place;

…

(g) anything not falling within paragraphs (a) to (f) which must (or must not) be done to, or in relation to, the goods before they are allowed to be sold."

18. Section 4 of UKIMA excludes pre-existing statutory requirements from the operation of the mutual recognition and non-discrimination principles.

19. Section 5 states the non-discrimination principle for goods, namely that the sale of goods in one part of the United Kingdom should not be affected by "*relevant requirements*" which directly or indirectly discriminate against goods that have a relevant connection with another part of the United Kingdom. Section 6 defines a "*relevant requirement*" for the purposes of the non-discrimination principle as follows:

"***Relevant requirements for the purposes of the non-discrimination principle***

(1) This section defines "relevant requirement" for the purposes of the non-discrimination principle for goods.

(2) A relevant requirement, for the purposes of the principle as it has effect in relation to a part of the United Kingdom, is a statutory provision that—

(a) applies in that part of the United Kingdom to, or in relation to, goods sold in that part, and

(b) is within the scope of the non-discrimination principle.

(3) A statutory provision is within the scope of the non-discrimination principle if it relates to any one or more of the following—

(a) the circumstances or manner in which goods are sold (such as where, when, by whom, to whom, or the price or other terms on which they may be sold);

(b) the transportation, storage, handling or display of goods;

(c) the inspection, assessment, registration, certification, approval or authorisation of the goods or any similar dealing with them;

(d) the conduct or regulation of businesses that engage in the sale of certain goods or types of goods.

*(4) **A statutory provision is not a relevant requirement—***

***(a) to the extent that it is a relevant requirement for the purposes of the mutual recognition principle** for goods (see section 3), or*

(b) if section 9 (exclusion of certain existing provisions) so provides.

*(5) **The Secretary of State may by regulations amend subsection (3) so as to add, vary or remove a paragraph of that subsection.***

(6) Regulations under subsection (5) are subject to affirmative resolution procedure.

(7) Before making regulations under subsection (5) the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

*(8) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, **the Secretary of State may make the regulations without that consent**.*

(9) If regulations are made in reliance on subsection (8), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned.

(10) In this section "statutory provision" means provision contained in legislation." [emphasis added]

20. Section 8 provides so far as material:

"***The non-discrimination principle: indirect discrimination***

(1) A relevant requirement indirectly discriminates against incoming goods if—

(a) it does not directly discriminate against the goods,

(b) it applies to, or in relation to, the incoming goods in a way that puts them at a disadvantage,

(c) it has an adverse market effect, and

(d) it cannot reasonably be considered a necessary means of achieving a legitimate aim.

…

(6) "Legitimate aim" means one, or a combination, of the following aims—

(a) the protection of the life or health of humans, animals or plants;

(b) the protection of public safety or security.

(7) ***The Secretary of State may by regulations amend subsection (6) so as to add, vary or remove an aim.***

(8) Regulations under subsection (7) are subject to affirmative resolution procedure.

(9) Before making regulations under subsection (7), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

*(10) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority****, the Secretary of State may make the regulations without that consent****.*

(11) If regulations are made in reliance on subsection (10), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned." [emphasis added]

21. Section 10 provides so far as material:

"***Further exclusions from market access principles***

(1) Schedule 1 contains provision excluding the application of the United Kingdom market access principles in certain cases.

(2) ***The Secretary of State may by regulations amend that Schedule****.*

(3) The power under subsection (2) may, for example, be exercised to give effect to an agreement that—

(a) forms part of a common framework agreement, and

(b) provides that certain cases, matters, requirements or provision should be excluded from the application of the market access principles.

(4) A "common framework agreement" is a consensus between a Minister of the Crown and one or more devolved administrations as to how devolved or transferred matters previously governed by EU law are to be regulated after IP completion day.

…

(8) Regulations under subsection (2) are subject to affirmative resolution procedure.

(9) Before making regulations under subsection (2), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

(10) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, ***the Secretary of State may make the regulations without that consent****.*

(11) If regulations are made in reliance on subsection (10), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned." [emphasis added]

22. Part 2 of UKIMA provides for a new market access regime for services in the UK based on the same mutual recognition and non-discrimination principles as for goods. Section 18 provides for exclusions from the definition of "services" to which UKIMA will apply as follows, so far as material:

"***Services: exclusions***

(1) Schedule 2 contains—

(a) a list of services specified in the first column of the table in Part 1 of that Schedule, to which section 19 (mutual recognition) does not apply;

(b) a list of services specified in the first column of the table in Part 2 of that Schedule, to which sections 20 and 21 (non-discrimination) do not apply;

(c) a list of authorisation requirements in Part 3 of that Schedule, to which section 19 does not apply;
(d) a list of regulatory requirements in Part 4 of that Schedule, to which sections 20 and 21 do not apply.

(2) ***The Secretary of State must keep Schedule 2 under review, and may by regulations—***

(a) remove entries in the tables in Part 1 or Part 2 of that Schedule *or entries in the lists in Part 3 or Part 4 of that Schedule;*
(b) amend entries in those tables or lists;
(c) add entries to those tables or lists.

(3) The power under subsection (2) may, for example, be exercised to give effect to an agreement that—
(a) forms part of a common framework agreement, and
(b) provides that certain cases, matters, requirements or provision should be excluded from the application of this Part.

(4) A "common framework agreement" is a consensus between a Minister of the Crown and one or more devolved administrations as to how devolved or transferred matters previously governed by EU law are to be regulated after IP completion day." [emphasis added]

23. Section 21 of UKIMA provides so far as material:

"***Indirect discrimination in the regulation of services***
…
(2) A regulatory requirement indirectly discriminates against an incoming service provider if—
…
(d) it cannot reasonably be considered a necessary means of achieving a legitimate aim.
…
(7) In this section "legitimate aim" means one, or a combination of any, of the following aims—
(a) the protection of the life or health of humans, animals or plants;
(b) the protection of public safety or security;
(c) the efficient administration of justice.

(8) ***The Secretary of State may by regulations amend subsection (7) so as to add, vary or remove a legitimate aim.***

(9) Regulations under subsection (8) are subject to affirmative resolution procedure.

(10) Before making regulations under subsection (8), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland.

*(11) If consent to the making of the regulations is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority**, the Secretary of State may make the regulations without that consent**.*

(12) If regulations are made in reliance on subsection (11), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the regulations without the consent of the authority or authorities concerned." [emphasis added]

24. Section 54(2) inserts UKIMA into paragraph 5(1) of Schedule 7B of GoWA.

25. Section 56 provides so far as material:

"***Regulations: general***

…

*(2) **Any power to make regulations under this Act includes power**—*

*(a) **to amend, repeal or otherwise modify legislation**;*

(b) to make different provision for different purposes;

(c) to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision made in reliance on paragraph (a))." [emphasis added]

26. Paragraph 2 of schedule 1 of UKIMA provides so far as material:

"*(1) The mutual recognition principle for goods does not apply to (and section 2(3) does not affect the operation of) legislation so far as it satisfies the conditions set out in this paragraph.*

*(2) The first condition is that the aim of the legislation is to prevent or reduce the movement of **unsafe food** or feed into the part of the United Kingdom in which the legislation applies ("the restricting part") from another part of the United Kingdom ("the affected part").*

(3) The second condition is that it is reasonable to believe that the food or feed affected by the legislation is, is likely to be, or is at particular risk of being unsafe in a particular respect.

(4) The third condition is the potential movement of food or feed that is unsafe in that respect into the restricting part from the affected part poses (or would in the absence of the legislation pose) ***a serious threat to the health of humans*** *or animals in the restricting part.*

(5) The fourth condition is that the responsible administration has provided to the other administrations an assessment of the available evidence in relation to—

(a) the threat referred to in sub-paragraph (4), and

(b) the likely effectiveness of the legislation in addressing that threat.

(6) The fifth condition is that the legislation can reasonably be justified as necessary in order to address the threat referred to in sub-paragraph (4).

(7) In this paragraph "food" and "feed" have the same meaning as in Regulation (EC) No 178/2002 (see Articles 2 and 3);

"unsafe" —

(a) in relation to food, has the same meaning as in Article 14 of Regulation (EC) No 178/2002;

(b) in relation to feed, means "unsafe for its intended use" within the meaning given by Article 15(2) of Regulation (EC) No 178/2002;

"Regulation (EC) No 178/2002" means Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law (etc), as it forms part of retained EU law on IP completion day." [emphasis added]

<u>Government of Wales Act 2006 (as amended by the Wales Act 2017) ("GoWA")</u>

27. Devolution in Wales is now based on a model of 'reserved powers' rather than (as in the first model of Welsh devolution) on a 'conferred powers' model. In other words, the Senedd can legislate in any field unless and to the extent that the matter in question is expressly reserved to the Westminster Parliament. Reserved matters are listed in schedule 7A of GoWA subject to listed exceptions.

28. As explained in paragraph 10 above, the extent of the Senedd's power in devolved fields is also limited to the extent that any exercise of its power may not modify specific items of parliamentary legislation which are protected from such modification by being listed in schedule 7B of GoWA.

29. Section A1 of GoWA provides:

> "***Permanence of the Senedd and Welsh Government***
> *(1) The Senedd established by Part 1 and the Welsh Government established by Part 2 are a* ***permanent part of the United Kingdom's constitutional arrangements****.*
>
> *(2) The purpose of this section is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Senedd and the Welsh Government.*
>
> *(3) In view of that commitment it is declared that the Senedd and the Welsh Government are not to be abolished except on the basis of a decision of the people of Wales voting in a referendum.*" [emphasis added]

30. Section 107 of GoWA provides so far as material:

> "***Acts of the Senedd***
> *…*
> *(5) This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales.*
>
> *(6) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Senedd.*"

31. Section 108A of GoWA provides so far as material:

> "***Legislative competence***
> *(1) An Act of the Senedd is not law so far as any provision of the Act is outside the Senedd's legislative competence.*
>
> *(2) A provision is outside that competence so far as any of the following paragraphs apply…*
> *(c) it relates to reserved matters (see Schedule 7A);*
> *(d) it breaches any of the restrictions in Part 1 of Schedule 7B, having regard to any exception in Part 2 of that Schedule from those restrictions…"*

32. Section 109 of GoWA provides so far as material:

"***Legislative competence: supplementary***

(1) Her Majesty may by Order in Council amend Schedule 7A or 7B.

…

(4) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory instrument containing the Order in Council has been laid before, ***and approved*** *by a resolution of, each House of Parliament and* ***the Senedd****."* [emphasis added]

33. Section 112 of GoWA provides so far as material:

"***Scrutiny of Bills by Supreme Court (legislative competence)***

(1) The Counsel General or the Attorney General may refer the question whether a Bill, or any provision of a Bill, would be within the Senedd's legislative competence to the Supreme Court for decision." [emphasis added]

34. Part 2 of schedule 7A ("Specific Reservations") section C6 Consumer Protection, provides so far as is material:

"*72 The regulation of;*

(a) the sale and supply of goods and services to consumers

Exceptions
Food, food products and food contact materials.
Agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment)."

"Food" is defined by reference to Regulation (EC) No. 178/2002 and "Food contact materials" means materials and articles to which Regulation (EC) No. 1935/2004 applies.

35. Schedule 7A of GoWA sets out a list of matters which are reserved to the competence of the Westminster Parliament. In Part 2 of schedule 7A, section C7 Product standards, safety and liability, provides so far as material:

"*77 The subject matter of all technical standards and requirements in relation to products that had effect immediately before IP completion day in pursuance of an obligation under EU law.*

…

79 Product safety and liability.

80 Product labelling.

Exceptions

Food, food products and food contact materials.

Agricultural and horticultural produce, animals and animal products, seeds, animal feeding stuffs, fertilisers and pesticides (including anything treated as if it were a pesticide by virtue of an enactment)."

36. Schedule 7B of GoWA sets out a list of restrictions upon the powers of the Senedd to legislate, even in fields of devolved competence. It does this in two ways. First, by precluding modification of provisions of enactments which concern 'reserved' matters as they apply to Wales, and secondly, by listing a set of enactments which are protected from modification by Senedd legislation.

37. Paragraph 1 of Part 1 of schedule 7B ("General Restrictions") provides:

"*(1) A provision of an Act of the Senedd cannot make modifications of, or confer power by subordinate legislation to make modifications of, the law on reserved matters.*

(2) "The law on reserved matters" means—

(a) any enactment the subject-matter of which is a reserved matter and which is comprised in an Act of Parliament or subordinate legislation under an Act of Parliament, and

(b) any rule of law which is not contained in an enactment and the subject-matter of which is a reserved matter, and in this sub-paragraph "Act of Parliament" does not include this Act."

38. Paragraph 5 of Part 1 of schedule 7B provides that a "*provision of an Act of the Senedd cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the table below*". UKIMA is now listed in the table.

39. "Modifications" are defined by s158(1) of GoWA to include "*amendments, repeals and revocations*".

Background

40. There is a distinction between a 'conferred powers' model of devolution (whereby a devolved legislature has the powers expressly granted to it by parent enactment) and a 'reserved powers' model (whereby a devolved legislature has power to legislate for all matters in its jurisdiction save for those expressly reserved by the devolution legislation). The Welsh devolution settlement was originally a 'conferred powers' model, but became a 'reserved' model when the Wales Act 2017 came into force.

41. The current reserved powers model of devolution in Wales has its origins in 2011. The coalition government of the United Kingdom committed itself to a review of the operation of GoWA as originally enacted if the people of Wales voted for more primary legislative powers for the (then) Welsh Assembly, which they did in the 2011 Welsh devolution referendum. The Commission on Devolution in Wales, led by Paul Silk, was duly established. Part 2 of the 'Silk Report' on legislative powers, published in March 2014, recommended a change from the original "conferred powers" model to a "reserved powers" model, and this is what was implemented by the Wales Act 2017, which amended GoWA by, inter alia, replacing what was formerly schedule 7 of GoWA 2006 (which set out the scope of conferred powers) with schedules 7A and 7B of GoWA as amended (which set out those matters which are reserved, and/or protected from modification by Senedd legislation) with effect from 1 April 2018.

42. The Wales Act 2017 also inserted ss A1 and 107(6) into GoWA with effect from 31 March 2017.

43. Food standards and environmental protection were devolved matters before the changes brought about by the Wales Act 2017. The now repealed schedule 7 conferred power on the Welsh Assembly to legislate in the following areas, amongst others:

a. Paragraph 6: "*Environmental protection, including pollution, nuisances and hazardous substances…*";
b. Paragraph 8: "*Food and food products. Food safety (including packaging and other materials which come into contact with food). Protection of interests of consumers in relation to food*".

44. Following the European Union (Withdrawal) Act 2018, the UK and devolved governments entered into discussions regarding Common Frameworks in relation to areas where retained EU law overlapped with matters of devolved competence. The aim of those discussions was to agree parameters for divergence between standards imposed by the four nations. The Common Frameworks process is described in the Cabinet Office document *Revised Frameworks Analysis* (April 2019). It states at p2:

> *"In October 2017, the UK, Scottish and Welsh Governments agreed a set of principles to underpin this work.* ***They agreed that common frameworks will be established where they are necessary in order to: enable the functioning of the UK internal market, while acknowledging policy divergence****; ensure compliance with international obligations; ensure the UK can negotiate, enter into and implement new trade agreements and international treaties; enable the management of common resources; administer and provide access to justice in cases with a cross-border element, and safeguard the security of the UK.*
>
> ***It was further agreed that the frameworks established would respect the devolution settlements and democratic accountability of the devolved legislatures. They would maintain current levels of flexibility; increase the decision making powers of the devolved institutions; and would be based on existing conventions and practices, such as those around not normally adjusting devolved competence without their consent****" (emphasis added).*

45. However, the White Paper on the UK Internal Market, published in July 2020, marked a shift in the Defendant's approach to the devolved governments. At §32 it stated:

> "*Under the Government's proposed approach, the devolved administrations would retain the right to legislate in devolved policy areas that they currently enjoy. Legislative innovation would remain a central feature – and strength – of our Union. The Government is committed to ensuring that this power of*

innovation does not lead to any worry about a possible lowering of standards – by both working with the devolved administrations via the Common Frameworks programme and by continuing to uphold our own commitment to the highest possible standards."

46. This White Paper explained the decision to introduce legislation notwithstanding the Common Framework process in the following way:

> "*92. Common Frameworks constitute a valuable mechanism to ensure all parts of the UK agree common approaches where possible. The additional cross-cutting measures set out in this White Paper, will be, however, necessary to complement them. This is for a number of reasons.*
>
> *93. Firstly, Frameworks are not able to assess the wider economic impacts or knock-on effects of regulatory divergence, including how regulatory differences in one sector affects other sectors (the so called 'spill-over effect'). Secondly, Common Frameworks do not address how the overall UK Internal Market will operate once the UK has left the overarching EU system at the end of the Transition Period. Lastly, as Frameworks are limited to a specific number of policy areas, they will not account for the full UK economy across goods and services, and therefore will not be able to provide a comprehensive safety net for businesses and consumers.*
>
> *94. As a result, in order to ensure that a post-EU UK Internal Market delivers continued fair, coherent, frictionless trade across all parts of the UK, these gaps need to be addressed through a more robust legal architecture.*"

47. In respect of international trade deals, the White Paper states:

> "*123. As reflected in the devolution settlements, the UK Government is responsible for international relations of the whole of the UK and alone has the power to enter into international agreements binding on the whole or any part of the UK. The devolved administrations have competence to observe and implement international obligations that relate to devolved matters. The UK Government is responsible, as a matter of international law, for compliance with those obligations.*
>
> *124. To ensure such compliance, however, consideration must be given to the important interactions between a well-functioning Internal Market in the UK and the implementation of future trade deals.*"

48. The United Kingdom Market Bill was introduced to Parliament on 9 September 2020. The Scottish Parliament voted to refuse consent to the Bill on 8 October 2020 and the Senedd voted to refuse legislative consent to the Bill on 8 December 2020. However, UKIMA was passed by both Houses of Parliament, received Royal Assent on 17 December 2020, and came into force on 31 December 2020.

49. During a debate in the House of Commons, the Minister stated on 7 December 2020 (Hansard, volume 685, column 652[1]):

> "*I stress that the proposals in the Bill are designed to ensure that devolution can continue to work for everyone.* ***All devolved policy areas will stay devolved*** *and the proposals ensure only that there are no new barriers to UK internal trade. Indeed, at the end of the transition period hundreds of powers that are currently exercised by the EU will flow back to the UK. Many of these powers will fall within the competence of the devolved Administrations, and this flow therefore represents a substantial transfer of powers to the devolved Administrations that they did not exercise before the EU exit*" (*emphasis added).*

50. On 16 December 2020, the Claimant sent a pre-action protocol letter to the Defendant. The Defendant replied on 8 January 2021. In that letter, the Defendant stated at §13 that "*Senedd Cymru has competence to legislate in all areas which are not reserved… The boundaries of Senedd Cymru's devolved competence set by the reservations in Schedule 7A to GOWA are – save for the amendment made by section 52 of the Act [concerning the regulation of distortive or harmful subsidies] – unamended*."

Issue 1 – Devolved competence cannot be impliedly repealed

51. The 'protection' of UKIMA by its inclusion in schedule 7B of GoWA must be read down to the extent that it would otherwise implicitly re-reserve to the Westminster Parliament matters which have been devolved to the Senedd by GoWA, which is

[1] Available at https://hansard.parliament.uk/Commons/2020-12-07/debates/03F9AA70-3B1F-453B-A834-0498A5DDF1BF/UnitedKingdomInternalMarketBill

constitutional legislation. This reading is required by operation of the principle of legality; and to give effect to Parliament's intention (legislating in the light of the Minister's statement quoted at §49 above) that all devolved policy areas would stay devolved.

52. The Claimant relies upon two practical examples of how this concern arises.

53. First, the language of schedule 7A of GoWA puts it beyond doubt that legislating for food standards in Wales is a devolved matter. This is not expressly changed by UKIMA. However, it is impliedly undercut by the listing of UKIMA in schedule 7B of GoWA, which could be said to preclude any Senedd legislation requiring higher food standards in Wales than that in force in any other nation of the United Kingdom. That is because, on one reading, the ambit of the mutual recognition principle in Part 1 of UKIMA is so comprehensive that any future Senedd legislation or Welsh ministerial action which regulated the sale of food in Wales would be void and of no effect, save in the very limited circumstances set out in paragraph 2 of schedule 1 of the UKIMA. If that *were* the effect of the amendment of schedule 7B of GoWA, it would mean that UKIMA has the implicit effect of rendering the express terms of schedule 7A of GoWA which devolve food standards to the Senedd completely inoperable, notwithstanding that food standards remains an unreserved – ie devolved – policy area on the face of the legislation.

54. Second, the Senedd passed legislation banning certain single use plastics before such legislation was passed in England[2]. The Welsh Government has announced a proposal to implement legislation which mirrors the terms of Article 5 of Directive (EU) 2019/904, the European Union's Single Use Plastic Directive, and so to ban a whole range of single use plastics in 2021. If the ostensible 'protection' of UKIMA in schedule 7B of GoWA is not read down so as to give continuing effect to the devolution of environmental standards, the Senedd will not be able to give effect to this intention, notwithstanding that environmental protection is a devolved policy area. This is

[2] The Environmental Protection (Microbeads) (Wales) Regulations 2018

because s2 of UKIMA (which would be protected) would preclude the application of higher environmental standards for goods sold in in Wales than those applicable elsewhere in the United Kingdom. The protection of the market access principles in UKIMA would ostensibly preclude the Senedd from exercising its devolved power to regulate the sale of products on grounds of environmental protection, notwithstanding the fact that the power to do so remains unaffected by schedule 7A of UKIMA and the UK Government claims not to have cut down the devolution settlement.

55. Unless the Court makes the declaration which the Claimant seeks as to the proper reading of UKIMA in relation to the ambit of the devolution settlement, UKIMA would have the effect of reserving areas of devolved competence (such as regulation of the sale of goods on environmental protection grounds) *sub silentio,* and contrary to the express Ministerial statement to Parliament that the effect of UKIMA would be that "*all devolved policy areas will remain devolved"*. It would prevent the Senedd from legislating in any field where to do so might infringe the mutual recognition principle in Part 1 of UKIMA, which is very wide.

56. The Senedd, a permanent feature of the UK's constitutional arrangements, will have its competence very substantially diminished to the point of extinction in respect of significant fields of devolved policy, without any express admission that the devolution settlement has been seriously cut down.

57. The Court should make the declaration sought to ensure that this incorrect reading of the interaction between UKIMA and GoWA does not have a chilling effect on the operation of devolved powers. If Parliament intended to amend constitutional devolution legislation in such important respects, it should have done so by express language. The principle of legality means that Parliament cannot lawfully achieve by implication through schedule 7B of GoWA what it could have done expressly through amending the ambit of schedule 7A: see *UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* [2018] UKSC 64 at §51. UKIMA itself recognises this and amends schedule 7A of GoWA in respect of harmful subsidies; s52(2) of UKIMA.

58. It is well-established that; (i) GoWA is a constitutional enactment; and (ii) constitutional enactments cannot be impliedly amended or repealed: see *Thoburn v Sunderland City Council* [2002] EHWC 195 (Admin) per Laws LJ at §§ 62 – 63; *AXA General Insurance Ltd v HM Advocate* [2011] UKSC 46 per Lord Reid at §153; *H v Lord Advocate* [2013] 1 AC 413 at §30; *R (HS2 Action Alliance) v Secretary of State for Transport* [2014] UKSC 3 at §207; *R (Miller) v Secretary of State for Exiting the European Union* [2018] AC 61 at §66. To the extent that ss 2(3) and 54(2) of UKIMA purport to reduce the Senedd's competence, they are contrary to the principle of legality and inoperable.

59. The Defendant's position is that the Senedd can continue to legislate in all devolved areas; his Ministers said so in the White Paper, in Parliament and in pre-action correspondence. So he should agree to the Court making it clear that the effect of UKIMA is not to re-reserve policy making for food standards or environmental protection measures by a sidewind and that the mutual recognition principle in s2 of UKIMA cannot be read to have that effect, notwithstanding para 5 of schedule 7B of GoWA.

Issue 2 – Devolved competence cannot be cut down by secondary legislation

60. Further, and in any event, the regulation-making provisions of UKIMA must be read down to the extent that they could otherwise be used to diminish the ambit of the powers of the devolved legislatures without express Parliamentary authority.

61. Sections 6(5), 8(7), 10(2), 18(2) and 21(8) of UKIMA, read together with s56(2)(a), purport to give the Defendant wide and unconstrained powers to amend the scope of the principles of mutual recognition and non-discrimination in substantive ways, with limited Parliamentary scrutiny.

62. As described above, s54(2) of UKIMA states on its face that UKIMA is a protected enactment for the purposes of GoWA. If that were read in a wide and literal way, it would mean that the Minister could alter the scope of devolved competence by secondary legislation. If that were the right reading, *any* amendments to the ambit of UKIMA made by the Minister using his regulation-making powers would thereafter prevent the Senedd from being competent to act in any way which might modify the operation of UKIMA as so modified. In other words, future regulations made under UKIMA could have far-reaching – but obviously uncertain - consequential effects on the scope of the Senedd's legislative competence because any changes to the ambit of UKIMA would be protected from modification.

63. Still further, s56(2)(a) of UKIMA would, on its face, give the executive an unfettered power to amend any other legislation whatsoever, which would include GoWA.

64. The Court is asked to declare that the scope of the regulation-making powers in UKIMA cannot be so broad so as to grant the *executive* wide and unrestricted powers to amend the ambit of the constitutional settlement subject to inadequate Parliamentary scrutiny. That would be contrary to the rule of law.

65. The long-established principles of legality and certainty require clear and express legislative language to be used to have the effect of amending constitutional principles (*a fortiori* constitutional legislation): *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115 per Lord Hoffman at p131. Secondary legislation must be read with respect for the concept of the separation of powers and Parliamentary supremacy over the executive: see *R (Public Law Project) v Lord Chancellor* [2016] UKSC 39 at §§ 23 – 28.

66. Section 107(5) of GoWA reserves the power of *Parliament* to make laws for Wales. It does not reserve the power of the *executive* to make laws for Wales, or to decide the scope of devolved competence, and it cannot be interpreted as including a power for Parliament to delegate its power of constitutional amendment to a Minister.

67. Accordingly, the principles of legality and certainty in combination with fundamental constitutional values require the Henry VIII clauses in UKIMA to be given a narrow construction so that they may only be used to effect incidental and consequential amendments; and for it to be accepted that they cannot be used to make any substantive amendment to UKIMA or GoWA.

68. Other recent Henry VIII powers recognise these principles and are constrained in their scope so that they may not amend constitutional legislation, including GoWA and the Human Rights Act 1998: see s8(7) of the European Union (Withdrawal) Act 2018 and s31(4) the European Union (Future Relationship) Act 2020. The powers in UKIMA should be limited by the Court in the same way.

The declarations sought are neither academic nor premature

69. The Defendant seeks to argue in his response to the pre-action letter that the declarations sought are in some way abstract and/or hypothetical, and should await some future attempt by the Senedd to legislate. This assertion is misconceived. The application for the declarations sought is neither academic nor premature.

70. The Defendant, properly, does not suggest that the Court has no jurisdiction to make the declarations sought. It is well established that the Court has a discretion to make an advisory declaration where there is good reason in the public interest and/or a real practical purpose would be achieved: see *R (Williams) v Secretary of State for the Home Department* [2015] EWHC 1268 (Admin) per Hickinbottom J at §55; *R (Yalland) v Secretary of State for Exiting the European Union* [2017] EWHC 630 (Admin) per Lloyd-Jones LJ at §24. That is also true in a case concerning the interpretation of primary legislation: see *Jackson v HM Attorney General* [2005] UKHL 56 per Lord Bingham at §§ 2 and 27 (where a declaration of invalidity was sought in relation to Hunting Act 2004 upon it receiving Royal Assent).

71. The declarations sought affect the operation of democratic devolved government in Wales (and indeed in the other nations of the United Kingdom) and the nature of the

Senedd's powers in ways which may affect the scope of the statements which political parties can properly make as to the scope of their legislative ambitions in the forthcoming Senedd elections in May 2021.

72. It is plainly in the public interest for the Court to provide clarity to the Welsh Government (and, by extension, all of the devolved governments) now as to what they are permitted to achieve through their legislative programmes. It would cause legislative and constitutional uncertainty if a dispute had to be resolved by the Supreme Court every time the Welsh Government sought to introduce legislation in relation to devolved matters which potentially affected the operation of the internal market. Moreover, the proper legal interpretation of the ambit of the devolution settlement is a matter of constitutional importance.

73. Further, the suggestion made in the response to the pre-action letter that the interaction of schedule 7A and paragraph 5 of schedule 7B of GoWA should await a reference under s112 of GoWA is misconceived. An application for judicial review must be brought promptly and in any event within three months of grounds first arising (i.e. UKIMA receiving Royal Assent on 17 December 2020). So, this is the only point at which the Court can give a declaration in relation to issue 1 (implied repeal).

74. This ground would simply not arise on a reference of a Welsh bill to the Supreme Court under s112 of GoWA. On such a reference, the sole question for the Supreme Court is whether the bill is within the legislative competence of the Senedd by reference to the statutory scheme of GoWA itself. The Claimant would not be permitted to rely on common law grounds of challenge concerning the proper constitutional interpretation of the separate legislation (UKIMA): see *UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill* [2018] UKSC 64 at §§ 26 and 35. Thus, the Claimant would not be permitted on such a reference to seek the declaration sought in these proceedings that the purported protection of UKIMA in paragraph 5 of schedule 7B should be read down in accordance with the principle of legality. That is a point of administrative law which must be determined on an application for judicial review.

75. Finally, the declaration sought in relation to issue 2 is a point of principle which does not turn on a specific set of facts. The specific context in which the executive may in future seek to exercise its regulation-making powers under UKIMA is immaterial to this point of principle as to their proper constitutional scope.

Venue

76. The Court is requested to hear this application in Cardiff; CPR PD54D §5.2(10). The Claimant is the Counsel General for Wales, based in Cardiff, and the applications raises devolution issues of importance to the people of Wales. Given the constitutional importance of this matter, it ought to be heard by a Divisional Court.

Timing & Directions

77. As noted, the outcome of this application is material to the scope of devolved policy areas and therefore the matters upon which all political parties can properly campaign in the forthcoming elections to the Senedd in May 2021. This application is therefore one which ought to be expedited.

78. The Claimant therefore respectfully invites the Court to amend the usual directions as to timetable, with view to enabling the substantive hearing to take place before the end of the Hilary term:

    a. Acknowledgement of service to be lodged and served within 21 days (9 February 2021);
    b. Permission decision on papers within 7 days (16 February 2021);
    c. Detailed grounds of defence and any evidence within 21 days (9 March 2021);
    d. Any reply and application to rely on evidence in reply within 7 days (16 March 2021);
    e. Claimant's skeleton argument also by 16 March 2021;
    f. Agreed bundle by 19 March 2021;

g. Defendant's skeleton argument by 23 March 2021;
h. A further copy of the Claimant's skeleton argument, amended to include bundle references, also by 23 March 2021;
i. Agreed bundle of authorities two days prior to the date of the hearing;
j. Hearing for two days between 26 and 31 March 2021.

Conclusion

79. The declarations sought are plainly properly arguable ones and the application raises issues of considerable constitutional and democratic significance, in relation to which declarations would be of real practical importance. It is not premature because it affects the day-to-day operation of the Welsh Government and the ambit of the Senedd's power to legislate for Wales.

80. The Claimant respectfully invites the Court:

a. to grant permission;
b. to expedite the hearing of the application in accordance with the timetable suggested at §78 above; and
c. (at the substantive hearing) to make the declarations sought at §3 of these grounds.

Helen Mountfield QC
Christian J Howells
Mark Greaves
18 January 2021

Law Commission
Reforming the law

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20 January 2021

Dear Mr Antoniw,

May I begin by wishing you and the people of Wales a happy new year.

We were very pleased that the Legislation, Justice and Constitution Committee took note, at its meeting last week, of the publication of our consultation paper on the future of devolved tribunals in Wales. The paper has opened a consultation period running until 19 March.

The operation of the devolved tribunals seems to us to be relevant to the Committee's inquiry into making justice work in Wales. We have always valued our relationship with the Committee, and so I am writing to assure you that if the Committee have any questions about the contents of the consultation paper, or our project more generally, we would be very willing to meet with you. That could involve giving evidence formally, or providing a more informal briefing session to enable Committee members to familiarise themselves with the contents of the consultation paper. Please let us know if you would like to set up a meeting.

Yours sincerely,

Nicholas Paines QC
Commissioner for Public Law and the Law in Wales

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
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay, CF99 1SN

SeneddLJC@senedd.wales

20 January 2021

Dear Mick,

I am grateful for the Committee's consideration of the Government of Wales Act 2006 (Amendment) Order 2021 and for your report. I am writing to inform you that I have now laid the draft Order and that it will be debated on 2 February.

In response to the recommendations in your report:

Recommendation 1. The Counsel General should clarify his comments regarding the need for a further Order in Council as a consequence of the transition period.

Accepted. The Welsh Government is in discussions with the UK Government on bringing forward a further Order in Council under section 109 of the Government of Wales Act 2006 to make equivalent provision for concurrent functions under the European Union (Future Relationship) Act 2020 as that made for other EU Exit legislation in the Order on which you have reported.

Recommendation 2. The Counsel General should keep the Committee updated with developments related to concurrent and concurrent plus functions that have arisen or arise in the future, as a result of UK legislation.

Accepted. I will indeed keep the Committee updated

Yours sincerely,

Jeremy Miles AS/MS
Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition

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Document is Restricted

Lesley Griffiths MS
Minister for Environment, Energy and Rural Affairs

23 December 2020

Dear Lesley

UK Environment Bill

Thank you again for you **letter dated 28 August 2020**, in which you responded to the recommendations we put to you in our **report on the Legislative Consent Memorandum for the UK Environment Bill** (first report).

At our meeting on 14 December 2020, we considered the **Supplementary Legislative Consent Memorandum (Memorandum No.2)** which you laid before the Senedd on 4 December 2020.

You will be aware that the Business Committee has **set us a reporting deadline** of 4 February 2021 for the Memorandum No.2. Given the relatively short time available for committee consideration, it would helpful if you could respond to the questions set out below.

1. We note that you consider new clause 107 and new Schedule 16 to be within the legislative competence of the Senedd. Given this view, please can you say if you have:
    a. requested that the UK Government table an amendment to the Bill to give the Welsh Ministers the same powers as the Secretary of State in relation to Wales?
    b. pursued with the UK Government any amendments to the Bill to ensure the Welsh Ministers' involvement in the making of regulations that relate to Wales under Schedule 16?

2. Please can you elaborate on why you consider that new clause 107 and new Schedule 16 relate to matters within devolved competence when DEFRA say that it relates to the reservation in section C1, paragraph 65 of Schedule 7A to the *Government of Wales Act 2006* (the creation, operation, regulation and dissolution of types of business association)?

3. Are there ongoing discussions between the Welsh and UK Government to try resolve the dispute as regards new clause 107 and new Schedule 16? If so, please can you provide the detail of such discussions.

4. Please can you provide us with all copies of correspondence between the Welsh and UK Governments about section 107 and Schedule 16 of the Bill (including any responses to your letters of 8 September and 4 December 2020)?

5. If an agreement on the dispute as regards new clause 107 and new Schedule 16 cannot be reached, what further action do you intend to take?

6. In relation to the concurrent plus functions in the Bill, we note that the Environment Bill is not covered by the Government of Wales Act 2006 (Amendment) Order 2021 that was laid before Senedd Cymru on 10 December 2020. Can you provide an update on how the Welsh Government intends to address the issues around the concurrent plus functions in the Bill?

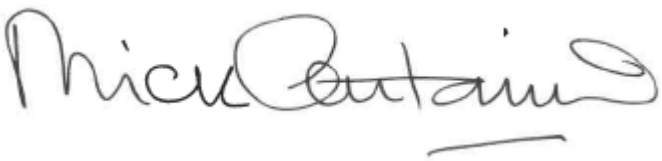
We intend to address concerns that arise with your response of 28 August 2020 in our report on the Supplementary LCM. However, we would like to raise one issue with you regarding the response you gave to our recommendation 20, which in part asked for an explanation as to why you had not discussed clause 81 with UK Ministers. Your response stated that "Engagement at Official level has been sufficient to secure agreement on" clauses 81 and 82.

7. Please could you explain in respect of your response to the first bullet of recommendation 20:

    - the precise nature of the agreement between officials i.e. what has been agreed and the status of the agreement?
    - whether the agreement between officials, and its content, has been signed of by Ministers of both the Welsh and UK Governments?
    - why it was considered appropriate to not discuss a concurrent plus power with UK Ministers?

We would be grateful to receive a response by no later than 13 January 2021.

Yours sincerely,



Mick Antoniw MS
Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

Lesley Griffiths MS/AS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Llywodraeth Cymru
Welsh Government

Mick Antoniw MS
Chair of Legislation, Justice and Constitution Committee

28 August 2020

Dear Mick

Legislation, Justice and Constitution Committee Report on the Legislative Consent Memorandum for the UK Environment Bill

Thank you for providing a copy of the Legislation, Justice and Constitution Committee's report and recommendations on the Legislative Consent Memorandum for the UK Environment Bill.

Please find the Welsh Government's response to the report's recommendations at Annex A.

I would like to take this opportunity to update the Committee on the current situation with the UK Parliament and Senedd Cymru's consideration of the Bill. The Bill was being considered by a public bill committee in the House of Commons but sittings of the Committee were suspended on 18 March until further notice. The Committee is now scheduled to report by Tuesday 29 September. There has been no update on when the parliamentary scrutiny of the Bill will likely recommence.

Given the uncertainty in the UK Bill timetable, no legislative consent motion debate has been scheduled for the Senedd at present. I now expect this to take place after summer recess.

Regards

Lesley Griffiths

Lesley Griffiths MS/AS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

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Annex A

Welsh Government Responses to Recommendations from the Legislation, Justice and Constitution Committee on the Legislative Consent Memorandum for the UK Environment Bill

Recommendation	Welsh Government Response
Recommendation 1. The Minister should respond to all recommendations contained in this report as a matter of urgency and in good time ahead of the Welsh Government tabling the relevant legislative consent motion.	**Accept** **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 2. The Minister should: ▪ state clearly which clauses of the UK Bill are in policy areas with identified common frameworks; ▪ explain how those clauses relate to the relevant planned common frameworks, in full or in part; ▪ state when a common framework in those policy areas will come forward and identify the mechanisms by which it will be achieved.	**Accept** The Bill includes provisions for chemicals and waste regulation. These are two policy areas where frameworks are being developed, namely the Chemicals Regulation (including Pesticides) Framework and the Waste and Resources Framework. The Bill does not provide a legislative basis to establish these frameworks. The frameworks are currently being developed on the basis they will be non-legislative in nature, likely to be underpinned by Ministerial Concordats. Once implemented, the frameworks may provide appropriate structures for the four governments to discuss the development of policy and legislation relating to those framework areas. For example, through inter-governmental groups established under the frameworks. Discussions are continuing between the four governments to develop these two frameworks. In particular, work is progressing on the draft Framework Outline Agreements which set out the proposed decision-making and governance arrangements. The aim is by the end of 2020 these frameworks will have a Framework Outline Agreement in place, which has received provisional confirmation by Ministers, and are operable in draft form. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 3.	**Accept**

The Minister should set out clearly, and with an appropriate explanation, which clauses of the UK Bill, as they apply to Wales: ✦ are necessary to meet legal obligations arising from the UK's departure from the EU; ✦ are related to the UK's departure from the EU but are not necessary to meet legal obligations	None of the clauses in the Bill, as they apply to Wales, are necessary to meet legal obligations arising from the UK's departure from the EU The following clauses are related to the UK's departure from the European Union but are not necessary to meet legal obligations. <u>Part 3</u> Clause 52 and Schedule 9 - Under Article 4 of the EU's Single Use Plastic Directive (DIR (EU) 2019/904), Member States have an obligation to achieve a 'substantial and sustained' consumption reduction in single use plastic cups for beverages and food container numbers. The Article does not stipulate how this reduction should be achieved, however suggested mechanisms includes the introduction of financial charges or levies. The single use carrier bag charge has shown the effectiveness of using this approach. Whilst the UK had voted to leave the EU at the point the Directive was introduced, there were ongoing uncertainties at the time of our future obligations and the details of any potential agreement with the EU. Despite this, the Directive's aim of reducing the environmental impact of single use plastics was supported by the Welsh Government and reflected our ambitions of moving Wales towards a circular economy. On this basis, a decision was made for Welsh Ministers to seek charging powers in the UK Environment Bill to enable us to maintain parity with other EU member states and to allow for the timely introduction of regulations in the absence of a suitable Welsh Bill. Clause 57 – Hazardous waste: The Hazardous Waste (Wales) Regulations 2005 were made under section 2(2) of the European Communities Act 1972. This Clause provides a power to allow Welsh Ministers to continue to be able to amend or replace the 2005 Regulations to ensure the manner in which hazardous waste is regulated prevents significant harm to the environment and human health. Clause 66 – Fixed Penalty Notices: This power is needed as there is no power in the Environmental Protection Act 1990 to amend the level of the FPNs relating to fly-tipping and householder duty of care. Such amendments have, in the past, been made under section 2(2) of the European Communities Act, which has now been repealed and cannot be used after the end of the Implementation Period. Without this new power, Welsh Ministers will be unable to amend existing penalties for the FPNs relating to fly-tipping and householder duty of care. <u>Part 8</u> Clause 125 and Schedule 19 (REACH) are related to the UK's departure from the EU, and are considered necessary to enable Ministers to keep the UK/GB REACH regime up-to-date

	(including mirroring changes to EU REACH where appropriate) following the end of the implementation period. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 4. The Minister should set out clearly which clauses of the UK Bill as they apply to Wales are not covered by recommendation 3.	**Accept** The following clauses, as they apply to Wales, are not covered by recommendation 3: <u>Part 1</u> Clause 19 - Statements about Bills containing new environmental law and Clause 43 - Meaning of environmental law (as it relates to clause 19). <u>Part 3</u> Clause 47 and Schedule 4 – Producer Responsibility Obligations Clause 48 and Schedule 5 – Producer Responsibility Disposal Costs Clauses 49 – 51 – Resource efficiency Clause 55: Electronic Waste Tracking Clause 60 – Regulations made under the Environmental Protection Act 1990 Clause 61 – Powers to make charging schemes Clause 63 and Schedule 10 – Enforcement Powers Clause 65 – Littering Enforcement1 Clause 67 – Regulation of Polluting Activities <u>Part 4</u> Clause 69 – Local Air Quality Management Clause 70 – Smoke Control Areas <u>Part 5</u> Clauses 75 and 76 – Plans and proposals Clause 77 – Authority's power to require information Clause 79 – Electronic service of documents Clause 81 – Water Quality Secretary of State Powers Clause 82 – Water Quality Welsh Ministers Powers Clause 85 – Water Quality interpretation Clauses 87 – 89 – Land drainage **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 5. The Minister should explain why it was necessary to include the clauses identified in	**Accept** The former First Minister set out the criteria where it would be acceptable to use a UK Bill to take forward Welsh Government policy. These continue to be the policy approach used when determining the appropriateness of using UK Bills.

recommendation 4 within the UK Bill, rather than within a Welsh Bill in the Sixth Senedd	Powers requested for Welsh Ministers within the UK Environment Bill adhere to this criteria as either: • The UK Government's legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar provisions to be brought forward in the Assembly; • The interconnected nature of the relevant Welsh and English administrative systems mean it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 6 The Minister should explain why an Environmental Bill was not prioritised in any of the Welsh Government's annual legislative programmes to cover: ✦ environmental governance, including an appropriate body for Wales, arising from the UK's departure from the EU; ✦ other non-Brexit related environmental policies that now appear within the UK Bill.	**Accept** The First Minister announced changes to the Welsh Government's legislative programme for the remainder of this Senedd on 15 July. He reflected on the pressures that the end of transition and Covid-19 had put on the programme and that difficult decisions to remove Bills from the programme had been required based on priorities. Unfortunately, this meant legislation on environmental principles and governance could not be brought forward this term, but the First Minister reiterated his commitment to do so. As I have previously noted, the Welsh Government has finite resources for developing its legislative programme. There are always more proposals requiring primary legislation than there is the capacity to deliver. Decisions on which proposals are to be progressed and ultimately included in a legislative programme are taken by Cabinet, taking into consideration a number of factors such as the Government's priorities across all its responsibilities, the relative maturity of development of a proposal, its likely size and timescale for delivery and the other policy and legal pressures in a portfolio which might impact on delivery. My officials are currently developing and preparing interim measures for receiving complaints about Environmental Governance in Wales to take effect by the end of the transition period for leaving the EU on 31 December 2020. In relation to principles, whilst we have a set of environmental principles in our Environment Act, the Welsh Government has already committed to continue to apply the four EU environmental principles in policy making until we include these in legislation.

	Financial Implications – There are no financial implications as a result of accepting this recommendation.
Recommendation 7 The Minister should confirm that it remains the Welsh Government's policy to create a Welsh environmental governance body using primary legislation.	**Accept** The First Minister announced changes to the Welsh Government's legislative programme for the remainder of this Senedd on 15 July. He reflected on the pressures the end of transition and Covid-19 had put on the programme and difficult decisions to remove Bills from the programme had been required based on priorities. Unfortunately, this meant legislation on environmental principles and governance could not be brought forward this term, but the First Minister reiterated his commitment to do so. My officials are currently developing and preparing interim measures for receiving complaints about Environmental Governance in Wales to take effect by the end of the transition period for leaving the EU on 31 December 2020. In relation to principles, whilst we have a set of environmental principles in our Environment Act, the Welsh Government has already committed to continue to apply the four EU environmental principles in policy making until we include these in legislation. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 8. The Minister should confirm that primary legislation to create a Welsh environmental governance body will include standalone sections, in line with its commitment to consolidated legislation, and will not amend the UK Bill as a means of delivering the Welsh Government's policy objectives.	**Accept** The intention is for Wales to have its own Welsh Environmental Principles and Governance Bill, the provisions of which will provide the necessary framework and mechanics for a Welsh environmental governance body, along with legislating to enshrine the four EU environmental principles into Welsh law. At our current stage of policy development we do not envisage amending the UK Bill as a means of delivering the Welsh Government's policy objectives. However it may be necessary to make consequential amendments to the UK Bill once a Welsh Bill is in place to ensure both pieces of legislation are able to operate smoothly alongside one another. **Financial Implications** – There are no additional financial implications as a result of accepting this recommendation.
Recommendation 9.	**Accept**

The Minister should explain how she will seek amendments to the UK Bill to reflect the outcome of relevant Welsh Government consultation exercises that have closed after the UK Bill's introduction to the UK Parliament.	Should the outcome of recent consultations result in a need to change the proposed provisions in the Bill, I will request the UK Government seeks the necessary amendments on our behalf. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 10. The Minister should seek an amendment to the UK Bill such that the clauses covered by recommendation 4 are subject to a sunset clause requiring them to expire after a specified date.	**Reject** The First Minister announced changes to Government's legislative programme for the remainder of this Senedd on 15 July. He reflected on the pressures the end of transition and Covid-19 had put on the programme and difficult decisions to remove Bills from the programme had been required based on priorities. We usually consider sunset clauses in UK legislation where there is a clear timetable for replacement of Welsh provisions and as, we do not have an Environment Bill scheduled in this term, we do not have sufficient certainty.
Recommendation 11 The Minister should explain: ✦ why consent is required for clauses 21, 45, 46, 78, 90, 100, 115, 122 and 124 of the UK Bill in so far as they relate to the general provisions in Part 8 of the UK Bill; ✦ why information included in her letter of 14 May 2020 in response to Q11 is not included in the LCM with appropriate commentary and in accordance with Standing Order 29; ✦ why her response to Q11 does not refer to clauses 55, 57, 60, 61, 65, 66, 67, 75-77, 79, 81, 82, 85 and 87-89.	**Accept** The list provided in response to Q11 was included in error. The nature of the general provisions means that we cannot recite with certainty what their specific application will be in all cases, and therefore what specific nexus they might have with a 'relevant provision'. However, to the extent that the general provisions in clauses 126 to 133 either concern or else may be exercised or understood in such a way as to bite on a relevant provision elsewhere in the Bill (i.e. on clauses 19, 43, 47 to 52, 55, 57, 60 to 61, 63, 65 to 66 to 67, 69 to 70, 75 to 77, 79, 81 to 82, 85, 87 to 89 and 125), we believe they constitute a 'relevant provision' for the purposes of Standing Order 29 in their own right. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 12.	**Accept**

The Minister should provide information, in either a supplementary document or within any supplementary LCM, justifying why it is appropriate to take each of the delegated powers for the Welsh Ministers contained within the UK Bill, and the choice of procedure for each power.	The information provided in Annex A of the LCM fulfilled the requirements of SO29.3: "A Legislative Consent Memorandum must" SO29.3(iv):"where the Bill contains any relevant provision conferring power to make subordinate legislation on Welsh Ministers, set out the Senedd procedure (if any) to which the subordinate legislation to be made in the exercise of the power is to be subject;" I have since provided the additional information requested to the Committee in my letter of 14 May. In the interests of ensuring ease of access to all of the information, I will instruct my officials to collate the information into one document and publish this alongside the LCM after summer recess. **Financial Implications** – There are no financial implications as a result of accepting this recommendation
Recommendation 13. The Minister should confirm that she requested the procedure to be used for each delegated power for the Welsh Ministers contained in the UK Bill and that in each case her request was granted.	**Accept** For each delegated power for the Welsh Ministers, I agreed the procedure to be used. **Financial Implications** – There are no financial implications as a result of accepting this recommendation
Recommendation 14. The Minister should clarify why it was necessary to include regulation-making powers in the UK Bill under clause 52 and Schedule 9 rather than in a future Welsh Bill covering recycling policy as part of its wider environmental and sustainability agenda.	**Accept** As noted in Recommendation 3, the Welsh Government sought the inclusion of powers via the UK Bill as this provided the most suitable vehicle at the time, to enable us to meet potential EU Directive obligations. Whilst the terms of the UK's exit currently mean we are no longer legally obligated to transpose the Directive or meet the required timescales, the Welsh Government still aims to match its ambitions in relation to single use plastic. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 15 The Minister should explain why she is	**Accept.** I refer the Committee to my responses to recommendation 3 and 5.

taking regulation-making powers in the UK Bill without a clear indication of when she intends to use them and therefore why they could not be included in a Welsh Environmental Bill within the Sixth Senedd.	**Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 16 The Minister should seek an amendment to the UK Bill applying the affirmative procedure to the making of regulations under section 33ZB(10A) and 34ZB(8A) of the *Environmental Protection Act 1990*, as inserted by clause 66 of the UK Bill.	**Reject** Given this is an updating power (substituting one figure for another), negative procedure is deemed appropriate given its limited scope. The process of amending the penalty amounts requires secondary legislation and are subject to an appropriate assessment of impacts to ensure the fixed penalty notices are set at a suitable level.
Recommendation 17 The Minister should explain: ▪ why it is so important to include clause 70 as it applies to Wales in the UK Bill, rather than in the Clean Air Bill to be introduced in the Sixth Senedd; ▪ without these powers, when the Welsh Ministers would next be due to amend regulations relating to smoke control areas using their powers under the *Clean Air Act 1993*.	**Accept** In relation to air quality, specifically clause 70 and Schedule 12 to the UK Environment Bill, the rationale for using the UK Environment Bill is to bring about benefits for both manufactures and consumers as soon as possible. Businesses and manufacturers will benefit as the delay between obtaining a recommendation from the technical experts who recommend products for use and placing products on the market will be reduced; the adoption of published list will minimise the margin of error when recording and updating the lists of products which can be lawfully used; and a streamlined, more effective process will increase consumer choice as more products enter the market sooner. In addition to the economic benefits for manufacturers and increased consumer choice for the public, there will also be an environmental benefit as this improvement to the operation of the smoke control regime in Wales will make it easier to identify products which can be lawfully used in smoke control areas. The UK Environment Bill was judged to be the delivery vehicle which could bring about this improvement to the operation of the smoke control regime in Wales sooner than any other mechanism. Once clause 70 is enacted, the Welsh Ministers' power to make subordinate legislation to authorise approved fuels under section 20(6) of The Clean Air Act 1993 will be repealed, as will the Welsh Ministers' power to make subordinate legislation to exempt appliances/fireplaces under section 21(5) of the same

	Act. The duty on Welsh Ministers (as distinct from a power) introduced by the enactment of the Bill to create published lists will be an administrative function as opposed to a regulation-making/legislative function. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 18. The Minister should explain clearly why it is more appropriate to replace existing sections in the *Water Industry Act 1991* with regulation-making powers under that Act.	**Accept** Clause 75(3) in so far as it applies to Wales repeals section 37B and 37C of the Water Industry Act 1991. These provisions relate to Water Resource Management Plans and Drought Plans. Section 37B deals with the publication of, and representations on, those plans. This includes wide powers for the Welsh Ministers to make Regulations and Directions in respect of such plans. Section 37C then deals with the provisions of information between licensed water suppliers to provide the water undertakers. Section 37B includes a requirement for water companies to consult the Welsh Ministers and Natural Resources Wales before preparing a draft Water Resource Management of Drought Plan. However, a requirement to consult on draft plans is included in the Water Resources Management Plan Regulations 2007 and the Drought Plan Regulations 2005 and so the requirement to consult still exists despite the repeal of section 37B of the Act. Clause 75(7) of the Environment Bill inserts new Section 39F into the Water Industry Act 1991. This does not confer new powers on Ministers – it essentially re-enacts most of the powers currently contained in Section 37B to make regulations and directions and, instead of requiring consultation responses on plans to be sent to the Welsh Ministers it enables the regulations to provide for another system, for example to respond directly to the water company holding the consultation. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 19 The Minister should explain the rationale for taking the powers of direction in proposed sections 39G(1) and 94C(8) of the *Water Industry Act 1991* (inserted by clauses 75 and 76 of the UK Bill) and explain how they will be used.	**Accept** Proposed Section 39G(1) says regulations made under section 39F may confer on the Minister power to make provision by directions. This does not give the Minister Direction making powers – it enables regulations to provide the Minister with powers of Direction. The power to enable the Minister to give Directions is narrow and specific and is limited to the procedure and detail for preparing and publishing a water resource management or drought plans. They largely replicate the powers of Direction

	currently conferred on the Minister by section 37 which the Bill repeals and do not provide additional powers. An example is the Water Resources Management Plan (Wales) Directions 2016 which direct the water companies to prepare a WRMP for 2020 The procedure for preparing Drainage and Wastewater Management Plans is intended to broadly mirror the process applied to water resource management and drought plans, so section 94C(8) which applies to DWMP's replicates section 39G(1) which applies to the other plans. Any use of the powers of Direction will be prescribed the Regulations made under these provisions, and will form part of the regulatory framework. These will be consulted on before they are made. The powers of Direction will be used for detailed points of process or procedure as at present. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.
Recommendation 20 The Minister should explain: ▪ why she has not discussed clause 81 with UK Ministers given that it is a concurrent plus power that impacts on Wales; and ▪ why the Secretary of State's powers under this clause are more limited in Scotland than in Wales.	**Accept** Engagement at Official level has been sufficient to secure agreement on these clauses. Welsh Government and Defra officials have discussed both the standalone Clause 82 and concurrent Clause 81. The rationale for the territorial extent of Clause 81 was, if the devolved administrations consented, the substances and standards to be taken into account in assessing the chemical status of surface water or groundwater could be set on a UK basis to the extent of England, Wales, NI and the cross border river basin districts with Scotland. This would deliver two benefits; having uniform standards across these territories and avoiding the need for several sets of regulations. The Secretary of State's powers in Clause 81 are not more limited in Scotland than in Wales. Subsection (4) establishes the Secretary of State can only exercise the powers in this section to make provision which could be made by the Welsh Ministers or DAERA under their own powers in clauses 82 and 83 respectively, with their consent. As there is no comparable standalone clause for Scottish Ministers*, subsection (5) establishes a similar consent mechanism should the Secretary of State exercise the powers in a part of a Scottish *cross-border* river basin districts which are in Scotland. This is necessary as subsection (2), which establishes the relevant water quality legislation, includes both the Solway Tweed and Northumbria River Basin District (RBD) Regulations. These are cross-border regions which straddle the border between England and Scotland.

	Scottish Ministers did not want to take a cl. 82/83 type stand alone power in the Environment Bill as the Regulations for the non-cross-border area of Scotland (the 'Scotland RBD') is set out in Scottish primary legislation and they plan to create powers of their own in a Scottish Bill. **Financial Implications** – There are no financial implications as a result of accepting this recommendation.

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